

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

THIRD SECTION

DECISION

Application no. 13212/09
Viorica CHERNAŢ and others
against Romania

The European Court of Human Rights (Third Section), sitting on 3 July 2012 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Nona Tsotsoria,
Kristina Pardalos, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the decision taken by the President of the Chamber to appoint Mrs Kristina Pardalos to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court), as Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court),

Having regard to the above application lodged on 4 March 2009,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having regard to the fact that the Moldovan Government, to whom a copy of the application was transmitted under Rule 44 § 1 (a) of the Rules of Court, did not exercise their right to intervene in the proceedings,

Having deliberated, decides as follows:

THE FACTS

1. The first applicant, Ms Viorica Chernaţ, is a Romanian and Moldovan national who was born in Bălţi, Moldova. She lodged the application in her own name and on behalf of her two children, Caesar Amitzur, born on 9 October 2001 in Hadera, Israel, and Emanuel Amitzur, born on 22 January 2004 in Netanya, Israel. All three applicants currently live in Oslo, Norway and are represented before the Court by Ms D. Hatneanu, a lawyer practising in Bucharest.

The Romanian Government ("the Government") are represented by their Co-Agent, Ms I. Cambrea, from the Ministry of Foreign Affairs.

A. The circumstances of the case

1. The background of the case

2. The first applicant and N.A. married in 2000 in Paraguay and then moved to Israel. In 2001 and 2004 the two children of the couple, Caesar and Emanuel, were born in Israel. The children are Romanian, Moldovan and Israeli citizens.

Between 2000 and 2005 the couple moved house four times, as N.A. was being looked for by numerous creditors and by the police authorities. The first applicant herself was summoned several times to appear before the Israeli authorities to give evidence about the activities of N.A., and this issue always provoked tension and strong arguments in the family.

From 2003, N.A. was allegedly under the supervision of the Hillel Yaffa psychiatric hospital in Hadera, undergoing medical treatment. In this context, the first applicant alleged that N.A. had attempted suicide several times.

3. In these circumstances the couple, with joint custody in respect of the children, agreed that the mother and the two children should leave permanently for Romania; N.A. intended to join them as soon as the criminal and civil (bankruptcy) proceedings lodged against him were finished, as they all wanted to start a new and, they hoped, better life in Romania.

4. On 20 August 2005 the three applicants left Israel. They bought return tickets as they were cheaper and also, allegedly in order to "trick the Israeli authorities that they were not leaving the country for good". The return date was to be 7 September 2005.

5. Following their departure N.A. shipped all their belongings (including furniture) to their new home in Romania. The children started attending kindergarten the day after their arrival. They maintained contact with their father on the phone and on the Internet, N.A. constantly promising them that he would join them soon. However, as N.A. was banned from leaving Israel

(pending criminal and bankruptcy proceedings lodged against him), this promise was left unfulfilled.

The first applicant alleged that as the judicial proceedings lodged against N.A. were still in progress, it had become impossible for him to come to Romania, and so he started putting pressure on her to return to Israel with the children. This pressure allegedly included threats of suicide or, by contrast, that he would kill both her and the children if they did not return.

6. Subsequently, N.A. filed for the return of his children under the Hague Convention (proceedings described under no. 2 below), while the first applicant filed for divorce and custody of the children with the Romanian courts and then with the courts of the Republic of Moldova (proceedings described under no. 3 below).

Following the judgments given by the Moldovan courts, the first applicant contested the enforcement of the judgment ordering the return of the children to Israel (proceedings described under no. 4 below).

7. On 20 September 2007, the first applicant gave birth to her third child, I., whose father, A.C., became her husband in March 2008.

8. As A.C. received a contract for permanent employment with a Norwegian employer, at an unspecified date in 2011 the whole family, including the second and third applicants and I., left for Norway, planning to remain there for a longer period of time.

It is submitted that all three applicants maintain a very close connection with Romania, where the maternal grandparents still live and where the first applicant continued to go with her children for holidays.

2. Proceedings for the return of the children lodged under the Hague Convention

9. On 22 May 2006 N.A. filed a request for the return of his children under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ("the Hague Convention"). The request was submitted through the Israeli Ministry of Justice to the Romanian Ministry of Justice ("the Ministry"). N.A. claimed that his wife (the first applicant) was wrongfully retaining their children in Romania without his consent.

On 14 August 2006 the Ministry, acting as the Central Authority for the purpose of the Hague Convention, instituted proceedings on behalf of N.A. before the Bucharest District Court.

10. On the basis of the evidence adduced in the case, namely documents and social enquiries at the parties' homes, the District Court found on 29 March 2007 that even though the father had consented to the children visiting Romania, he had never agreed to their relocation to that country. Since all of the procedural requirements set out in Articles 3 and 12 of the Hague Convention had been met, the court found that the retention of the children in Romania was illegal, as at the time of the retention the father was exercising his custody rights in respect of the children.

In dismissing the first applicant's arguments brought under Article 13 of the Hague Convention the court held that the allegations concerning the father's consent to relocation were unsubstantiated, in so far as N.A. had submitted documents indicating that he had bought a new house for the family in Israel and had attempted to enrol the children in Israeli kindergartens.

The evidence given by E.C. (the applicant's mother) concerning the agreement to relocation was not taken into consideration, as it was held to be subjective. Moreover, the fact that return tickets had been bought proved that there was never any agreement in that sense.

The fact that following the applicant's departure from Israel most of their belongings were shipped to Romania by N.A. did not constitute proof either, since those were in fact items for use by the children, and according to an agreement signed by the two spouses they belonged to the first applicant in any case.

The applicants' defence under Article 13 of the Hague Convention was thus found to be unsubstantiated. Furthermore, there was no indication of any risk of psychological harm, in spite of the applicant's allegations regarding her husband's mental and financial problems. There was no evidence of violent behaviour on the part of N.A. with respect to his children. He had also provided medical certificates attesting to his mental well-being.

11. The court held therefore that until a court or other competent authority had ruled on the custody issue in respect of the children, the children needed to return to their place of habitual residence. The court thus ordered the applicant to return the children to Israel within three weeks of the date on which the judgment became final.

12. The first applicant appealed against this judgment. She also requested to have the authenticity of several documents submitted by N.A. checked (a sale contract showing that N.A. had bought a house in Israel, and a social enquiry at N.A.'s alleged home in Israel which attested to good living conditions there, see paragraph 10 above). In substantiating her request the applicant submitted a letter of 13 August 2007 sent by the Department of International Affairs of the Israeli Ministry of Justice to the Romanian Ministry of Justice, which stated that "the alleged forgery of the purchase/sale agreement and the social investigation report introduced on Mr. N.A.'s behalf in the lower court proceedings is currently being investigated by the Israeli authorities".

However, the applicant's request was dismissed by the Court of Appeal, which held that all these allegations, even if they were true, would not be such as to constitute a risk to the physical and/or mental well-being of the children.

13. On 11 September 2007 the Bucharest Court of Appeal upheld the lower court's decision. In doing so, the court reiterated the arguments used

by the district court, considering that the refusal to return the children to Israel was unlawful. In that context, all the mother's allegations seeking to justify why she had remained in Romania with the children (N.A.'s bankruptcy and mental state and the fact that they all intended to relocate to Romania) were not sufficient to constitute a grave risk potentially faced by the children in the event of their return to Israel, having regard also to the fact that N.A. still had full parental rights and had expressed the wish to have the children returned to Israel.

The applicant's new arguments in appeal, that the children could no longer speak Hebrew and that they did not even remember their home in Israel, as they had left the country more than two years before, were dismissed by the Court of Appeal, which considered them to be, on the contrary, arguments in support of the need to return the children to their home in Israel, until a competent authority had decided on the custody issue.

3. Divorce and custody proceedings

14. On 7 September 2006 the first applicant filed for divorce in the Romanian courts. On 20 December 2007 her petition was dismissed, as she had failed to appear before the court and had not substantiated her application.

15. On an unspecified date the applicant again filed for divorce and custody rights in respect of the two children. The action was lodged with the Buiucani District Court in Moldova, in view of the fact that she and the two children had Moldovan citizenship.

Estimating that the defendant had been lawfully summoned by public subpoena in a local newspaper, the court finally held that it was impossible for the marriage to continue. The court thus allowed the applicant's claims, including the custody request in respect of the children, holding that the mother had been shown to have the necessary means to take care of the children, and that in view of their young age it was in their best interest to remain with their mother. As there was no appeal against that judgment, it became final on 14 December 2007.

On 15 December 2007 the divorce decree was issued by the Civil Status Office, Chisinau, Moldova.

16. On an unspecified date the first applicant lodged a second request with the Buiucani District Court in Chisinau, Moldova, this time asking that N.A. should have his parental rights restricted. In support of her claim, she stated that the father was not interested in the children's well-being, was not sending money for them and had not attempted to visit them since September 2006.

The judgment of 12 March 2008 confirming the lawful summoning of the parties allowed the applicant's claims, holding that "it is proved that the defendant (N.A.) is not interested in the education and upbringing of the

two children, therefore it is in the best interest of the minors that their mother should be able to decide by herself on their future".

The judgment was never appealed against and thus it became final on 2 April 2008.

4. Contestation of the enforcement proceedings

17. On 20 December 2007 the first applicant lodged a new action, contesting the enforcement of the judgment ordering the return of the children, by reason of the existence of the two judgments given by the Moldovan courts, one of which granted her full custody rights in respect of the children, and the other restricting the parental rights of the father, N.A.

18. The Bucharest Second Precinct Court of First Instance dismissed the applicant's claims on 10 June 2008; it held that the order to return the children to Israel was, according to the judgment of 11 September 2007, limited in time, namely until a competent authority or court had settled the custody rights; this measure had been taken in view of the actual situation of that time, a situation which had in fact not changed. Thus, it was to be noted that the judgments cited by the applicant could not produce any effect, as they had been given by the Moldovan authorities, who in the present case, pursuant to the Hague Convention, could not and did not have jurisdiction on such matters as divorce and child custody issues.

At the same time, the court held that the two impugned judgments did not comply with the provisions of Articles 51-53 of the Romanian-Moldovan Treaty on Judicial Assistance in Civil and Criminal Matters, which prescribed a specific procedure for the admittance and enforcement of a judicial order by a court from one jurisdiction to a court in another jurisdiction.

19. The first applicant appealed against this decision. She argued*, inter alia*, that the first-instance court had not in any way indicated precisely which of the conditions prescribed in Articles 51 -53 of the Bilateral Treaty had been breached. Moreover, the applicant stated, the Hague Convention did not regulate at all on the matter of who had jurisdiction on restriction of parental rights.

20. On 4 February 2009, her appeal was dismissed by Bucharest District Court, for the following reasons:

Firstly, according to the Vera Perez Report on the Interpretation of the Hague Convention, any custody matter was to be discussed before the courts within the area of habitual residence of the child. In the present case, the authorities with jurisdiction were proved to be the Israeli ones, and not the Moldovan. Contesting, by disputing the enforcement, the matters already set out in the main judgment ordering the return of the children, constituted a challenge to the *res judicata* principle.

Secondly, with regard to Article 17 of the Hague Convention, a judgment granting custody rights in respect of a child could justify a refusal to order

the return of the child, but only if the request lodged under the Hague Convention was still pending. In the present case the proceedings in respect of custody ended after the return had been ordered, which rendered Article 17 inapplicable.

To conclude, the court held that as the two cited judgments had not been given by authorities with jurisdiction on the matter, as the authorities with jurisdiction were the Israeli ones they could not be taken into consideration. In so far as the disputed judgment held that the children were to be returned to Israel until a court or another competent authority had settled the custody rights, and bearing in mind that the Moldovan judgments had not been given by competent authorities, the return judgment was to be enforced.

21. On 29 January 2009, the Ministry asked the Bucharest County Court to allow the enforcement of the judgment ordering the return of the children. The court allowed the request and authorised N.A. to take the children to Israel, either personally or with the assistance of the first applicant.

22. In her letter of 2 July 2009, the first applicant informed the Court that enforcement proceedings had started. Hence, on 4 June 2009, N.A., accompanied by police officers and with a bailiff, went to the school attended by Caesar to attempt to remove him. The first applicant and Emanuel went there at the same time. The children refused to go with their father, as they were afraid of him.

The record of the incident drawn up by the bailiff on that occasion states that in view of the children's reluctance the adults decided to go to the head's office for a discussion. Following the discussion, N.A. declared that "he did not insist on taking the children by force, as he loves them very much and wants them to be happy... he therefore waived his right to have the judgment enforced for the moment, but he would like to be granted contact with the children, as the mother had refused to allow him to have contact with them".

The applicant alleged that following this incident the children were scared and had nightmares at night, when they woke up crying.

23. In a further document sent on 23 June 2009 to the first applicant by the Romanian Ministry of Justice, it was mentioned that N.A. had insisted on enforcement of the judgment of 11 September 2007, but in view of the children's reaction he sought the first applicant's cooperation to achieve an amicable enforcement.

24. On 27 January 2010, in the presence of N.A., the first applicant gave an official declaration before the public notary, in which she undertook to allow N.A. to visit the children in Romania at least twice a year, to allow N.A. to contact his children on their mobile phones, to consult N.A. on every issue relating to the children's state of health, their studies and so on, and to facilitate contact between the children and their father at least twice a month. In exchange, N.A. gave consent for the two minors to travel abroad

without any restrictions. The declaration was signed by both the first applicant and N.A.

5. Exequatur proceedings

25. On 31 August 2009 the first applicant lodged with the Bucharest County Court *exequatur* proceedings with reference to the two judgments given by the Moldovan courts (see paragraphs 15-16 above).

The Romanian authorities granted her requests and delivered two judgments – the first on 23 October 2009 recognising the Moldovan judgment regarding the restriction of N.A.'s parental rights, and the other on 30 October 2009 regarding the divorce and custody proceedings. The courts held that all conditions for the admittance and enforcement of the foreign judgments, as laid out in Law no. 105/1992 on the regulation of private international legal relations and in the Bilateral Romanian-Moldovan Treaty (see paragraphs 27-28 below) had been fulfilled.

As no appeal was lodged against them both judgments became final, on 12 and 14 January 2010 respectively.

B. Relevant domestic law

26. The relevant legal provisions of the Hague Convention on the Civil Aspects of International Child Abduction are to be found in *Iosub Caras v. Romania*, no. 7198/04, 27 July 2006, and *Deak v. Romania and the United Kingdom*, no. 19055/05, § 58, 3 June 2008.

The Hague Convention was ratified by Romania in Law no. 100 of 16 September 1992.

Law no. 369/2004 sets out the principles and the procedure on the application of the Hague Convention on the Civil Aspects of International Child Abduction.

27. The Bilateral Treaty between Romania and the Republic of Moldova Concerning Judicial Assistance in Criminal and Civil Matters was signed on 6 July 1996 and entered into force on 13 November 1997.

In its relevant section concerning the conditions of mutual recognition and the enforcement of the judgments, the Treaty states as follows:

Article 50

(1) Each Contracting Party recognises and allows the enforcement, on its territory or in the circumstances set out in the present Treaty, of judgments pronounced on the territory of the other Contracting Party.

(2) Within the meaning of paragraph 1, a judgment is:

a) a judgment in civil proceedings, pecuniary or non-pecuniary, given by judicial courts or other competent authorities...

Article 51

The judgments will be recognised and enforced provided the following conditions are respected:

a) If they are final and enforceable according to the law of the Contracting Party on the territory of which they were pronounced...

b) If the exclusive jurisdiction of the Contracting Party where the recognition or the enforcement is needed has not been violated;

c) if the person who is held by the judgment, and who did not participate in the trial, has lawfully and in due time been summoned and presented with a request, in accordance with the law of the Contracting Party where the judgment was given, or, if the person does not have full capacity, he/she has been given the opportunity to be represented at the trial;

d) If there has never been nor is at present a trial pending between the same parties, concerning the same claims on the grounds of the same circumstances, lodged with the authorities of the requested Contracting Party.

e) If, in the event the law of the other Contracting Party must be applied, the given judgment mentions that that law has not been applied. However, recognition cannot be refused for the sole reason that the court which gave the judgment applied a different law, unless the trial concerns questions of the civil status or capacity of a person, and the given solution is different from that which would have been given on the basis of the applicable law;

f) If such recognition or enforcement is manifestly contrary to the public policy of the requested State.

Article 52

(1) A request for recognition and enforcement of a judgment is to be lodged with the court that has given the judgment as a first instance. The request will be transmitted to the authority of the other State which is competent to allow enforcement. The request may also be lodged directly with this latter authority...

Article 53

(1) Judgments given on the territory of one Contracting Party concerning the civil status of its own citizens will be fully recognised on the territory of the other State, or, if pronounced in a third State, have first been recognised in the State of citizenship of each of the parties.

(2) Judgments concerning any other matters than those mentioned in paragraph 1 may be recognised if all conditions prescribed in Articles 50 and 51 have been fulfilled....

Article 54

> The final judgments, once recognised or allowed to be enforced, will have the same effects as those judgments given by the competent authorities of the requested Contracting Party [...]

28. Law no.105/1992 on the regulation of private international legal relations applies to the recognition and enforcement in Romania of judgments rendered in non-EU countries. According to its section 167, this is possible only under certain conditions, such as: the judgment must be final and enforceable in the country in which it has been rendered; it must have been issued by a court with the jurisdictional competence to do so; and the judgment must not have been obtained fraudulently. The law also provides that the Romanian authorities are never competent to review a foreign judgment on its merits.

COMPLAINTS

29. The applicants complain under Articles 5, 6, 8 of the Convention that the Romanian courts have infringed their right to security and have ignored the general principle of the best interest of the child, by obliging the mother to return the children from a safe environment, where they are surrounded by an extended family, to Israel, to a house they do not know and a father who is in a precarious mental and financial situation, with no other relatives to help them acclimatise. In doing so, the courts have misinterpreted the relevant legal provisions and have wrongly assessed the evidence brought in the case. For the same reasons, the applicants further complain that the enforcement of the judgment ordering their return would be in breach of their rights protected by Article 8 of the Convention.

30. At the same time, the applicants allege that contrary to Article 1 of Protocol no. 12 and to Article 5 of Protocol no. 7, the Romanian authorities in general, and the Romanian Ministry of Justice in particular, have demonstrated a biased attitude, favouring the position of the father N.A. throughout the proceedings.

31. The applicants complain that, in breach of Article 2 of Protocol no. 4, in September 2008 they were prevented from going on holiday abroad, as the border authorities did not allow the children to leave the country.

THE LAW

I. ADMISSIBILITY OF THE COMPLAINTS UNDER ARTICLES 6 AND 8 OF THE CONVENTION

32. The applicants complained under Articles 6 and 8 of the Convention that the proceedings before the Romanian courts concerning the return of the second and third applicant to Israel had not been fair, in that the national courts had erred in interpreting and applying both the Hague Convention and the relevant provisions of international law on the recognition and enforcement of the judgments given by the Moldovan courts regarding custody rights with respect to the two children.

33. The Court finds that the complaints raised by the applicants are essentially directed against the merits of the impugned decisions, concerning the crucial issue of an alleged international abduction of children. The Court is master of the characterisation to be given in law to the facts of the case, and does not consider itself bound by the characterisation given by an applicant; it therefore considers that its examination should exclusively address the issue raised under Article 8 of the Convention.

Article 8 of the Convention reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

1. The parties' submissions

34. The Government argued that the interference complained of by the applicants was prescribed by law, namely by the Hague Convention; it had a legitimate aim, seeking to protect the children's right to be reunited with their father; the interference was necessary in a democratic society, being proportionate to the aim pursued.

In that respect, the Government contended that the domestic courts had conducted an in-depth assessment of the case, also in connection with the children's physical and psychological well-being in the event of their return to Israel; the courts carefully balanced the various interests at stake and gave reasoning for the solution adopted, which was done in the best interests of the two children and which involved an assessment of the general family situation, from a financial, psychological and also a medical point of view.

In their examination of the case, the domestic courts have correctly applied the relevant international legislation, both concerning the abduction of the children and relating to the recognition of the judgments given by the Moldovan authorities on custody rights.

In this context, the Government pointed out that the first applicant did not lodge any request with the Israeli courts for custody rights in respect of the children, such a request, if successful, being an appropriate remedy able to prevent her from having to return the children to Israel.

35. The present case differed considerably from the case of *Neulinger and Shuruk v. Switzerland* ([GC], no. 41615/07, ECHR 2010), mainly in view of the fact that there was no evidence in the case to attest to any potential danger to the children in the event of their return to Israel.

36. In any event, the Government submitted that both the first applicant and N.A. had complied with their mutual agreement signed before the notary on 27 January 2010 (see paragraph 24 above). Moreover, following the above-mentioned agreement, N.A. has not expressed any intention to reopen the proceedings on enforcement of the judgment ordering their return. In that respect, the circumstances appeared to be favourable to a positive development of the father-children relationship.

Such an improvement was also acknowledged by N.A. in his letter sent to the Ministry on 18 March 2010, in which he confirmed that he was in regular contact with his children by phone and e-mail. In the same letter N.A. reiterated his consent for the children to travel abroad with their mother without restriction.

The Government thus asked the Court to dismiss the applicants' claims as manifestly ill-founded and to hold that there was no breach of the applicants' right to a family life.

37. The applicants submitted that even though they had moved to Norway (see paragraph 8 above), their ties with Romania remained very close, in so far as they continued to spend all their holidays in Romania, where they still had close family. The applicants therefore maintained that whenever they were on Romanian territory they could be subjected to the enforcement of the return judgment, having regard also to the fact that N.A. had never formally waived his right to seek such enforcement.

The second and third applicants claimed that they maintained contact with their father in Romanian, either by phone or on line, the conversations sometimes being tense; however, N.A. did not contribute financially to their upbringing, even though he cashed in their Israeli monthly allowance.

The applicants thus considered that their situation was similar to that described in the case of *Neulinger and Shuruk,* cited above*,* in that the second and third applicants, aged at the time ten and eight, had in the meantime become very well integrated in their new family; an enforcement of the return judgment five years after its pronouncement would, as in the Swiss case, certainly not be in the best interest of the children.

38. The applicants further contended that in their decision-making the domestic courts had focused on protecting N.A.'s rights in relation to his children and had automatically applied the Hague Convention proceedings, without investigating the actual circumstances of the case and thus assessing the interests of all the parties involved, especially those of the children. In fact, the well-being of the second and third applicants was never assessed or considered in the courts' judgments, which represented a violation of their rights under Article 8.

2. The Court's assessment

39. As regards the general principles relating to matters of international child abduction, the Court refers to the summary of its established case-law in the case of *Neulinger and Shuruk*, cited above*,* §§131-40).

40. In the light of these principles, the Court firstly observes that the decision regarding the return of the second and third applicants to Israel amounts to an interference with the applicants' rights protected by Article 8 of the Convention (see *Neulinger and Shuruk*, cited above, § 90).

The Court further considers that having regard to the circumstances of the present case, the interference was in accordance with the law, in that it was based on the provisions of the Hague Convention ratified by Romania and forming part of its domestic law, and pursued a legitimate aim, namely the protection of the family rights of the children, the second and third applicants, and of their father, N.A.

The Court must accordingly determine whether the interference in question was "necessary in a democratic society" within the meaning of the second paragraph of Article 8 of the Convention, interpreted in the light of the international instruments applicable to the circumstances of the present case, the decisive issue being whether a fair and proportionate balance between the competing interests at stake – those of the children, of the parents, and of public order – was struck, within the margin of appreciation afforded to States in such matters (see, among others, *Maumousseau and Washington v. France*, no. 39388/05, § 62, 6 December 2007).

41. The Court points out that one of the aims of the Hague Convention is to swiftly return children to the country of their habitual residence, to thus prevent them from growing accustomed to their illegal retention (see *Lipkowsky and Mc Cormack v. Germany* (dec.), no. 26755/10, 18 January 2011). In such matters, the national courts, having the benefit of direct contact with the persons involved, are in general better placed to assess the evidence before them, while bearing in mind that the child's best interests must be the primary consideration (see *Neulinger and Shuruk*, cited above, § 134).

42. Even though there might be questions as to the compliance of the domestic courts' decisions with the established case-law of the Court (see *Maumousseau and Washington,* cited above, § 74), following the principles

set out in the case of *Neulinger and Shuruk* (cited above, § 145), in order to assess whether Article 8 has been complied with, the Court must also take into account the developments that have occurred since the pronouncement of the return judgment in 2007; to that end the Court must consider the time of the enforcement of the measure, considering that enforcement after a certain time following the child's abduction may undermine the pertinence of the Hague Convention, it being essentially an instrument of a procedural nature, and not a human rights treaty protecting individuals on an objective basis.

43. From that perspective, the Court firstly notes that the return order was limited in time, namely until a competent authority had rendered judgment on the custody issues (see paragraphs 11, 13 and 18 above). The Court then points out that in 2010 the two Moldovan judgments settling the custody rights in favour of the first applicant were recognised by the Romanian courts in *exequatur* proceedings as being given by a competent authority (see paragraph 25 above). According to the relevant legislation, once recognised these judgments are enforceable and have full effect on Romanian territory (see paragraphs 27-28 above).

In view of the above, and having regard to the lapse of time in the enforcement of the judgment, the Court considers that the enforceability of the obligation to return the children may be put into question (see *Neulinger and Shuruk*, cited above, § 145).

44. Furthermore, the Court notes that the mutual agreement signed by the first applicant and N.A. in 2010 was respected by the father, who, according also to the Government's submissions, has not manifested his intention to reopen the proceedings regarding the enforcement of the return judgment (see paragraph 36 above). The father's wish to develop a relationship with his children without making recourse to an enforcement of the return judgment is also underlined by the fact that he consented to the children being able to freely travel abroad with the first applicant; based on this consent, the applicants have moved to Norway indefinitely, their visits to Romania now being occasional (see paragraphs 8 and 37 above).

45. Having regard to the significant changes and developments in the factual and legal circumstances of the parties involved in the case, the Court does not see the necessary elements sustaining the applicants' claims under Article 8.

It follows that these complaints are manifestly ill-founded within the meaning of Article 35 3 (a) of the Convention, and must be rejected in accordance with Article 35 § 4 of the Convention.

II. ADMISSIBILITY OF OTHER COMPLAINTS

46. Lastly, the applicants complain that the Romanian authorities have breached their obligations under Article 5 of the Convention, under

Article 1 of Protocol no. 12, Article 5 of Protocol no. 7 and under Article 2 of Protocol no. 4, by ignoring the children's right to security, by preventing them from travelling abroad without the consent of the father, and in general by constantly favouring N.A in their decision-making process.

47. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

48. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President