CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF IOSUB CARAS v. ROMANIA

(Application no. 7198/04)

JUDGMENT

STRASBOURG

27 July 2006

FINAL

11/12/2006

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 Iosub Caras v. Romania,

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

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mr C. BÎRSAN,
Mrs A. GYULUMYAN,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr R. LIDDELL, *Section Registrar*,

Having deliberated in private on 6 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 7198/04) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Israeli and Romanian nationals, Mr Andrei Dorian Iosub Caras ("the first applicant") and Iris Iosub Caras ("the second applicant"), on 28 November 2003.

2. The applicants were represented by Mr A. Nantel, a lawyer practising in Hod Hasharon, Israël. The Romanian Government ("the Government") were represented by their Agents, Mrs R. Rizoiu succeeded by Mrs B. Rămăşcanu from the Ministry of Foreign Affaires.

3. On 16 November 2004, the President of the Third Section decided, under Rule 41 of the Rules of the Court to give priority to the application.

4. On 25 May 2005 the Court (the Third Section) decided to communicate the complaints concerning the right to respect for family life, access to a court and the protection of property to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1972 and lives in Petah Tikva, Israel. The second applicant, the daughter of the first applicant, was born in 2001. She currently lives in Romania.

6. The first applicant and his wife, both Romanian and Israeli citizens, have had their permanent residence in Israel since 1997. Their child Iris was born there, in 2001, and acquired Israeli citizenship from birth.

7. In September 2001, the family visited Romania. On 11 October 2001, the date scheduled for the return of the family to Israel, only the first applicant left, while the wife and the second applicant remained in Romania.

Subsequently, the first applicant filed for the return of the child, under the Hague Convention (proceedings described under no. 1 below), while the wife filed for divorce and custody of the child with the Romanian courts (proceedings described under no. 2 below).

1. Proceedings for the return of the child

8. On 22 November 2001, upon arrival in Israel, the father filed a request for the return of his child 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") which received it on 26 November 2001. The first applicant claimed that his wife was wrongfully retaining their daughter in Romania, without his consent. He also informed the Ministry that he had heard his wife had filed for divorce with the Romanian courts.

9. On 27 November 2001, he asked the Ministry to apply for a stay in the divorce proceedings (see *infra*, §§ 12-17), for as long as the Hague proceedings were pending.

10. On 11 January 2002, the Ministry, acting as the Central Authority for the purpose of the Hague Convention, instituted proceedings on behalf of the first applicant before the Bucharest District Court of the Sixth Precinct.

Based on the evidence adduced in the case, the district court found that the retention of the child in Romania was illegal, under Article 3 of the Hague Convention. However, it considered that, due to the political situation in Israel, which had worsened constantly since September 2000, there was a great risk that the return would expose the child to physical or psychological harm. Therefore, in a judgment of 15 April 2002, the district

court rejected the request for the return of the child under Article 13 (b) of the Convention.

11. On 17 December 2002, the Bucharest County Court allowed the appeal lodged by the Ministry and ordered the return of the child on the grounds that the retention was illegal and that the mother had not proved the grave risk that the child would be exposed to, if returned to her father.

12. On 21 February 2003, the mother filed an appeal against this decision, allowed by the Bucharest Court of Appeal in a final decision of 5 June 2003.

The court rejected the request for return on the ground that, since the date of the commencement of the Hague proceedings, another Romanian court had ruled on the divorce of the parents and had granted sole custody of the child to the mother, in a final decision of 18 September 2002.

It also considered that, bearing in mind the child's age, namely two years and four months, her return would be against her interests in so far as she had effectively been living in Romania, with her mother, since she was 7 months old. Lastly, on the basis of witness testimony, the court found it proved that the father had consented initially to remain in Romania and to establish there the domicile for the whole family.

Therefore, the court found that the child had legally resided in Romania since 12 September 2001.

2. Divorce and custody proceedings

13. On 10 October 2001, the first applicant's wife filed for divorce, custody of their daughter and maintenance before the Bucharest District Court of the Sixth Precinct.

14. The court found that, except for the first hearing, the first applicant had been correctly summoned at his address in Israel through the Ministry, as required by the Code of Civil Procedure. The first applicant was not present at any of the four hearings held in the case.

15. In the judgment of 18 September 2002, as rectified on 6 November 2002, the district court granted divorce on the grounds of fault by the first applicant, awarded the custody of the child to the mother and ordered the first applicant to pay monthly maintenance of 824 American dollars for his daughter.

16. On 11 December 2002 the district court sent the judgment to the first applicant's address.

17. In the absence of appeals against it, the judgment became final.

18. The first applicant informed the Court that he had not received any of the summonses sent to him or the judgment of 18 September 2002. It appears that he did not appeal at any point against the judgment.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

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

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 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 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 12

"Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child."

Article 13

"Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal of retention; or

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence."

Article 16

"After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under the Convention is not lodged within a reasonable time following receipt of the notice."

Article 17

"The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention."

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."

2. Explanatory Report on the 1980 Hague Child Abduction Convention drafted by Elisa Pérez-Vera in 1980

Paragraph 121 of the Explanatory Report on the 1980 Hague Convention comments on Article 16 of the Hague Convention as follows:

"This article, so as to promote the realisation of the Convention's objectives regarding the return of the child, seeks to prevent a decision on the merits of the right to custody being taken in the State of refuge."

3. The Code of Civil Procedure

Article 87 § 8

"Unless otherwise provided in a treaty, international convention or special law, persons who are abroad and whose home address abroad is known shall be summoned to appear by registered mail. Article 114^1 (4) applies accordingly...

In all cases in which those who are abroad have a known representative in Romania, the latter shall be summoned..."

Article 114[1] § 4

"Persons resident abroad... shall be informed [through the summons] of the obligation to establish residence in Romania for the purpose of service of procedural acts. If they do not comply with this requirement, service shall be effected by registered mail, the proof that the letter was presented to a Romanian post office being sufficient evidence that the summoning procedure was respected."

Article 614

"The parties [in divorce proceedings] shall be present before the courts ruling on the merits, except where one of the spouses... resides abroad; in the latter situation the parties may participate through a representative."

THE LAW

I. PRELIMINARY OBJECTION

19. The Government submitted that the first applicant was not entitled to lodge the application on behalf of the second applicant, as he did not have custody of his daughter.

20. The first applicant contested the argument and recalled that he had lost custody of his child as a result of court proceedings that had contravened the Hague Convention and recalled that prior to the retention of the child, the two parents had had joint custody of their child. Neither of them had superior parental rights over their daughter.

21. The Court recalls that in principle a person who is not entitled under domestic law to represent another may nevertheless, in certain circumstances, act before the Court in the name of the other person. In particular, minors can apply to the Court even, or indeed especially, if they are represented by a parent who is in conflict with the authorities and criticises their decisions and conduct as not being consistent with the rights guaranteed by the Convention. In such cases, the standing as the natural parent suffices to afford him or her the necessary power to apply to the Court on the child's behalf, too, in order to protect the child's interests (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 138, ECHR 2000-VIII, *Iglesias Gil et Urcera Iglesias v. Spain* (dec.), no. 56673/00, 5 March 2002 and *Sylvester v. Austria* (dec.), nos. 36812/97 and 40104/98 (joined), 26 September 2002).

22. This principle applies in the present case, especially as the first applicant also contested the way in which the Romanian courts had decided on the custody rights, which, in his view, had violated his Article 8 rights.

23. In conclusion the Court finds that the first applicant has standing to act on his daughter's behalf.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

24. The applicants complained that their right to respect for their family life, as provided in Article 8 § 1 of the Convention, had been violated by the courts that had dealt with both the Hague Convention and the divorce proceedings. In particular, they claimed that the courts had ignored the provisions of Articles 16 and 17 of the Hague Convention. According to these Articles no decision on the merits of the custody matter could have been taken as long as the Hague proceedings were pending and, at the same time, the courts should not have been bound by a custody decision when assessing the request for the return of the child. Furthermore, the authorities had not acted expeditiously in the Hague proceedings.

In so far as the custody and divorce proceedings were concerned, the first applicant contested the fact that he had been deprived of his guardianship and visiting rights and of any possibility to participate in the education of his daughter. The absence of any legal documents attesting to the divorce had made it impossible for him to update the civil register, with the risk of being accused of bigamy should he have tried to remarry. He considered that the amount of alimony had been arbitrarily fixed by the courts. He could not pay it and, therefore, risked being imprisoned for non respect of his obligations, should he visit Romania. This prohibited him from seeing his daughter and his parents who were still living in Romania.

Lastly, the first applicant complained, on behalf of his daughter, of a violation of the child's Article 8 rights by reason of the fact that the two sets of proceedings that took place before the Romanian courts deprived her of the right to see her father and her paternal grandparents and thus to establish normal relations with them.

Article 8 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."

25. The Court finds that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

26. The Government considered that the interference with the applicants' family life caused by the Hague proceedings was in accordance with the law, namely Article 13 (b) of the Hague Convention, and recalled that, on the one hand, the right to return of the child was not absolute and that, on the other hand, the domestic courts enjoyed wide margins of appreciation when called upon to interpret and apply the domestic law. They relied on authorities such as *Winterwerp v. the Netherlands* (judgment of 24 October 1979, Series A no. 33, p. 20, § 46), *Iglesias Gil and A.U.I. v. Spain* (no. 56673/00, § 61, ECHR 2003-V) and *De Diego Nafría v. Spain* (no. 46833/99, § 39, 14 March 2002).

Lastly, in so far as the divorce proceedings were concerned, they claimed that according to Romanian law, it was in the child's interest that, in case of divorce, one of the parents was entrusted with the child's custody. However, the other parent, in this case the first applicant, preserved the right to have personal ties with the child and to watch over her education.

They concluded that no breach of Article 8 had occurred in the case.

27. The applicants contested the argument. In particular they considered that the interference with their family life had not been in accordance with the law or necessary in a democratic society. In their view, the authorities had not acted expeditiously for the return of the child and for the stay of the divorce proceedings, violating thus their obligations under Article 7 of the Hague Convention.

28. The Court notes, firstly, that it is common ground that the relationship between the applicants comes within the sphere of family life under Article 8 of the Convention.

29. 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 *Monory v. Romania and Hungary*, no. 71099/01, § 70, 5 April 2005).

30. The events under consideration in the instant case, in so far as they give rise to the responsibility of the respondent State, amounted to an interference with the applicants' right to respect for their family life, as it restricted the enjoyment of each other's company.

31. The Court must accordingly determine whether there has been a breach of the applicants' right to respect for their family life.

1. Proceedings for the return of the child under the Hague Convention

32. The Court reiterates that, 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 v. Romania*, no. 31679/96, § 94, ECHR 2000-I, *Iglesias Gil and A.U.I.*, cited above, § 48 and *Sylvester v. Austria*, no. 36812/97, 40104/98, § 51, 24 April 2003).

33. 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, Romania was party to the Hague Convention (see *Monory*, cited above, § 73).

34. Under Article 7 of the Hague Convention, the authorities have the obligation to take all necessary measures to prevent further harm to the child or prejudice to the interested parties.

However, in the present case, although the authorities had knowledge of the existence of the divorce proceedings before the Romanian courts, they did nothing to defer the judgment until the Hague proceedings would be finalised, contrary to Article 16 of the Hague Convention.

35. It is true that the first applicant did not inform the district court dealing with the divorce and custody proceedings of the Hague proceedings. However, the Court recalls that no law obliges him to do so. Moreover, it was reasonable for him to expect the Ministry to take action for at least the following two reasons: first, the Ministry was deemed to take all measures, including extra judicial, on his behalf, to secure the respect of the Hague Convention and, second, he expressly asked the Ministry to take the necessary steps for a stay of the divorce proceedings (see paragraph 9 above).

On this point, the Court recalls that the Ministry acted both as Central Authority under the Hague Convention and as the authority responsible for the international summons procedure in the divorce proceedings. It therefore had knowledge of and to a certain extent participated in both sets of proceedings. Bearing in mind that the Hague Convention is an international instrument binding on States, it is primarily for the States and not for the private individuals to regulate their behaviour in such a way as to ensure respect for this Convention.

36. By failing to inform the divorce courts of the existence of the Hague proceedings, the authorities, in particular the Ministry, deprived the Hague Convention of its very purpose, that is to prevent a decision on the merits of

the right to custody being taken in the State of refuge (see Article 16 of the Hague Convention and the annotation in the Explanatory Report).

37. In this context, the Court expresses its concern that the domestic courts ruling on the Hague proceedings based their judgment, among other arguments, on the fact that the custody rights had been decided on the merits, while the Hague proceedings were still pending.

This was not the sole argument that led the national jurisdiction to refuse to order the return of the child. The other arguments put forward by the courts, namely the child's best interest and the evidence that the applicant had consented initially to remain in Romania, constitute an interpretation of the facts and evidence adduced in the case that does not appear to be arbitrary. With the Government, the Court recalls that it is not within the province of the European Court to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for these courts to assess the evidence before them (see, *mutatis mutandis*, *Edwards v. the United Kingdom*, judgment of 16 December 1992, Series A no. 247-B, pp. 34-35, § 34; and *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

38. 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 eighteen months elapsed from the date on which the first applicant lodged his request for the return of the child to the date of the final decision. No satisfactory explanation was put forward by the Government for this delay.

39. It follows 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.

40. Based on its conclusions reached at paragraphs 36 and 39 above, and notwithstanding the respondent States' margin of appreciation in the matter, the Court concludes that the Romanian authorities failed to fulfil their positive obligations under Article 8 of the Convention.

There has accordingly been a violation of that Article on this account.

2. Divorce and custody proceedings

41. The Court notes from the outset that there is a dispute between the parties as to whether the summoning procedure was respected in the instant case. While the first applicant claimed that none of the summonses had

reached him, the Government contended that the documents had been correctly sent to his address in Israel.

However, the Court has already held that whilst Article 8 contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8:

> "[W]hat ... has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests. If they have not, there will have been a failure to respect their family life and the interference resulting from the decision will not be capable of being regarded as "necessary" within the meaning of Article 8." (see the ... W. v. the United Kingdom judgment [of 8 July 1987, Series A no. 121-A], pp. 28 and 29, §§ 62 and 64, *McMichael v. the United Kingdom*, judgment of 24 February 1995, Series A no. 307-B, p. 55, § 87 and *Ignaccolo-Zenide*, cited above, § 99).

The facts of the present case indicate that, although he had knowledge, to a certain extent, of the existence of the divorce and custody proceedings, the first applicant did not participate at all in these proceedings and that the judgment of 18 September 2002 was never brought to his knowledge. Moreover, it seems very unlikely, under Article 114^1 of the Code of Civil Procedure, that it would have been possible for him to obtain a reopening of the case before the national courts.

42. However, the Court does not find it necessary to resolve this matter as it has already found a violation of Article 8 in so far as the respondent State's positive obligations are concerned (see paragraph 40 above).

3. Other aspects of the Article 8 complaint

43. Bearing in mind the violation of Article 8 already found in the case (paragraph 40 above), the Court considers that it is not necessary to examine the other aspects of the complaint raised by the applicants, namely: lack of visiting rights and access of the daughter to her paternal grandparents, impossibility for the first applicant to return to Romania and to resolve his marital status in Israel.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

44. The first applicant complained that his right to a fair trial guaranteed by Article 6 § 1 of the Convention had been infringed by the district court's ruling on the divorce and custody matters, in so far as he had not been legally summoned to participate in the proceedings and the decision adopted had never been served on him.

On behalf of his daughter he also complained that the two sets of proceedings that had taken place before the Romanian courts had deprived her of her right to see her father and her paternal grandparents and thus to establish normal relations with them.

45. Article 6 § 1 reads as follows, in so far as relevant:

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

46. The Government contested the arguments. They considered that the first applicant had been legally served with the summonses long before the hearings had taken place. Furthermore, they considered that the fact that he had mentioned the divorce proceedings when he had filed the application under the Hague Convention proved that he had been well aware of their existence. In any event, the absence of a summons would not have prohibited the applicant's active participation in the proceedings.

47. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

48. It further reiterates the difference in the nature of the interests protected by Articles 6 and 8 of the Convention. While Article 6 affords a procedural safeguard, namely the "right to a court" in the determination of one's "civil rights and obligations", Article 8 serves the wider purpose of ensuring proper respect for, *inter alia*, family life. The difference between the purpose pursued by the respective safeguards afforded by Articles 6 and 8 may, in the light of the particular circumstances, justify the examination of the same set of facts under both Articles (see for instance *McMichael*, cited above, p. 57, § 91 and *Sylvester*, cited above, § 76).

49. However, in the instant case, the Court finds that the lack of respect for the applicants' family life resulting from the non-involvement of the first applicant in the divorce and custody proceedings is at the heart of their complaint. Therefore, having regard to its above findings under Article 8 (see paragraph 40 above) and notwithstanding certain misgivings as to the conformity of Article 114^1 of the Code of Civil Procedure with the access to court requirement of Article 6 § 1, the Court considers that it is not necessary to examine the facts also under Article 6 (see *Sylvester*, cited above, § 77).

IV. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

50. Under Article 1 of Protocol No. 1 to the Convention, the first applicant complained of the procedure by which the alimony had been fixed, of the amount of alimony and of the fact that his daughter had never received it. He also contended that the second applicant can no longer receive benefits under the Israeli law.

51. Article 1 of the Protocol No. 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

52. The Government considered that no interference with the first applicant's right to peaceful enjoyment of his possessions had occurred, in so far as Romanian law established a duty on the parents to provide for their underage children. Lastly, they recalled that the second applicant, through her legal guardian, had not requested the exequatur for the enforcement in Israel of the judgment of 18 September 2002.

53. The Court notes that this complaint is linked to the one examined under Article 8 above and must therefore likewise be declared admissible.

54. Having regard to its finding under Article 8 (see paragraph 40 above) and in view of the fact that the alleged violation of Article 1 of Protocol No. 1 is the direct outcome of the proceedings that gave rise to the breach of Article 8 of the Convention, the Court considers that it is not necessary to examine whether, in this case, there has also been a violation of Article 1 (see, *mutatis mutandis*, *Sylvester*, cited above, § 77; and *Glod v. Romania*, no. 41134/98, § 46, 16 September 2003).

V. ALLEGED VIOLATION OF ARTICLE 5 OF PROTOCOL NO. 7

55. Lastly, the first applicant complained that the aspects that caused a violation of his Article 8 rights also infringed the equality between spouses requirement of Article 5 of Protocol No. 7 to the Convention, which reads:

> "Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children."

56. The Court recalls that it has previously decided that Article 5 of Protocol No. 7 essentially imposes a positive obligation on States to provide a satisfactory legal framework under which spouses have equal rights and obligations concerning such matters as their relations with their children (see *Cernecki v. Austria*, (dec.), no. 31061/96, 11 July 2000).

57. In the present case, the first applicant does not question the legislative framework. His criticism only concerns the way in which the national courts applied it. The Court finds no indication that the law in question violates the equality clause provided for in Article 5 of Protocol No. 7 (see also *Monory v. Romania* (dec.), no. 71099/01, 17 February 2004).

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

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The first applicant claimed 1,355,000 euros (EUR) in respect of non-pecuniary damage, divided as follows: EUR 200,000 for violation of his civil status, EUR 500,000 for the impossibility to exercise his parental rights and duties, EUR 195,000 for failure of the Romanian courts to grant him visiting rights, EUR 180,000 for the impossibility for him to preserve normal contact with his parents, EUR 80,000 in damages for the abduction of the child and the need to reconstruct the father-daughter relationship, EUR 200,000 for the anguish, distress, depression, loss of joy of life and faith in the family life.

He further claimed under this head, on behalf of his daughter, EUR 1,364,382, in particular: EUR 300,000 in damages for loss of the Israeli medical care, EUR 9,382 for the monthly allowances that she should have received from the Israeli state, EUR 500,000 for the infringement of the right to enjoy the family life, EUR 195,000 for failure of the Romanian courts to establish visiting rights for her father, EUR 80,000 for the impossibility to see her paternal grandparents, EUR 180,000 of psychological damages, EUR 100,000 for the anguish, distress, depression, loss of joy of life and faith in the family life.

61. The Government considered the amounts unjustified and excessive. In their view, there was no causal link between the alleged violations and the damages claimed. They considered that the finding of a violation could constitute in itself sufficient just satisfaction for any non-pecuniary damage which the applicants may have suffered.

62. The Court sees no reason to doubt that the applicants suffered distress as a result of the impossibility to enjoy each other's company. It considers that, in so far as the first applicant is concerned, 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 *Monory*, § 96, cited above, *Sophia Gudrun Hansen v. Turkey*, no. 36141/97, § 115,

23 September 2003, as well as *Maire v. Portugal*, no. 48206/99, § 82, ECHR 2003-VII), and making an assessment on an equitable basis as required by Article 41, the Court awards the first applicant EUR 20,000 under this head.

As to the second applicant, the Court considers that the finding of a violation provides sufficient just satisfaction for any non-pecuniary damage she may have suffered as a result of the violation of her Article 8 rights (see *Sylvester*, cited above, § 80).

Lastly, the Court considers that the remainder of the claims for compensation under Article 41 of the Convention are unsubstantiated.

B. Costs and expenses

63. The first applicant also claimed EUR 141,500 for the costs and expenses incurred before the domestic courts and before the Court, namely EUR 61,500 for the costs incurred with doctors, psychologists, groups of support, EUR 60,000 in legal fees for lawyers and EUR 20,000 for plane tickets, phone calls and telecommunications. On behalf of his daughter, he asked the Court to award a reasonable sum in legal fees for lawyers, leaving the exact amount at the Court's discretion.

64. The Government recalled that the applicants did not justify the expenses.

65. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The applicants submitted the claims without any supporting documents except for a letter of 2 August 2005, in which the representative asked the first applicant to pay EUR 47,000 and 6,750 Swiss francs in respect of the application submitted to the Court. However, no bill was submitted to the Court concerning these sums or any other sum that the first applicant might have paid or have to pay. Therefore the full claim cannot be awarded. Nevertheless, the Court accepts that the first applicant must have incurred some legal costs and expenses. Accordingly, regard being had to the information in its possession, the above criteria and the awards made by the Court in similar cases, it considers it reasonable to make an award of EUR 1,500 in this respect to the first applicant.

C. Default interest

66. 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. *Declares* the complaints concerning the right to respect for family life, access to court and the peaceful enjoyment of possessions admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there is no need to examine the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1;

4. *Holds*
   (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage and EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable;
   (b) 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 27 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Roderick LIDDELL Section Registrar	Boštjan M. ZUPANČIČ President