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

SECOND SECTION

CASE OF MONORY v. ROMANIA AND HUNGARY

(*Application no. 71099/01*)

JUDGMENT

STRASBOURG

5 April 2005

FINAL

05/07/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Monory v. Hungary and Romania,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr R. TÜRMEN,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 17 February 2004 and 15 March 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 71099/01) against Romania and Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Mr György Monory ("the applicant"), on 23 November 2000.

2. The applicant was represented by Mrs L. Farkas, a lawyer practising in Budapest. The Hungarian Government were represented by Mr L. Höltz, Deputy-State Secretary in the Ministry of Justice. The Romanian Government ("the Government") were represented by their Agents, Mr B. Aurescu succeeded by Mrs R. Rizoiu.

3. The applicant alleged, in particular, that the Romanian authorities had failed to make sufficient efforts to secure to him the return of his child with a view to reasserting the exercise of his parental rights, following his wife's wrongful removal of the child, and that no effective remedy existed at his disposal to bring his complaint before the Romanian courts, in violation of Articles 8 and 13 of the Convention.

The applicant's complaint against Hungary concerns the length of proceedings for divorce and child custody, allegedly in violation of Article 6 § 1 of the Convention.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 17 February 2004, the Court declared the application partly admissible.

6. The applicant and the Governments filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1946 and lives in Nagymaros, Hungary.

A. Abduction of the applicant's daughter and divorce proceedings initiated in Romania

9. In 1994 the applicant married Ms C.M., who is a national of both Romania and Hungary. On 16 February 1995 their daughter V. was born. The parents had joint custody in respect of the child, according to Hungarian law. They lived in Nagymaros.

10. In December 1998 they visited the wife's family in Romania. The applicant returned to Hungary, while C.M. stayed in Romania with V. and promised to return by 30 January 1999.

11. On 4 January 1999 C.M. filed for divorce, custody of V. and maintenance before the Satu Mare District Court in Romania. On 17 January 1999, she informed the applicant by telephone that she had decided to live in Romania and would not allow him to take V. to Hungary, despite him still being her husband and having joint custody of their daughter.

12. In a decision of 8 October 2003, the Satu Mare District Court established the residence of the child with her mother, pending the outcome of the divorce proceedings and required the applicant to pay alimony for his daughter. It also granted the applicant visiting rights to his child. On 19 February 2004 the decision became final.

B. Proceedings under the Hague Convention before the Romanian courts

13. In the meantime, on 20 January 1999 the applicant submitted a request for the return of his daughter to Hungary under Article 3 of the

Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ("the Hague Convention"). The request was submitted through the Hungarian Ministry of Justice ("the Hungarian Ministry") to the Romanian Ministry of Justice ("the Romanian Ministry"). He argued that V. was the victim of international kidnapping and had been retained in Romania unlawfully within the meaning of Article 72 § 1 of the Hungarian Code on Family Law.

14. The Romanian Ministry, acting as the Central Authority responsible for the obligations established by the Hague Convention, instituted proceedings on behalf of the applicant before the Satu Mare District Court. On 8 June 1999 the District Court found no violation of the relevant Articles of the Hague Convention and refused the applicant's request. It considered that the retention of the child was not unlawful in so far as the applicant did not have exclusive custody rights in respect of his daughter and, thus, Article 3 of the Hague Convention was not applicable. The court considered that, in any case, the return of the child would constitute a great risk for her since she was already integrated into the new environment created by the mother during her stay in Romania.

15. On 5 October 1999 the Hungarian Nagymaros Guardianship Authority, at the applicant's request, declared that C.M. had not instituted the correct administrative proceedings, as required by the Hungarian Code on Family Law, with respect to their daughter's lawful removal to, and retention in Romania. It proposed that the child's residence be established with her father.

16. On 22 October 1999 the Satu Mare County Court dismissed the applicant's appeal against the decision of 8 June 1999. It recalled that the applicant did not have exclusive custody rights with respect to his daughter. It further considered that the return of the child would deprive the mother of the exercise of her parental rights. Lastly, the county court stated that, as long as the marriage of the parents was still valid, they should have the custody matters resolved by a competent court.

17. The Romanian Ministry appealed on points of law against this decision, alleging that the county court had incorrectly interpreted the applicable law and the facts of the case. They recalled that, according to the Hague Convention, the court should have applied Hungarian law, by which the retention of the child across the border by her mother without the father's consent was illegal.

18. On 2 February 2000 the Oradea Court of Appeal dismissed the appeal. It recalled that under Hungarian law the parents exercised parental rights jointly. However, due to the concrete family situation, it was normal that the parent living abroad would have to make more effort in order to exercise these rights. Furthermore, it considered that the child had already become integrated into the new environment. It held therefore that it was in the best interests of the child that she remain with her mother.

C. Proceedings for divorce and custody, mainly before the Hungarian courts

19. In parallel, on 28 April 1999 the applicant filed for the custody of V. before the Vác District Court in Hungary. On 17 May 1999 the applicant requested the court to proceed with the case as a matter of urgency and to hear witnesses.

20. On 21 May 1999 the District Court, via the Ministry of Justice, notified the defendant in Romania of the action.

21. On 30 August 1999 the applicant requested, by way of an interim measure, that V. be temporarily placed in his care and that the mother's custody rights be terminated.

22. On 8 September 1999 the District Court held a hearing, dismissed the applicant's request for interim measures and suspended the case until the proceedings on the Hague Convention issues had been finalised. The District Court noted that the divorce proceedings before the Romanian Satu Mare District Court had also been suspended on an earlier date for the same reason. The applicant appealed against this decision on 16 September 1999.

23. On 21 September 1999 the Pest County Public Prosecutor's Office interceded in the proceedings for the applicant and endorsed his appeal of 16 September filed against the decision of the Vác District Court. On 30 September 1999 both the applicant's and the public prosecutor's appeals were served on the defendant, who received them on 28 December 1999.

24. On 29 October 1999 the applicant requested the District Court to grant him, by way of an interim measure, custody of the child, to terminate the mother's parental rights and to proceed with the case urgently.

25. On 31 January 2000 the applicant renewed his request for custody of the child. He also filed a motion for bias against the District Court and the presiding judges. He renewed this motion on 21 February 2000.

26. On 29 February 2000 the Pest County Regional Court upheld the dismissal of the applicant's request for interim measures but instructed the District Court to resume its proceedings. This decision, notified via the Hungarian Ministry, reached the defendant on 29 May 2000.

27. On 19 May 2000 the District Court ordered that a study be made in the homes of both parties in order to ascertain their living conditions. A study was carried out in the applicant's home on 8 June 2000. The order was served on the defendant on 10 July 2000 and the relevant documents forwarded on 23 January 2001 to the Ministry of Justice with a view to carrying out a similar study in the defendant's home in Romania.

28. The applicant's repeated motions for bias were dismissed on 27 September, 26 and 30 October and 11 December 2000.

29. On 5 January 2001 the District Court joined to the proceedings the applicant's further claim for divorce which had been filed on 3 July 2000. The defendant was notified of this step on 1 March 2001.

30. On 21 and 30 January 2001 respectively, the applicant submitted further documents and requested the court to summon other witnesses.

31. The applicant's renewed request of 31 January 2001 for an interim measure was dismissed by the District Court on 15 February 2001.

32. On 6 June 2001 the District Court held a hearing and heard four witnesses. The defendant failed to appear. The court therefore requested her to submit her observations on the minutes of the hearing within 15 days and ordered her to submit a written response to the applicant's claim for custody of the child.

33. On 8 June 2001 a lawyer practising in Hungary informed the court that the defendant had authorised him to represent her in the case. On 2 July 2001 the defendant submitted her counter-claim and motions for evidence.

34. On 5 July and 30 October 2001 the Hungarian Ministry made an enquiry with its Romanian counterpart as to whether the envisaged study of the defendant's home could be carried out. In their reply of 10 December 2001, the Romanian Ministry stated that the relevant documents had been lost.

35. A hearing was held on 7 November 2001 at which the District Court heard a witness. The defendant's representative informed the court that the request to carry out a study of the defendant's living conditions had been served on the defendant by mistake. Consequently, the District Court asked the Hungarian Ministry to send the request again to the Satu Mare District Court.

36. On 8 November 2001 the District Court refused to regulate the applicant's access rights by way of an interim measure.

37. On 22 and 29 November 2001 the District Court invited the applicant to update the addresses of two of his witnesses who could not be summoned. On the previous day the applicant had appealed against the order of 8 November 2001.

38. On 19 December 2001 the District Court held a hearing and heard witnesses. It also set a statutory three-month time-limit for the parties to reconsider or confirm the continuation of the divorce proceedings.

39. Meanwhile, on 14 November 2001 the witness requested by the Vác District Court was heard by the Satu Mare District Court. The minutes were forwarded to the Hungarian Ministry and their translation was completed on 3 December 2001 and 27 February 2002, respectively.

40. On the applicant's appeal, the Pest County Regional Court quashed the order of 8 November 2001 and requested the District Court to take a new decision.

41. After the Hungarian Ministry had replaced the lost documents, on 13 February 2002 the Romanian Satu Mare District Court carried out the requested home study. The translation of the resultant documents reached the Hungarian Vác District Court on 21 May 2002.

42. Meanwhile, on 15 February 2002 the District Court regulated the applicant's access rights. This order was amended by the Regional Court on 2 April 2002.

43. On 26 March 2002 the Pest County Regional Court rejected the applicant's renewed motion for bias against the Vác District Court and fined him 15,000 Hungarian forints (HUF) for having repeatedly challenged judges without substantiating the requests.

44. On 27 May 2002 the District Court appointed an expert in child psychology. The expert's examination of V., scheduled for 2 July 2002, was cancelled as the defendant was unwilling to attend because she was unable to meet the travel costs.

45. On 16 July 2002 the District Court dismissed the applicant's request for an interim measure of 4 July 2002 to order that V. spend her summer vacation in Hungary.

46. The defendant failed to appear with the child at examinations scheduled for 2 July and 11 November 2002, 13 January and 26 February 2003. On 4 December 2002 the District Court imposed a fine of HUF 20,000 on the defendant. On 22 January 2003 the court warned the defendant that she was obliged to appear at the examinations. At a later date, the court amended the instructions for the expert and ordered her to assess who was the most suitable parent to raise the child. The defendant was examined on 14 May 2003.

47. On 26 June 2003 the expert submitted her opinion, finding the mother more suitable to raise V.

48. On 4 July 2003 the District Court, as an interim measure, regulated the applicant's access rights for the summer of 2003.

49. The District Court held hearings on 12 September and 29 October 2003. In a judgment delivered on the latter date, the court declared the couple's divorce and divided the matrimonial property. It also granted the defendant custody of V. and ordered the applicant to pay her maintenance of HUF 10,000 per month.

50. On 5 January 2004 the applicant appealed against the judgment. He withdrew the appeal 15 days later. Consequently, on 21 January 2004 the judgment became final.

II. RELEVANT DOMESTIC LAW

51. The relevant provisions of the Hague Convention on the Civil Aspects of International Child Abduction provide 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..."

Article 5

"For the purposes of this Convention –

a) 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;..."

Article 7

"Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures -

a) to discover the whereabouts of a child who has been wrongfully removed or retained;

b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

d) to exchange, where desirable, information relating to the social background of the child;

e) to provide information of a general character as to the law of their State in connection with the application of the Convention;

f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;

g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

i) to keep other each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application."

Article 8

"Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child..."

Article 10

"The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child."

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. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be."

Article 18

"The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time."

52. Paragraph 68 of the Explanatory Report on the 1980 Hague Child Abduction Convention drafted by Elisa Pérez-Vera in 1980, interprets Article 3 of the Convention as follows:

"The first source referred to in Article 3 is law, where it is stated that custody 'may arise ... by operation of law'. That leads us to stress one of the characteristics of this Convention, namely its application to the protection of custody rights which were exercised prior to any decision thereon. This is important, since one cannot forget that,

in terms of statistics, the number of cases in which a child is removed prior to a decision on its custody are quite frequent. Moreover, the possibility of the dispossessed parent being able to recover the child in such circumstances, except within the Convention's framework, is practically non-existent, unless he in his turn resorts to force, a course of action which is always harmful to the child."

The same Report, in its paragraph 84, comments on Article 5 in the following terms:

"...although nothing is said in this article about the possibility of custody rights being exercised singly or jointly, such a possibility is clearly envisaged... the whole tenor of Article 3 leaves no room for doubt that the Convention seeks to protect joint custody as well. As for knowing when joint custody exists, that is a question which must be decided in each particular case, and in the light of the law of the child's habitual residence."

53. The relevant provisions of the Hungarian Code on Civil Procedure are:

Section 2

"(1) A court shall - in accordance with Section 1 - enforce the parties' right to have their disputes determined in fair proceedings and within a reasonable length of time."

Section 3

"(1) The task of a law court is to endeavour to find out the truth in accordance with the aim of the present Act. The court shall, therefore, see in its line of duties that the parties exercise their rights properly throughout the procedure and meet the obligations they are bound to meet in the lawsuit. The court is obliged to provide the necessary information to a party who has no counsel and to remind him of his rights and obligations. The court shall consider pleas and declarations submitted by a party not by their formal designation but according to their contents.

(2) The court shall see, in its line of duties, that cases be tried thoroughly and within a reasonable length of time."

THE LAW

I. COMPLAINTS AGAINST ROMANIA

A. Alleged violation of Article 8 of the Convention

54. The applicant complained that the Romanian authorities, namely courts and administrative bodies, had failed to ensure the swift return of his daughter after his wife had retained the child in Romania without his consent. In so doing, the authorities had failed to secure his parental rights with respect to his daughter, in violation of his right to respect for his family life enshrined in Article 8 of the Convention, which reads, in so far as relevant, as follows:

> "1. Everyone has the right to respect for his ... 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 ... for the protection of the rights and freedoms of others."

1. Scope of the issue before the Court

55. The Court recalls that the admissibility decision of 17 February 2004, based on the parties' submissions, limited the examination of the complaint to the proceedings concerning the return of the child to Hungary where the family had a common residence. The applicant also maintained in his observations that his aim was to have his child returned to Hungary. Therefore, reference to the proceedings for access or visiting rights was made only in so far as it was necessary to examine the Government's submissions concerning the other possible avenues which the applicant could have pursued.

56. In his supplementary observations of 15 April 2004, the applicant broadened the complaint and submitted that the failure of the Romanian authorities to return the child, and thus to re-establish his parental rights, had violated his access and visiting rights. By dismissing his request for the return of the child, the courts had obliged him to conduct two parallel sets of proceedings for divorce, custody and alimony before both the Romanian and Hungarian courts. This had led to a violation of his right to respect for his family life, in so far as the Romanian courts failed to take into account the proceedings before the Hungarian courts and to regulate visiting rights in his favour.

In this context, he claimed that the visiting rights which were granted to him by the Romanian courts, in the decision of 19 February 2004, might have proved difficult to implement should he have chosen to enforce them.

57. Subsequently, the applicant submitted, in his written observations on the merits of the complaint raised under this Article, that his visiting rights have been brought to the Court's attention only in so far as they were a direct consequence of the outcome of the Hague proceedings initiated before the Romanian courts. In a letter of 22 September 2004, he had recalled that, in the initial application submitted to the Court, he could not have raised the issue of visiting rights, as at that time the proceedings focused solely on the return of his child.

58. The Romanian Government pointed out that Article 21 of the Hague Convention creates a separate procedure for the establishment of visiting rights, distinct from proceedings for the return of a child. However, the applicant did not institute the former proceedings. Furthermore, although he was granted visiting rights in the decision of 19 February 2004, the applicant did not prove that he had taken any steps towards their implementation.

59. The Court agrees with the Government that, as regards visiting rights, the applicant did not exhaust all effective remedies as he did not institute proceedings for access rights under Article 21 of the Hague Convention, nor did he seek the enforcement of the decision granting him visiting rights.

60. Therefore, the Court will only take this matter into account to the extent that it is relevant to the applicant's complaint under Article 8 of the Convention due to the failure to return the child to Hungary. It will, therefore, limit its examination to the complaint as it was communicated and assessed in the admissibility decision of 17 February 2004.

2. Submissions of the parties

a) The applicant

61. The applicant contended that the decisions of the Romanian courts dealing with his request for the return of his child and the position of the Romanian Ministry throughout the proceedings, initiated at his request under the Hague Convention, constituted an interference with his right to respect for his family life. The authorities made it impossible for him to have his child returned to the family's common residence and to exercise his parental rights according to Hungarian law.

62. The proceedings, instituted by the applicant on 20 January 1999 and finalised by the courts on 2 February 2000, took too long for a case of this type. This contradicts the requirements of the Hague Convention to resolve the matter expeditiously. Furthermore, had the Romanian courts applied Hungarian law, as required by the Hague Convention, they would have

acknowledged his custody rights as outlined in that Convention, and allowed his request for the return of his child. He concluded that there had been flaws and shortcomings in the proceedings that resulted in the violation of his Article 8 rights.

b) The Government

63. In the Government's view there was no interference with the applicant's right to respect for his family life.

64. Concerning the period before the final decision of the domestic courts, ruling on the Hague Convention procedure, the State authorities had fulfilled their duties under the Convention, which were limited to lodging the application for the return of the child, as requested by the applicant, representing him before the courts and availing themselves of all possible appeals against the court decisions that were unfavourable to him.

65. Moreover, the State authorities had no further obligations under the Hague Convention as no court had granted the applicant the right to exercise sole parental responsibility or any other right superior to that of the mother. The present case is therefore distinct from those of *Ignaccolo-Zenide v. Romania* (no. 31679/96, ECHR 25 January 2000), *Maire v. Portugal* (no. 48206/99, 26 June 2003) and *Iglesias Gil and A.U.I. v. Spain* (no. 56673/00, 29 April 2003), where the respective applicants had been granted such rights by means of final court decisions.

66. As for the proceedings for the return of the child and their outcome, no interference with the applicant's Article 8 rights occurred, in so far as the domestic courts had found that the removal of the child by the applicant's wife had not been "wrongful" within the meaning of the Hague Convention. The domestic courts, who were better placed to examine the issue, had dealt in substance with all the arguments presented by the parties and had reached their decisions based on Hungarian law concerning custody matters, which conferred equal parental rights on the applicant and his wife. There was nothing in the reasoning of the domestic courts that could qualify their decisions as arbitrary. The Government relied on cases like *Olsson v. Sweden* ((No. 1), judgment of 24 March 1988, Series A no. 130, p. 32, § 68), *Tiemann v. France and Germany* ((dec.), no. 47457/99 and 47458/99, ECHR 2000-IV), *Hokkanen v. Finland* (judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55) and *Bronda v. Italy* (judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, p. 1491, § 59).

67. The Government contended, therefore, that once the domestic courts had established that the removal of the child had not been unlawful, the applicant's request for the return of his child no longer satisfied the requirements of the Hague Convention and the Romanian authorities had no further obligations towards the applicant. They relied on the ruling of the Court in the cases of *Guichard v. France* ((dec.), no. 56838/00, 2 September

2003) and *Paradis and others v. Germany* ((dec.), no. 4783/03, 15 May 2003).

68. Should the Court consider that there had been an interference with the applicant's rights, the Government contended that it was in accordance with Article 8 § 2 of the Convention. The domestic courts had rejected the applicant's request in the light of the provisions of the Hague Convention which had been incorporated into the domestic legal system by law no. 100/1992. The courts had adopted their decisions in the best interests of the child, as required by both the Hague and the European Conventions.

3. The Court's assessment

69. The Court notes, firstly, that it is common ground that the relationship between the applicant and his daughter came within the sphere of family life under Article 8 of the Convention.

70. The Court 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, among other authorities, *Tiemann* (dec.) and *Bronda*, p. 1489, § 51, cited above).

The events under consideration in the instant case, in so far as they give rise to the responsibility of the respondent States, clearly amounted to an interference with the applicant's right to respect for his family life, as it restricted his enjoyment of his daughter's company.

71. The Court must accordingly determine whether there has been a breach of the right of the applicant to respect for his family life.

72. Although the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities, there are in addition positive obligations inherent in effective "respect" for family life. However, the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are nonetheless similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, and in both contexts the State enjoys a certain margin of appreciation (see *Ignaccolo-Zenide*, cited above, § 94; *Iglesias Gil and A.U.I.*, cited above, § 48, and *Sylvester v. Austria*, no. 36812/97, 40104/98, § 51, 24 April 2003).

73. The positive obligations imposed on States by Article 8 include taking measures to ensure a parent's reunification with his or her child (see *Ignaccolo-Zenide*, cited above, § 94, and *Nuutinen v. Finland*, no. 32842/96, § 127, ECHR 2000-VIII). The Court has already interpreted these positive obligations in the light of the Hague Convention, Article 7 of which contains a non-exhaustive list of measures to be taken by States in order to secure the prompt return of the child, including the institution of judicial proceedings (see *Ignaccolo-Zenide*, cited above, § 95). The same

interpretation can be followed in the present case in so far as, at the material time, both Romania and Hungary were parties to the Hague Convention.

74. The Court notes that the Romanian Ministry, acting as the Central Authority for the purpose of the Hague Convention, had chosen to act upon the applicant's request for the return of his child. It transpires that the authorities acted genuinely as if the removal had been unlawful.

75. The Court recalls that Article 13 of the Hague Convention allows the Central Authority to reject applications which are clearly ill-founded. Such a decision has already been found to comply with Article 8 of the Convention in the case of *Guichard*, cited above. However, in the present case, the State organs did not reject the applicant's request and, by choosing to act upon it, they must be presumed to have consented to all the obligations arising under that Convention. The Court therefore disagrees with the Government's view that their duties were limited to bringing the law suit for the return of the child before the competent courts.

76. Moreover, the Court does not share the Government's view that no further obligation lay with the State authorities under the Hague Convention as no court had granted the applicant sole parental responsibility. The Court recalls that joint custody, exercised by parents who are not divorced, is recognised by Article 3 paragraph (b) of the Hague Convention. This is supported by the Explanatory Report on the Hague Convention (see paragraph 52 above). There is nothing in the Convention excluding married couples. Moreover, the Hague Convention has been interpreted by domestic courts of other European States as being applicable prior to the proceedings on divorce and child custody (see, *inter alia*, *Sylvester*, cited above, §§ 13 and 16, and *Couderc v. Czech Republic* (dec.), no. 54429/00, 30 January 2001).

77. The Hungarian law applicable in the present case granted the parents joint custody. Neither of them, therefore, had superior parental rights over their daughter (see paragraph 9 above). As for the residence of the child, Hungarian law imposed an obligation on the mother to obtain the approval of the father or of the Hungarian Guardianship Authority if she wished to change the child's residence (see paragraph 15 above). It appears from the file that she did not fulfil this obligation. Moreover, it was not until 8 October 2003 that the child's residence was formally established with her mother in Romania (see paragraph 12 above).

78. The Court acknowledges that the present case is to be distinguished from the cases of *Ignaccolo-Zenide*, *Maire* and *Iglesias Gil and A.U.I.*, cited above, where the applicants were in possession of a return order which the State authorities had failed to enforce. However, this distinction has little impact on the Article 8 issue in the present case. While in the previous cases the authorities' obligation to act arose from a court order, in the present case their obligation arose by virtue of the applicable Hungarian law and Article 3 of the Hague Convention.

79. Consequently, the Romanian authorities were bound to comply with all obligations set out in Article 7 of the Hague Convention. They should have taken or caused to be taken all provisional measures, including extra-judicial ones, which could have helped prevent "further harm to the child or prejudice to the interested parties". However, the authorities did not take any such measure but limited themselves to representing the applicant before the Romanian courts. The Court considers therefore that the authorities failed to observe their full obligations under Article 7 of the Hague Convention.

80. As for the interpretation given by the courts to the Hague Convention in the light of Hungarian law, it is to be noted that all court instances that dealt with the case dismissed from the outset the applicability of Article 3 of the Hague Convention. The courts found that, according to Hungarian law, the applicant did not have the right to have the child returned to him. However, it appears that the child had been removed from her usual place of residence in breach of the formalities under Hungarian law. Moreover, the applicant had not been successful in his attempt to have the legality of the situation restored, despite his joint custody rights over the child.

81. In the Court's view, this interpretation by the Romanian courts contradicts the obvious meaning of the Hague Convention which transpires from its very text, its Explanatory Report and the recognised common practice (see paragraph 76 above). It deprives Article 3 and, therefore, the Hague Convention itself, of much of its useful effect. Furthermore, as Article 8 of the European Convention was examined in the light of the Hague Convention, the national courts' interpretation of the latter weakened the guarantees of Article 8. In these circumstances, the Court considers that the matter went beyond a simple matter of the interpretation and application of domestic legislation falling within the exclusive competence of the national authorities. The Court concludes that the domestic courts' interpretation of the guarantees of the Hague Convention led to a violation of Article 8 of the European Convention (see, *mutatis mutandis*, *Iglesias Gil and A.U.I.*, cited above, § 61).

82. Furthermore, in matters pertaining to the reunification of children with their parents, the adequacy of a measure is also to be judged by the swiftness of its implementation, such cases requiring urgent handling, as the passage of time can have irremediable consequences for the relations between the children and the parent who does not live with them (see *Ignaccolo-Zenide*, cited above, § 102, and *Nuutinen*, cited above, § 110). Indeed, Article 11 of the Hague Convention imposes a six-week time-limit for the required decision, failing which the decision body may be requested to give reasons for the delay. Despite this recognised urgency, in the instant case a period of more than twelve months elapsed from the date on which the applicant lodged his request for the return of the child to that on which

the final decision was taken. However, no satisfactory explanation was put forward by the Government for this delay.

83. The Court recalls that the interests of the child are paramount in such cases. Thus it may well have been justified, eight months after the removal from Hungary of the applicant's daughter, for the courts to hold that the child had adapted to her new environment and that it was in her best interests to remain in Romania with her mother although, at that time, no final decision had established her residence there (see paragraphs 12 and 15 above). However, where the Court accepts that a change in the relevant facts may exceptionally justify such a decision, it must be satisfied that the change was not brought about by the State's actions or inactions (see, *mutatis mutandis*, *Sylvester*, cited above, § 59).

84. Having found that the time it took for the courts to adopt the final decision in the present case failed to meet the urgency of the situation, the Court concludes that the change in the child's circumstances was considerably influenced by the slow reaction of the authorities.

85. Based on its conclusions reached at paragraphs 79, 81 and 84 above, and notwithstanding the respondent States' margin of appreciation in the matter, the Court concludes that the Romanian authorities failed to make adequate and effective efforts to assist the applicant in his attempt to have his child returned to him with a view to exercising his parental rights. Consequently, there has been a breach of Article 8 of the Convention.

B. Alleged violation of Article 13 of the Convention

86. The applicant contended that the Romanian authorities did not provide him with an effective remedy for his Article 8 complaint, in violation of Article 13 of the Convention, which reads as follows:

> "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."

87. The Government submitted that the applicant was able to bring his claim for the return of his child before the judicial bodies in Romania. The domestic courts ruled on the matter with full jurisdiction and examined the merits of the applicant's arguments. They recalled that Article 13 did not require the successful outcome of the proceedings (see, *mutatis mutandis*, *Lindberg v. Sweden* (dec.), no. 48198/99, 15 January 2004).

88. However, having regard to its conclusion in paragraph 85 above, the Court does not find it necessary to rule separately on this complaint (see, *mutatis mutandis*, *Pavletic v. Slovakia*, no. 39359/98, § 101, 22 June 2004).

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION BY HUNGARY

89. The applicant complained that the length of the proceedings for divorce and child custody in his case exceeded a reasonable time within the meaning of Article 6 § 1 of the Convention, which, in so far as relevant, reads:

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

90. The Government contested this view. They maintained that the international aspects of the dispute – namely, the involvement of the Romanian authorities in the examination of the parties' living conditions, the correspondence between the Hungarian and the Romanian authorities and the translation of documents – had inevitably slowed down the proceedings.

A. Period to be taken into consideration

91. The Court observes that the proceedings commenced on 28 April 1999 and ended on 21 January 2004. They thus lasted nearly four years and nine months. Despite the fact that the examination of interim measures on most occasions involved two court instances, the merits of the case were determined by only one instance. However, as of 29 October 2003, the applicant was solely responsible for the further delay, as he lodged an appeal which he subsequently withdrew.

B. Reasonableness of the length of the proceedings

92. 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). Regarding this latter element, special diligence is required in child custody disputes (*Laino v. Italy* [GC], no. 3158/96, § 18, ECHR 1999-I). The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the

instant case the overall length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

93. 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."

A. Damage

1. Non-pecuniary damage in respect of Romania

94. The applicant claimed non-pecuniary damage of 80,000 euros (EUR) in respect of the violation of his rights by Romania.

95. The Romanian Government contended that the amount claimed by the applicant was excessive and asked for an assessment on an equitable basis inspired by the case-law of the Court in the matter.

96. The Court sees no reason to doubt that the applicant suffered distress as a result of the impossibility to have his child returned to him or to exercise his parental rights. It considers that sufficient just satisfaction would not be provided solely by a finding of a violation. Having regard to the sums awarded in comparable cases (see *Ignaccolo-Zenide*, §117; *Sylvester*, § 84; *Iglesias Gil and A.U.I.*, § 67, and *Maire*, § 82, cited above, as well as *Sophia Gudrun Hansen v. Turkey*, no. 36141/97, § 115, 23 September 2003), and making an assessment on an equitable basis as required by Article 41, the Court awards the applicant EUR 15,000 under this head.

2. Non-pecuniary damage in respect of Hungary

97. The applicant claimed EUR 60,000 in respect of non–pecuniary damage from Hungary.

98. The Hungarian Government found the applicant's claim excessive.

99. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards award him EUR 3,000 under this head.

B. Costs and expenses

100. The applicant claimed HUF 1,100,000, around EUR 4,550, for costs and expenses incurred during the proceedings before both the Romanian and Hungarian courts, and HUF 424,000 (around EUR 1,750) in attorneys' fees, of which HUF 100,000 (around EUR 415) is owed to his previous legal counsellor, Mr L. Molnar.

101. Both Governments agreed to reimburse those legal costs and expenses which the applicant could prove he had actually advanced in respect of the proceedings concerning them, in so far as they had been actually and necessarily incurred and were reasonable as to quantum.

102. According to Rule 60 § 2 of the Rules of the Court, which was brought to the applicant's attention in a letter of 23 February 2004, itemised particulars of all claims made, together with the relevant supporting documents, are to be submitted, failing which the Chamber may reject the claim in whole or in part.

103. The applicant submitted his claims without any supporting documents. Therefore the full claim cannot be awarded. Nevertheless, it accepts that the applicant must have incurred some legal costs and expenses. Accordingly, it considers it reasonable to make an award of EUR 1,000 in this respect (EUR 500 to be paid by each respondent Government).

C. Default interest

104. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 8 of the Convention by Romania;

2. *Holds* that it is not necessary to examine separately whether there has been a violation of Article 13 of the Convention by Romania;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention by Hungary;

4. *Holds*

(a) that the Romanian Government is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage, plus EUR 500 (five hundred euros) in costs and expenses, to be converted into Hungarian forints at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(b) that the Hungarian Government is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, plus EUR 500 (five hundred euros) in costs and expenses, to be converted into Hungarian forints at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 April 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President