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

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International child abduction: no return to the country of origin without an effective examination of allegations of a "serious risk" to the child

In today's Grand Chamber judgment in the case of **X v. Latvia** (application no. 27853/09), which is final[1], the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the procedure for the return of a child to Australia, her country of origin, which she had left with her mother at the age of three years and five months, in application of the Hague Convention on the Civil Aspects of International Child Abduction, and the mother's complaint that the Latvian courts' decision ordering that return had breached her right to respect for her family life within the meaning of Article 8 of the Convention.

The Court considered that the European Convention on Human Rights and the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980 had to be applied in a combined and harmonious manner, and that the best interests of the child had to be the primary consideration. In the present case, it considered that the Latvian courts had not complied with the procedural requirements of Article 8, in that they had refused to take into consideration an arguable allegation of a "serious risk" to the child in the event of her return to Australia.

Principal facts

The applicant, X., is a Latvian national who was born in 1974, and who also obtained Australian nationality in 2007 and now lives in Australia.

In 2004, while she was living in Australia and was married, the applicant began a relationship with another man, T., and moved in with him. In 2005 she gave birth to a daughter. The birth certificate did not give the father's name. The relationship between the applicant and T. deteriorated, but they continued to live together until 17 July 2008, when the applicant left Australia for Latvia with her daughter, then aged three years and 5 months.

T. then applied to an Australian Family Court, which recognised his paternity and held that he had had joint parental responsibility since the child's birth. At the same time, the Australian authorities submitted to their Latvian counterpart a request for the child's return to Australia, in application of the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980. In November 2008 the Latvian first-instance court ruled that the child's removal had been unlawful and had been carried out without the consent of T., whose rights had been recognised by an Australian court. The applicant appealed against that judgment, putting forward, in particular, the child's ties with Latvia, and criticising T.'s conduct and the lack of information about her daughter's situation in the event of return. While alleging her own inability to return to live in Australia again, the applicant submitted a report, drawn up at her request by a professional, which concluded that there was a risk of psychological trauma for her child in the event of immediate separation. In January 2009 the Riga Regional Court upheld the first-instance judgment ordering the child's return to Australia. Holding

1 Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

that the applicant's allegations were unfounded, it stated, with regard to the risk raised in the psychological report, that it was not called upon to rule on that issue, since it concerned the merits of the custody issue, which was not part of the procedure for the child's return as foreseen by the Hague Convention. Following that judgment, T. took advantage of a chance encounter to recover his daughter and return with her to Australia. He has since exercised parental rights alone, but the applicant, who is once again living in Australia and working for a public institution, has regular contact with her daughter.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life) of the Convention, the applicant alleged that she had been the victim of an infringement of her right to respect for her family life within the meaning of Article 8 of the Convention, on account of the Latvian courts' decision to order her daughter's return to Australia in application of the Hague Convention on the Civil Aspects of International Child Abduction.

The application was lodged with the European Court of Human Rights on 8 May 2009.

In its chamber judgment of 15 November 2011, the Court concluded, by a majority, that there had been a violation of Article 8. On 4 June 2012 the case was referred to the Grand Chamber at the Government's request. A hearing took place in public before the Grand Chamber in the Human Rights Building, Strasbourg, on 10 October 2012. Written observations were received from the Finnish and Czech Governments, and from the non-governmental organisation Reunite Child International Child Abduction Centre, the President having authorised them to intervene in the procedure before the Grand Chamber as third parties.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
Nicolas **Bratza** (United Kingdom),
Guido **Raimondi** (Italy),
Ineta **Ziemele** (Latvia),
Mark **Villiger** (Liechtenstein),
Nina **Vajić** (Croatia),
Khanlar **Hajiyev** (Azerbaijan),
Danutė **Jočienė** (Lithuania),
Ján **Šikuta** (Slovakia),
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Zdravka **Kalaydjieva** (Bulgaria),
Nebojša **Vučinić** (Montenegro),
Angelika **Nußberger** (Germany),
Julia **Laffranque** (Estonia),
Paulo **Pinto de Albuquerque** (Portugal),
Linos-Alexandre **Sicilianos** (Greece),

and also Michael **O'Boyle**, *Deputy Registrar.*

Decision of the Court

Article 8

The Court noted at the outset that the decision to return the child to Australia had amounted to interference with the applicant's right to respect for her private and family life. That interference

had been in accordance with the law. Admittedly, the applicant submitted that the Hague Convention was not applicable in that she had been raising her daughter as a single parent at the time of her departure from Australia. The Court pointed out, however, that that issue, which was a matter solely for the domestic courts, had been expressly examined by the Latvian courts, which had noted that an Australian court had confirmed T.'s paternity and his rights in respect of the child. The Court also considered that this interference had pursued a legitimate aim, namely that of protecting the rights of the child and of her father.

With regard to the necessity of the interference, the Court reiterated that the various international texts had to be applied in a combined and harmonious manner, without conflict or opposition between the different treaties, provided that the Court was able to perform its task, which was to ensure observance of the commitments undertaken by the States Parties to the Convention, through an interpretation of the Convention which guaranteed practical and effective rights.

The Court further noted that there was a broad consensus in support of the idea that in all decisions concerning children, their best interests had to be paramount. Those interests were not the same as those of the parents and, in the context of an application for return made under the Hague Convention – which was distinct from custody proceedings – they had to be evaluated in the light of the exceptions provided for by the Hague Convention, particularly those concerning the passage of time (Article 12) and the existence of a "grave risk" (Article 13 (b)). This task fell to the national authorities, which enjoyed a margin of appreciation in fulfilling it. For its part, the Court had a supervisory role which consisted, without substituting its own assessment for that of the domestic courts, in verifying whether the decision-making process which led to the decision to return the child to the State of habitual residence had been fair and that his or her best interests had been defended.

Thus, in the light of Article 8 of the Convention, while domestic courts called on to examine an application for return were not required, contrary to what may have been submitted, to conduct an in-depth examination of the entire family situation, they had nonetheless to comply with a twofold procedural obligation: on the one hand, by examining the allegations of a "serious risk" to the child in the event of return, and demonstrating such examination through a reasoned decision on this point; and on the other, by satisfying themselves that adequate safeguards were provided in the State of habitual residence (in this case, Australia), particularly through tangible protection measures in the event of a known risk.

In the present case, the Court noted that less than a year had elapsed between the child's departure from Australia and the application for her return to that country, which would ordinarily have implied an immediate return. However, it noted that the applicant had submitted to the Riga Regional Court a certificate, prepared by a psychologist after the first-instance judgment, indicating, *inter alia*, that an immediate separation from her mother was to be ruled out on account of the likelihood of psychological trauma for the child. In the Court's opinion, it was unacceptable for the domestic courts to rule this expert report inadmissible on the ground that it concerned the merits of the custody issue rather than the application for return that was before them, and was thus not part of the proceedings in question: in fact, the psychological report drew attention to a risk of psychological trauma, directly linked to the best interests of the child, and represented an arguable allegation of a "grave risk", which ought therefore to have been examined in the light of Article 13 (b) of the Hague Convention, as should the issue of whether it was possible for the mother to follow her daughter to Australia and to maintain contact with her. The need to comply with short time-limits, admittedly also laid down by the Hague Convention, could not exonerate the Latvian authorities from undertaking an effective examination of such an allegation.

In conclusion, the Court held that, in refusing to examine a certificate issued by a professional which disclosed the possible existence of a "serious risk" for the child within the meaning of Article 13 (b)

of the Hague Convention, the Latvian authorities had failed to comply with their procedural obligations. It followed that there had been a violation of Article 8 of the Convention.

Just satisfaction (Article 41)

The court held that Latvia was to pay the applicant 2,000 euros (EUR) in respect of costs and expenses.

Separate opinions

Judges Bratza, Vajić, Hajiyev, Šikuta, Hirvelä, Nicolaou, Raimondi and Nussberger expressed a dissenting opinion and Judge Pinto de Albuquerque expressed a concurring opinion. These separate opinions are annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.