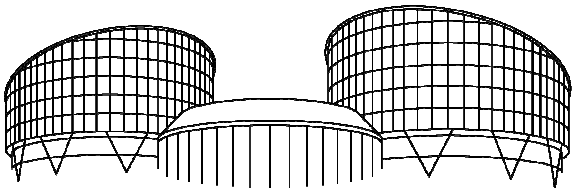

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

**CASE OF KARRER v. ROMANIA**

*(Application no. 16965/10)*

JUDGMENT

STRASBOURG

21 February 2012

*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 Karrer v. Romania,**

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

Josep Casadevall, *President,*
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Nona Tsotsoria,
Mihai Poalelungi,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 31 January 2012,

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

# PROCEDURE

1. The case originated in an application (no. 16965/10) 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 Austrian nationals, Mr Alexander Hannes Karrer and Ms Alexandra Bianca Karrer ("the applicants"), on 16 March 2010.

2. The applicants were represented by Mr Mihai Buidoso, a lawyer practising in Arad, Romania. The Romanian Government ("the Government") were represented by their former Agent, Mr Răzvan Horaţiu Radu.

The Austrian Government, to whom a copy of the application was transmitted under Rule 44 § 1 (a) of the Rules of Court, did not exercise their right to intervene in the proceedings.

3. The applicants alleged in particular that their right to respect for family life as provided under Article 8 of the Convention had been infringed. The first applicant further points out that he did not benefit from a fair hearing in the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention.

4. On 31 May 2010 the President of the Third Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. As Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mr Mihai Poalelungi to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant was born in 1982 and lives in Furstenfeld, Austria. He is the father of the second applicant, who was born in 2006 and lives at an unspecified address in Romania.

### A. Abduction of the second applicant and proceedings conducted in Austria

7. On 13 April 2004 the first applicant married a Romanian citizen, K.T. The marriage was concluded in Salzburg, Austria. On 15 February 2006 their daughter, the second applicant, was born. The parents had joint custody of the child under Austrian law. They lived in Salzburg.

8. On 1 February 2008 K.T. and the first applicant separated. On 25 February 2008 K.T. filed a divorce petition with the Salzburg authorities. The first applicant lodged a counter petition on 25 March 2008.

9. On 29 January 2008 K.T. filed for an interim injunction against the first applicant, seeking his removal from the family home on the ground of his violent behaviour. On 8 February 2008, the Salzburg District Civil Court granted the interim injunction for a period of three months. Criminal proceedings were also initiated against the first applicant for infliction of bodily harm.

10. On 1 February 2008 K.T. lodged an action for temporary sole custody of the second applicant throughout the divorce proceedings. At the end of September 2008, while the proceedings for the award of custody were pending before the Austrian courts, K.T. left for Romania together with the second applicant. The first applicant was not informed of the departure, even though at the time the spouses had joint custody of the second applicant.

11. In the meantime, on 25 July 2008 the Salzburg District Criminal Court acquitted the first applicant of inflicting bodily harm. The Salzburg Public Prosecutor reserved the right to initiate criminal proceedings against K.T. for perjury.

12. On 25 November 2008, the Salzburg District Civil Court granted the first applicant temporary sole custody of the second applicant until the finalisation of the divorce proceedings. The court relied, *inter alia*, on expert opinion which concluded that the first applicant was better suited to have custody. K.T. does not appear to have appealed against the judgment.

13. Currently, the divorce proceedings between the first applicant and K.T. are pending before the Romanian courts.

### B. Proceedings under the Hague Convention conducted in Romania

14. On 30 September 2008 the first applicant submitted a request for the return of the second applicant to Austria under Article 3 of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ("the Hague Convention"). He argued that the second applicant had been removed from Austrian territory in breach of the joint custody held by the spouses at the time of the removal. On 7 October 2008 the Austrian authorities submitted the request to the Romanian Ministry of Justice ("the Romanian Ministry"), the Central Authority responsible for the obligations established under the Hague Convention.

15. On 28 October 2008, at the request of the Romanian Ministry, the General Police Department (*Inspectoratul General al Poliției*) confirmed that the second applicant was living with her mother, in Romania, at her grandparents' home. Furthermore, on 3 November 2008 the Department for Social Services and Child Protection (*Departamentul General de Asistență Socială şi Protecția Copilului)* drafted a report in relation to the second applicant. The report mainly mentioned K.T.'s statements concerning her situation in Austria, her reasons for departure as well as the maternal grandparents' declarations concerning their commitment to provide housing and financial support to the second applicant indefinitely. It was also mentioned that the second applicant did not appear to be an abused or neglected child and that she was very attached to her mother and her maternal grandparents. The report concluded that the second applicant had appropriate living conditions, both from a material and emotional point of view.

16. On 5 December 2008 the Romanian Ministry instituted proceedings on behalf of the first applicant before the Bucharest County Court. By a judgment of 28 January 2009, communicated on 28 May 2009, the Bucharest County Court found in favour of the first applicant, ordering the return of the second applicant to Austria. The Bucharest County Court held that the request fell under Article 3 of the Hague Convention and that none of the exceptions provided for under Article 13 applied.

17. K.T. appealed. She submitted several pieces of evidence, including declarations of her parents as witnesses given before a Romanian Court in the context of the divorce and custody proceedings. She further submitted a welfare report drafted by the Custody Service within the Timişoara City Hall *(Serviciul de Autoritate Tutelară din cadrul Primariei Municipiului Timişoara*). The report included information on K.T.'s family situation, living conditions, and K.T.'s declarations in relation to the circumstances of her living and departing from Austria. Finally, the report recommended that K.T. were awarded the custody over the second applicant.

18. By a final judgment delivered on 8 July 2009, and rendered in written form on 17 September 2009, the Bucharest Court of Appeal allowed the appeal on points of law, holding that the return of the second applicant to Austria would expose her to physical and psychological harm, within the meaning of Article 13 § 1 (b) of the Hague Convention. On the merits, the Bucharest Court of Appeal held that the first applicant had shown violent behaviour towards K.T., as the Salzburg District Civil Court had maintained when granting K.T. the interim injunction of 8 February 2008. The Bucharest Court of Appeal further held that the first applicant had breached the restraining order in September 2008, which determined K.T. to come to Romania. Finally, the domestic court reasoned that even if there was no evidence of a violent behaviour of the first applicant towards the child, this could be inferred from his behaviour towards K.T. and from K.T.'s departure to Romania. The Salzburg District Civil Court's judgment of 25 November 2008 was set aside on the ground that by that time K.T. and the second applicant had already left Austria.

19. Throughout the domestic proceedings, the Romanian Ministry informed the Austrian authorities of the progress of the Hague Convention proceedings. The information included the date of the hearings and whether or not an appeal had been lodged. From the evidence adduced to the case file, it appears that the Romanian Ministry did not have any direct contact with the first applicant in connection with the Hague Convention proceedings.

## II. RELEVANT INTERNATIONAL AND EUROPEAN UNION LAW

20. The relevant provisions of the Hague Convention, which entered into force in respect of Romania on 30 September 1992, read, in so far as relevant, 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.

The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State."

**Article 4**

"The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years."

**Article 6**

"A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities. [..]"

**Article 7**

"Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective State 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 –

[..]

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; [..]"

**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 or 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 20**

"The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms."

21. Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility ("the Regulation"), in so far as relevant reads as follows:

**Preamble**

(17)"In cases of wrongful removal or retention of a child, the return of the child should be obtained without delay, and to this end the Hague Convention of 25 October 1980 would continue to apply as complemented by the provisions of this Regulation, in particular Article 11. [...]"

**Article 11**

"1. Where a person, institution or other body having rights of custody applies to the competent authorities in a Member State to deliver a judgment on the basis of the Hague Convention [..], in order to obtain the return of a child that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, paragraphs 2 to 8 shall apply.

[...]

3. A court to which an application for return of a child is made as mentioned in paragraph 1 shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law.

Without prejudice to the first subparagraph, the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.

4. A court cannot refuse to return a child on the basis of Article 13 (b) of the [...] Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.

5. A court cannot refuse to return a child unless the person who requested the return of the child has been given an opportunity to be heard.

6. If a court has issued an order on non-return pursuant to Article 13 of the 1980 Hague Convention, the court must immediately either directly or through its central authority, transmit a copy of the court order on non-return and of the relevant documents, in particular a transcript of the hearings before the court, to the court with jurisdiction or central authority in the Member State where the child was habitually resident immediately before the wrongful removal or retention, as determined by national law. The court shall receive all the mentioned documents within one month of the date of the non-return order.

7. Unless the courts in the Member State where the child was habitually resident immediately before the wrongful removal or retention have already been seized by one of the parties, the court or central authority that receives [a copy of an order on non-return pursuant to Article 13 of the Hague Convention and of the documents relevant to that order] must notify it to the parties and invite them to make submissions to the court, in accordance with national law, within three months of the date of notification so that the court can examine the question of custody of the child. [..]"

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLES 8 AND 6 OF THE CONVENTION

22. The applicants complained under Article 8 about the unfolding of Hague Convention proceedings, in particular that the requirement of expedition had not been observed by the domestic courts, that the first applicant had not been heard by the Romanian courts and that the Romanian Ministry in its capacity as Central Authority under the Hague Convention had not properly represented the applicants' interests.

23. The applicants also complained under Article 6 § 1 that the proceedings had been lengthy and that the Romanian courts had delivered their judgments without hearing the first applicant.

24. In so far as relevant, Articles 8 and 6 § 1 provide as follows:

**Article 8**

"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 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."

**Article 6**

"In the determination of ... his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by an independent and impartial tribunal established by law."

25. The Court reiterates that it is the master of the characterisation to be given in law to the facts of a case (see *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I). The Court further notes that it has previously held that the procedural safeguards guaranteed under Article 6 § 1 are encompassed by the overall requirements of ensuring respect for family life under Article 8 (see *Iosub Caras v. Romania*, no. 7198/04, § 48, 27 July 2006, *Diamante and Pelliccioni v. San Marino*, no. 32250/08, § 150, 27 September 2011).

26. In view of the close link between the complaints under Articles 6 § 1 and 8, the Court shall examine the application solely under Article 8, which also covers the complaints under Article 6 § 1.

## A. Admissibility

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

## B. Merits

### *1. The parties' submissions*

#### (a) The applicants

28. The applicants contended that the proceedings in Romania had resulted in an interference with their rights to respect for family life. In particular, the applicants argued that the hearings and the drafting of the Romanian courts' judgments had taken an excessive length of time, in breach of the Hague Convention. The Bucharest County Court had postponed the enforcement of its judgement for three months and the written version of that judgment was rendered three months after its delivery, leaving the applicants unable to appeal during this period. The overall length of the proceedings had thus largely exceeded the six weeks provided for under the Hague Convention and the Regulation.

29. The applicants further maintained that the Bucharest Court of Appeal had based its findings on an interim injunction which was no longer in force. Also, at the time of the Bucharest Court of Appeal's judgment the Austrian courts had granted the first applicant sole custody of the second applicant, based on a psychological assessment which established that the first applicant did not have aggressive behaviour.

30. The first applicant also submitted that the Romanian authorities had not abided by the provisions of Article 11 § 5 of the Regulation in that he had not been heard (see paragraph 19 above). Had he been heard, he would have been able to prove that the allegations as to his aggressive behaviour were unfounded.

31. Lastly, the applicants submitted that the Romanian authorities had not abided by the provisions of Article 11 § 3 of the Regulation in that the written version of the judgment of the Bucharest Court of Appeal had only been rendered on 17 September 2009 and served on him, by fax, on 30 September 2009.

#### (b) The Government

32. The Government submitted that the decision rendered by the Bucharest Court of Appeal did not constitute an interference with the

applicants' right to respect for family life. In this connection, the Government pointed out that at the time of the second applicant's removal, the first applicant had not had sole custody rights and the two spouses had not lived together since 23 January 2008, when a restraining order was issued against the first applicant. Furthermore, the Government pointed out that the first applicant had breached the restraining order.

33. Should the Court find that there had been an interference with the applicants' rights under Article 8, the Government submitted that the interference had had a legal basis, namely Article 13 (b) of the Hague Convention. Also, the interference had served the legitimate aim of protecting the child's best interests.

34. The Government stressed that the domestic courts were better placed to decide on custody matters and that they therefore had a wide margin of appreciation. In the present case, the domestic courts relied on evidence adduced in the case, including witnesses' testimonies, a welfare report and an official report by the Department for Social Services and Child Protection.

35. The Government also pointed out that under the Regulation it had been open to the domestic courts to summon the first applicant but they had not been under an obligation to do so. Moreover, the Romanian Ministry – in its capacity as Central Authority under the Hague Convention – had informed the first applicant of all the relevant procedural steps and given him the opportunity to submit comments thereto. He could have been present at the hearings and asked to be heard; however, he had not availed himself of this opportunity.

36. The Government lastly submitted that the period of six weeks set forth under the Hague Convention for deciding custody matters was a recommendation rather than an obligation imposed on the domestic authorities. The domestic courts had decided the case with sufficient expedition, taking into account the significant workload and the lack of sufficient staff.

*2. The Court's assessment*

37. The Court first notes that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life and is protected under Article 8 of the Convention (see *Monory v. Romania and Hungary*, no. 71099/01, § 70, 5 April 2005, *Iosub Caras v. Romania*, no. 7198/04, §§ 28-29, 27 July 2006).

38. In the sensitive area of family relations, the State is not only bound to refrain from taking measures which would hinder the effective enjoyment of family life, but, depending on the circumstances of each case, should take positive action in order to ensure the effective exercise of such rights. In this area the decisive issue is whether a fair balance between the competing interests at stake – those of the child, of the two parents, and of public order

- was struck, within the margin of appreciation afforded to States in such matters (see *Maumousseau and Washington,* cited above, § 62), bearing in mind, however, that the child's best interests must be the primary consideration (see *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000-IX).

39. Notwithstanding the State's margin of appreciation, the Court is called to examine whether the decision-making process leading to an interference was fair and afforded due respect to the interests safeguarded by Article 8 (see *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 99, ECHR 2000-I, with further references, *Tiemann v. France and Germany* (dec.), nos. 47457/99 and 47458/99, ECHR 2000-IV).

40. To that end the Court must ascertain whether the domestic courts conducted an in-depth examination of the entire family situation and of a whole series of factors, in particular of a factual, emotional, psychological, material and medical nature, and made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what the best solution would be for the abducted child in the context of an application for his return to his country of origin (see *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 139, 6 July 2010, with further references).

41. Furthermore, the Court reiterates that the States' obligations under Article 8 of the Convention are to be interpreted in harmony with the general principles of international law, and, in the area of international child abduction, particular account is to be given to the provisions of the Hague Convention (see *Golder v. the United Kingdom*, 21 February 1975, § 29, Series A no. 18, *Ignaccolo-Zenide*, cited above, § 95).

42. In the instant case, while holding that the removal of the second applicant from her habitual residence in Austria was wrongful within the meaning of Article 3 of the Hague Convention, the domestic courts dismissed the first applicant's request for the return of his daughter on the ground that the return would expose her to physical and psychological harm, within the meaning of Article 13 § 1 (b) of the Hague Convention. The Court finds that such measure constituted an interference with the applicants' right to respect for family life (see also *Iosub Caras,* cited above*,* § 30).

43. The Court accepts the Government's submissions that the interference was provided for by law, namely Article 13 § 1 (b) of the Hague Convention and pursued the legitimate aim of protecting the child's best interests.

44. The Court must therefore determine whether the interference in question was "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention, interpreted in the light of the above-mentioned international instruments, and whether when striking the balance between the competing interests at stake, appropriate account was

given to the child's best interests, within the margin of appreciation afforded to the State in such matters.

45. The Court is bound to observe that the domestic court's assessment of the child's best interest was based on an expired interim injunction issued in Austria (see paragraph 9 above). Furthermore, there is no evidence in the case file of a renewal of such interim injunction, therefore the Court has doubts regarding the reference to the breach of the restraining order in September 2008, which allegedly determined K.T's departure to Romania (see paragraph 18 above). Moreover, the Salzburg District Court judgment of 25 November 2008 awarding sole custody to the first applicant was set aside on the sole ground that it was delivered after K.T had left for Romania.

46. Furthermore, in assessing the child's best interests the Bucharest Court of Appeal did not make any reference to her current family situation or to other elements of a psychological, emotional, material or medical nature. No reference was made to the weight attached, if any, to the report drafted by the Department for Social Services and Child Protection. In any event, this report did not assess the implications of the second applicant's return to Austria, or whether appropriate arrangements were in place to secure her protection upon return. The Court also notes that the domestic authorities did not take into consideration the expert report drafted in Austria and mentioned in the judgment of 25 November 2008 (see paragraph 12 above). The Court finds that these factors, taken together, cast doubts as to the level of depths of the domestic court's assessment of the child's best interests (see *Šneersone and Kampanella v. Italy*, no. 14737/09, § 95, 12 July 2011).

47. The Government further submitted that, in assessing the child's best interests the domestic courts relied on witness testimonies and a welfare report. The Court notes that the witnesses' testimonies only consisted of declarations of K.T. and her parents (see paragraph 17 above). Moreover, the welfare report was produced before the Romanian courts in the context of the divorce and custody proceedings and mainly restated K.T.'s allegations concerning the first applicant's behaviour in Austria and the reasons for her departure. No attempt appears to have been made to contact the first applicant in order to hear his position on the matter. Similarly to the report drafted by the Department for Social Services and Child Protection, there was no analysis of the implications of a possible return of the second applicant to Austria.

48. In these circumstances the Court cannot but observe that the analysis conducted by the domestic authorities in order to determine the child's best interests was not sufficiently thorough.

49. The Court will now turn to examine the fairness of the decision-making process in connection with the participation of the first applicant in the domestic proceedings and the speediness of review.

50. The Government argued that the first applicant had not been prevented from participating in the hearings and making submissions. In this respect, the Court reiterates that the Convention is designed to "guarantee not rights that are theoretical or illusory but rights that are practical and effective" (see, among other authorities, *Airey v. Ireland*, 9 October 1979, § 24, Series A no. 32). As regards litigation involving opposing private interests, equality of arms implies that each party must be afforded a reasonable opportunity to present his case – including his evidence – under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent. It is left to the national authorities to ensure in each individual case that the requirements of a "fair hearing" are met (*Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274).

51. In the instant case, Court finds that accepting the Government's argument whereby it was incumbent on the first applicant to inquire on the status of the request for return without any obligation on the part of the domestic authorities to undertake any action, would result in a disadvantageous situation for such applicant thus undermining the principle of fair proceedings.

52. The Court further notes that the Romanian Ministry submitted regular updates on the status of the domestic proceedings to their Austrian counterpart (see paragraph 19 above). The Court agrees with the Government that providing such information formed part of the Romanian Ministry's obligations under the Hague Convention. However, the Court notes that neither was the applicant heard by the domestic courts nor did he present written submissions in the domestic proceedings.

53. When examining the overall decision-making process the Court cannot disregard the fact that the file before the domestic courts contained controversial pieces of evidence. The Court finds that giving the first applicant the opportunity to present his case either directly or through written submissions was of paramount importance for ensuring the fairness of the decision-making process.

54. In relation to the speediness of review, the Court reiterates that 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 *Iosub Caras*, cited above, § 38). Even if the Court were to accept the Government's argument whereby the six-week time-limit set forth under the Hague Convention is not to be interpreted strictly, it cannot fail but notice that this time-limit was largely exceeded as the Hague Convention proceedings lasted a total of eleven months before the first-instance and the instance of appeal. Moreover, the Court notes that the Council Regulation No. 2201/2003

permits non-compliance with the six-week rule only in exceptional circumstances (see paragraph 21 above). No satisfactory explanation was put forward by the Government for this delay.

55. In conclusion, and in the light of the foregoing considerations the Court finds that the decision-making process at domestic level was flawed as on the one hand no in-depth analysis was conducted with a view to assessing the child's best interests and on the other hand the first applicant was not given the opportunity to present his case in an expeditious manner as required under Article 8 of the Convention interpreted in the light of the Hague Convention and the Regulation.

There has accordingly been a violation of Article 8 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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. Pecuniary damage*

57. The first applicant claimed 185,759.28 euros (EUR) in respect of pecuniary damage resulting from past, present and future loss of income as he had become ill from the stress associated with the abduction of his daughter.

58. The Government submitted that the first applicant's claims were speculative and did not have a direct connection with the possible finding of a violation of Article 8 of the Convention.

59. The Court finds that the causal link between the violation found and the alleged pecuniary damage is too remote to justify an award of compensation under this head.

#### *2. Non-pecuniary damage*

60. The first applicant sought EUR 40,000 on his own behalf and EUR 60,000 on behalf of the second applicant in compensation for non-pecuniary damage suffered due to the anxiety and distress he and his daughter had experienced on account of the domestic courts' failure to promptly order the return of the second applicant to Austria.

61. The Government submitted that the amounts claimed were unjustified and excessive, inviting the Court to rule that the finding of a

violation would provide sufficient just satisfaction for any non-pecuniary damage the applicants may have suffered.

62. The Court considers that the applicants must have 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. In the light of the circumstances of the case, and making an assessment on an equitable basis as required by Article 41, the Court awards the first applicant EUR 10,000 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).

### B. Costs and expenses

63. The first applicant also claimed EUR 15,172.04 for the costs and expenses incurred before the domestic courts and the Court, namely (i) EUR 11,160 in lawyer's fees incurred in Austria in connection with the Hague Convention proceedings; (ii) EUR 1,500 in lawyer's fees incurred in Romania in connection with the Hague Convention proceedings; (iii) EUR 553 for expenses before the Court and (iv) EUR 1,959.04 for mobile phone expenses incurred in connection with his attempts to retrieve his daughter.

64. The Government disputed the claims, arguing that the first applicant had not submitted the relevant documents in support of his claim and that the requirements of Rule 60 of the Rules of Court had not been met.

65. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In relation to the costs incurred in the proceedings before the Court, the first applicant submitted a bank statement certifying payments made to his lawyer's bank account amounting to 1591.06 Romanian lei (representing the equivalent of around EUR 393) and an invoice for 687.15 Romanian lei (representing the equivalent of around EUR 160) for English translations of the correspondence with the Court. In the absence of any other documents, the Court finds that the first applicant has only justified the translation expenses and awards him the amount of EUR 160 for the proceedings before the Court.

### C. Default interest

66. The Court considers it appropriate that the default interest rate 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 application admissible;

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

3. *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 10,000 (ten thousand euros) in respect of non-pecuniary damage and EUR 160 (one hundred sixty 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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 21 February 2012 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President