FOURTH SECTION

**CASE OF ROYER v. HUNGARY**

*(Application no. 9114/16)*

JUDGMENT

STRASBOURG

6 March 2018

*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 Royer v. Hungary,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Ganna Yudkivska, *President,* Vincent A. De Gaetano, Faris Vehabović, Iulia Motoc, Carlo Ranzoni, Marko Bošnjak, Péter Paczolay, *judges,*and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 13 February 2018,

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

PROCEDURE

1.  The case originated in an application (no. 9114/16) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a French national, Mr Patrick Royer (“the applicant”), on 11 February 2016.

2.  The applicant was represented by Mr C. Meyer, a lawyer practising in Strasbourg. The Hungarian Government (“the Government”) were represented by Mr Z. Tallódi, Agent, Ministry of Justice.

3.  The applicant alleged that the Hungarian authorities had failed to ensure his son’s return to France, thus violating his right to respect for his family life, as protected by Article 8 of the Convention.

4.  On 18 May 2016 the application was communicated to the Government.

5.  The French 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.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

6.  The applicant, is a French citizen, who was born in 1969 and lives in Gaillard, France.

7.  In 2003 the applicant met K.B.V., a Hungarian national. In 2009 K.B.V. moved to France and the couple lived together in the applicant’s flat in Gaillard. On 18 October 2013 their son, L., was born. In December 2013 the couple spent the Christmas holidays with the applicant’s family in Nancy. The applicant returned to their home on 27 December 2013.

8.  On 28 December 2013 K.B.V. lodged a complaint against the applicant in Toul. She alleged that the applicant had become hostile and sometimes aggressive towards her and constituted a danger to her and their son.

9.  On 4 January 2014 K.B.V. left for Hungary with L, without the prior knowledge or authorisation of the applicant. Since then K.B.V. has lived with L. at her parents’ home in Szombathely.

10.  On 9 January 2014 K.B.V. initiated custody proceedings in respect of L. before the Szombathely District Court.

A.  Proceedings before the French courts

11.  On 7 February 2014 the applicant instigated proceedings before the Thonon-Les-Bains *tribunal de grande instance.* On 24 March 2014 the court found that L. had been illegally taken from France, placed the son with his father (that is to say the applicant), and granted the applicant sole custody. The court ordered the provisional execution of the judgment. Following an appeal by K.B.V., in a judgment of 22 July 2014, the Chambery Court of Appeal granted K.B.V. the right to have supervised contact every other Saturday between 2 p.m. and 4 p.m., awarded the parents joint custody, and upheld the remainder of the first-instance decision.

12.  On 28 January 2015 the Chambery Court of Appeal issued a certificate of enforceability under Article 39 of 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 (known “the Brussels II *bis* Regulation”).

13.  On 23 September 2015 the Court of Cassation quashed the second‑instance judgment of the Chambery Court of Appeal and remitted the case to the Lyon Court of Appeal.

B.  Proceedings before the Hungarian courts

1.  Proceedings for the return of the child

14.  On 10 December 2014 the Pest Central District Court received from the applicant a request under the Hague Convention on the Civil Aspects of International Child Abduction (Articles 11-12) and the Brussels II *bis* Regulation for the child to be returned to France. The applicant maintained that L.’s place of residence was in France and that under French law parents exercised their custody rights jointly. K.B.V. had decided on the child’s place of residence without his approval. On 17 November and 4 and 12 December 2014, and 8, 22 and 28 January and 9 February 2015 the court examined the request in the presence of both parents.

15.  By a decision of 12 February 2015 the Pest Central District Court dismissed the request under Article 11 of the Hague Convention and Article 11 of the Brussels II *bis* Regulation. Relying on the definition of child abduction, as provided in Article 3 of the Hague Convention, the court found that K.B.V. had abducted L. from his habitual residence in France, where the parents had exercised their custody rights jointly. However, on the basis of the evidence before it, the court concluded that if L. (who was still being breastfed) were returned to France, he would be placed in uncertain circumstances, only seeing his mother every second week for a couple of hours. It emphasised that according to the applicant’s own submissions, he was away from home from 7 a.m. until 10 p.m. and that it would be difficult for him to look after the child during weekends. Thus, as he suggested, his sister would look after L. The court also noted that the applicant had lodged his request almost a year after L.’s abduction and that although he had visited Hungary on a number of occasions, he had not been in contact with L. Thus, the court dismissed the applicant’s request under Article 13(b) of the Hague Convention.

16.  The Budapest High Court upheld the first-instance decision on 28 April 2015. It reiterated the conclusion of the first-instance court that there was a grave risk that L.’s return to France would expose him to harm. In this aspect the court found relevant that L. was only one and a half years old and if returned to France he would be deprived of all maternal care. Thus, under Article 13 of the Hague Convention, the Hungarian courts were not bound to order the child’s return. The court also held that Article 11 § 4 of the Brussels II *bis* Regulation was not applicable, since no measures or arrangements were available to secure the protection of L. after his return.

17.  The applicant lodged a petition for judicial review of this decision with the *Kúria.* He argued that Article 13 of the Hague Convention was applicable to exceptional circumstances only and that neither the child’s age nor his closer connection to his mother had any bearing on the matter and could not constitute a decisive element in the decision to refuse to order the child’s return to his habitual residence. He also argued that he had contributed to the child’s care and that his employment, which allowed him to provide for his family, could not be held against him. Furthermore, the decisions had failed to take into account L.’s best interests, which lay in his being raised by both of his parents. He also maintained that his lack of contact with L. was due to K.B.V.’s own conduct and the fact that he had not been aware of the child’s place of residence until August 2014. Finally, the lower-instance courts had not respected the six-week deadline stipulated by the Brussels II *bis* Regulation.

18.  The *Kúria* dismissed the applicant’s petition for judicial review on 6 October 2015. According to its reasoning both the Brussels II *bis* Regulation and the Hague Convention had established the presumption that a child’s interests could best be served by his immediate return to his habitual residence. However, under Article 13 of the Hague Convention this presumption could be rebutted in exceptional circumstances. It agreed with the applicant that the child’s young age, his close connection to the parent living in Hungary and his Hungarian roots could not serve as a basis for the refusal to order his return to France. It nonetheless held that at the time of his abduction L. had only been two and a half months old and that a considerable time had passed without him having contact with the applicant. The reason for this was that the applicant had refused to see L. at the premises of a child protection service, as suggested by K.B.V. The *Kúria* also found it important that according to the applicant’s own statements his sister would take care of L. if the child were returned to France and that, according to the decision of the French courts, K.B.V. would only have very limited contact with L. Furthermore, there was no information about any measure of protection envisaged in the event of L.’s return. Thus, the *Kúria* concluded that the return of the child, who was less than two years old, to an unknown environment would cause serious psychological harm.

2.  Custody proceedings

19.  On 9 January 2014 K.B.V. initiated custody proceedings in respect of L. before the Szombathely District Court; she also requested the court to adopt an interim measure placing L. under her custody.

20.  On 27 August 2014 the District Court discontinued the proceedings, regard being had to the judgments delivered by the French courts. On 31 October 2014 the Szombathely High Court overturned this decision and ordered the District Court to examine whether the judgments of the French courts could be recognised and if not whether it had jurisdiction in the matter.

21.  On 5 January 2015 the District Court discontinued the proceedings again, finding that K.B.V. could have exercised her procedural rights before the French courts, submitting her written observations through her representative in the course of the appellate proceedings. This decision was overturned again by the High Court on 5 March 2015 owing to procedural errors.

22.  On 22 April 2015 the applicant tried to abduct L., who was walking with his grandfather on the street. Following the incident K.B.V. lodged a criminal complaint against the applicant and requested that a restriction order be imposed on him. On 8 May 2015 the Szombathely District Court issued a restriction order in respect of the applicant, which was subsequently overturned on appeal on the grounds that the mother herself had not been a victim of violent behaviour on the part of the applicant.

23.  On 30 April 2015, in an interim decision, the District Court decided not to recognise the judgments adopted by the Thonon-Les-Bains *tribunal de grande instance* and the Chambery Court of Appeal, established that it did have jurisdiction in the matter, and temporarily placed L. in his mother’s sole custody. According to the District Court the French courts had found that the interests of the child could best be served by his return to France. However, the proceedings before the Thonon-Les-Bains *tribunal de grande instance* had failed to respect K.B.V.’s right to a fair trial, since – owing to the fact that the applicant had given false information to the French authorities – she had not been informed of the proceedings and had not been able to be heard in person. Thus, the court concluded that the decision could not be recognised, pursuant to Articles 21 § 4 and 23(d) of the Brussels II *bis* Regulation. It also held that it had jurisdiction under Article 8 (1) of the Brussels II *bis* Regulation, since the child’s habitual residence was in Hungary. As to the interim resolution of custody rights, the Court held that the interests of the child could be best served if he remained in his habitual environment – that is to say in the company of his mother and maternal grandparents – and that removing him from Hungary would pose a risk of causing him psychological harm.

24.  Following a further appeal, on 11 August 2015 the Szombathely High Court overturned the decision concerning custody rights and remitted the case to the first-instance court. As to the decision on the non-recognition of the judgments delivered by the French courts, it found that recognition could not be refused on the basis that K.B.V. had not been heard in person before the French courts, since the Brussels II *bis* Regulation did not stipulate such an obligation and the mother could have submitted written observations. Nonetheless, the court found that the recognition of the foreign judgments could not be recognised, pursuant to Article 23(b) of the Brussels II *bis* Regulation, since recognition would have been contrary to the public policy of Hungary, given that the best interests of the child had only been respected in a formalistic way. According to the High Court, restricting the mother’s contact with L. to two hours every second week would have caused harm to L., especially since the applicant himself had stated that L. would be looked after by his sister. The court also had regard to the forensic psychiatric opinion prepared by Dr Gy.L.K. on 28 August 2014 and supplemented by L.K. on 6 March 2015, according to which ‑ from a psychological point of view – the enforcement of the French courts’ judgment would constitute “institutional abuse”. Furthermore, the court found that no measures were being contemplated by the applicant to ensure the protection of the child after his return to France.

A petition for judicial review lodged by the applicant with the *Kúria* was dismissed as time-barred on 15 January 2016.

25.  On 13 July 2015, in the course of the custody proceedings, the applicant also lodged a request for an interim measure regulating his access rights.

26.  On 8 December 2015 the applicant abducted L. from K.B.V., in the course of which he caused grievous bodily harm to her. L was taken to France.

27.  On 10 December 2015 the Szombathely District Court issued an interim decision on the exercise of parental custody and access rights. It noted that since January 2014 the applicant had seen his son only three times and had been in contact with him seven or eight times via Skype. It held that L. needed to have contact with his father and therefore ruled that the applicant could visit him for three hours every second weekend and could contact him via Skype every other weekend. Given the applicant’s violent behaviour towards the mother (and previously towards the child’s grandfather – see paragraph 22 above), the court held that the applicant’s visits should take place under supervision. The applicant appealed.

28.  On 11 December 2015 the Szombathely District Court issued a European arrest warrant against the applicant, who was detained in France on 14 December 2015. L. was placed in a childcare institution.

29.  By a decision of 24 December 2015 the Thonon-Les-Bains *tribunal de grande instance* found that the applicant had endangered the child’s development and temporarily placed L. in his mother’s custody. The applicant was granted access rights, in accordance with the Szombathely District Court’s decision of 10 December 2015. The applicant appealed against this decision.

30.  L. was returned to Hungary on 28 December 2015.

31.  On 3 February 2016 the Szombathely High Court upheld the decision of the District Court of 10 December 2015 on the temporary placement of L. in his mother’s custody, emphasising that the Thonon‑Les‑Bains *tribunal de grande instance* had arrived at the same conclusion.

3.  Proceedings for the execution of the French courts’ judgments

32.  In the meantime, on 24 February 2015 the applicant applied for the execution of the judgments delivered by the Thonon-Les-Bains *tribunal de grande instance* and the Chambery Court of Appeal.

33.  On 7 September 2015 the Szombathely District Court dismissed the application, relying on the decision of the Szombathely High Court of 11 August 2015 on the non-recognition of the French courts’ judgments. It relied on Article 23(a) of the Brussels II *bis* Regulation.

34.  The applicant appealed, arguing that the District Court had erred in finding that the decision on the non-recognition of the French courts’ judgments was relevant in the case. Since in the meantime the Court of Cassationhad overturned the judgment of the Chambery Court of Appeal, the applicant requested the enforcement of the judgment of the Thonon‑Les‑Bains *tribunal de grande instance* and maintained that this judgment had been declared automatically enforceable. The Szombathely High Court held that the judgment of the Thonon-Les-Bains *tribunal de grande instance*, under which no rights at all were granted to the mother at all, was contrary to the public policy of Hungary since it did not respect fundamental rights, and in particular the best interest of the child, and refused by a decision of 10 December 2015 to execute it.

II.  RELEVANT DOMESTIC AND INTERNATIONAL LAW

35.  The relevant Articles of the Hague Convention (ratified by Hungary on 1 July 1986), the interpretation given to the concept of “the child’s best interests”, and the relevant provisions of the Brussels II *bis* Regulation are described in *X v. Latvia* ([GC], no. 27853/09, §§ 34 and 42, ECHR 2013).

36.  In addition to the Articles described in *X v. Latvia*, the following provisions were quoted in the domestic proceedings:

The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

Article 21  
Recognition of a judgment

“1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.”

...

Article 23  
Grounds of non-recognition for judgments relating to parental responsibility

“A judgment relating to parental responsibility shall not be recognised:

(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child; ...”

Council Regulation (EC) NO 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility

Article 11  
Return of the child

“...

4. A court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return. ...”

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

37.  The applicant claimed to have been a victim, on account of the decisions of the Hungarian courts refusing to order the return of his son to France, of an infringement of his right to respect for his family life within the meaning of Article 8 of the Convention, which provides:

“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.”

A.  Admissibility

1.  The parties’ submissions

38.  The Government pleaded that the application should be rejected as an abuse of the right of petition as the applicant had not included certain facts in his application form. In particular, he had maintained in the application form that the final decision concerning custody rights had been that of 24 March 2014 delivered by the Thonon‑Les-Bains *tribunal de grande instance*, whereas at the time that he submitted his application the *tribunal de grande instance* had temporarily placed the child under the mother’s custody by a decision of 24 December 2015. Furthermore, the applicant had been arrested under a European arrest warrant on suspicion of having caused grievous bodily harm to K.B.V.

39.  The applicant considered that he had submitted all the facts that related to the questions communicated to the parties and to the alleged violation of his rights under Article 8. He also maintained that all the information in his application had been supported by the relevant judicial decisions and that the events invoked by the Government were not pertinent to the complaint that he had submitted to the Court. In particular, at the time of his submitting his application the decision of the Thonon-Les-Bains *tribunal de grande instance* of 24 December 2015 had not been final, since he had lodged an appeal against it. As regards the allegation that he had caused grievous bodily harm to L.’s mother, the applicant submitted that he had not been tried for the impugned acts at the time of his application.

2.  The Court’s assessment

40.  Article 35 § 3 (a) of the Convention provides:

“3.  The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

(a)  the application is ... an abuse of the right of individual application; ...”

41.  The Court reiterates that under this provision an application may be rejected as an abuse of the right of individual application if, among other reasons, it was knowingly based on untrue facts. The submission of incomplete and thus misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information. The same applies if new, important developments have arisen during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 (the former Rule 47 § 6) of the Rules of Court, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts. However, even in such cases, the applicant’s intention to mislead the Court must always be established with sufficient certainty (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, with further references).

42.  It is true that at the stage of the proceedings when the applicant submitted his complaint he had been aware of the decision of the Thonon‑Les-Bains *tribunal de grande instance* and the European arrest warrant issued against him. However, the Court notes that the applicant’s complaint concerned the initial decisions of the Hungarian courts refusing to order the return of L. to France despite the judgments of the French courts and finding that the French court judgments had been, allegedly, in violation of Article 8 of the Convention. It also notes that the subsequent developments – namely L. being placed with his mother and an arrest warrant being issued against the applicant – had no bearing on those decisions and are not considered to constitute the core of the case. Furthermore, the Court is unable to find any indication that the applicant intended to mislead the Court.

43.  In these circumstances, the Court does not find it appropriate to declare the application inadmissible as being abusive within the meaning of Article 35 § 3 of the Convention.

44.  The Court furthermore notes that the application is not manifestly ill‑founded within the meaning of Article 35 § 3 (a) of the Convention. Moreover, it notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B.  Merits

1.  The parties’ submissions

45.  The applicant disagreed with the Government’s view that in the present case the question was whether he had been able to keep up occasional contact to his son. Rather, in his view, the interference with his family life had stemmed from the erroneous decision of the Hungarian courts whereby they had refused to order his child’s return to France. He maintained that the Hungarian courts had failed to carry out a proper examination of the child’s best interests and had confused them with those of the mother. He argued that they had made an abusive application of the exceptions provided by the Hague Convention when refusing to order the return of his son to France. In particular, they had failed to explain how the child’s return would have caused him grave harm.

46.  According to the Government the applicant’s complaint was to be understood as an application to regain custody of his son rather than as a complaint about his lack of contact with him. They contended that the applicant’s contact with L. had not been impeded either by the conduct of the mother or the decisions of the Hungarian courts. The applicant had only requested the regulation of his access right more than one and a half years following the child’s abduction, and although he had been offered the possibility of visiting his son under supervision, he had declined to do so. Thus, in the Government’s view, the Hungarian authorities had taken all necessary and possible measures without any delay to ensure that the applicant could maintain contact with his child. Furthermore, the applicant himself had not taken any measures to rebuild or restore a personal, emotional relationship with his child.

47.  As regards the applicant’s assertion that the Hungarian authorities should have ensured his custody rights, the Government contested that the applicant’s application to regain custody of his son fell under the scope of family life, as protected by Article 8 of the Convention. In the Government’s understanding the applicant’s intention had only been to establish a legal relationship between himself and his son, without providing the necessary emotional ties and safe environment, thus disregarding the best interests of the child. This had also been demonstrated by his kidnapping L.

48.  Therefore, according to the Government, the refusal of the Hungarian courts to order the return of L. to France had been in compliance with the laws protecting the “rights of others” under Article 8 of the Convention, namely – in the instant case – the child. When identifying the child’s best interests the domestic courts had had to pay due regard to the age of the child, his special relationship with his mother and the fact that returning L. would have deprived him of a loving environment, placing him under the care of persons unknown to him. Thus, the Hungarian decisions had reflected the child’s best interests, as required by the Court’s case-law.

2.  The Court’s assessment

(a)  Principles established by the Court’s case-law

49.  In its ruling in *X v. Latvia* ([GC], no. 27853/09, ECHR 2013) the Court clarified some of the principles that have emerged from its case-law on the issue of international abduction of children as follows:

(i)  A harmonious interpretation of the European Convention and the Hague Convention can be achieved provided that the following two conditions are observed. Firstly, the factors capable of constituting an exception to the child’s immediate return in application of Articles 12, 13 and 20 of the Hague Convention, particularly where they are raised by one of the parties to the proceedings, must genuinely be taken into account by the requested court. That court must then make a decision that is sufficiently reasoned on this point, in order to enable the Court to verify that those questions have been effectively examined. Secondly, these factors must be evaluated in the light of Article 8 of the Convention (ibid, § 106).

(ii)  In consequence, Article 8 of the Convention imposes on the domestic authorities a particular procedural obligation in this respect: when assessing an application for a child’s return, the courts must not only consider arguable allegations of a “grave risk” for the child in the event of return, but must also make a ruling giving specific reasons in the light of the circumstances of the case. Both a refusal to take account of objections to the return capable of falling within the scope of Articles 12, 13 and 20 of the Hague Convention and insufficient reasoning in the ruling dismissing such objections would be contrary to the requirements of Article 8 of the Convention and also to the aim and purpose of the Hague Convention. Due consideration of such allegations, demonstrated by reasoning of the domestic courts that is not automatic and stereotyped, but sufficiently detailed in the light of the exceptions set out in the Hague Convention, which must be interpreted strictly, is necessary. This will also enable the Court, whose task is not to take the place of the national courts, to carry out the European supervision entrusted to it (ibid, § 107).

(iii)  Furthermore, as the Preamble to the Hague Convention provides for children’s return “to the State of their habitual residence”, the courts must satisfy themselves that adequate safeguards are convincingly provided in that country, and, in the event of a known risk, that tangible protection measures are put in place (ibid, § 108).

50.  In addition, in relations between EU member States the rules on child abduction contained in the Brussels II *bis* Regulation supplement those already laid down in the Hague Convention. Both instruments are based on the philosophy that in all decisions concerning children, their best interests must be paramount. Under the Brussels II *bis* Regulation, which builds on the Hague Convention and is based on the principle of mutual trust between EU member States, the competency to assess whether non-return would be in the child’s best interest is distributed as follows: the State to which the child has been wrongfully removed can oppose his or her return in justified cases. However, under Article 11 § 8 of the Brussels II *bis* Regulation, the State in which the child had its habitual residence prior to the wrongful removal can override a decision refusing to order that child’s return, pursuant to Article 13 of the Hague Convention. If such a decision is accompanied by a certificate of enforceability, pursuant to Article 42 of the Regulation, the requested State has to enforce it. Under Article 47 of the Regulation, the law of the State of enforcement applies to any enforcement proceedings (see *M.A. v. Austria*, no. 4097/13, §§ 112 and 114, 15 January 2015). As the Court has previously held, it must verify that the principle of mutual recognition is not applied automatically and mechanically (see, *Avotiņš v. Latvia* [GC], no. 17502/07, § 116, ECHR 2016).

(b)  Application of these principles to the present case

51.  The present case concerns the return of a child from one EU member State to another. The applicant, a French national living in France, complained that the Hungarian courts refused to order the return of his child from Hungary to France, the country in which his son had lived before his arrival in Hungary and that they decided not to enforce the French courts’ judgments granting him custody of his son.

52.  The Court notes that it is common ground that the ties between the applicant and his son fall within the scope of family life within the meaning of Article 8 of the Convention. The Court further considers that the events under consideration in the instant case amounted to an interference with the applicant’s right to respect for his family life, as it restricted his enjoyment of his son’s company (see *Monory v. Romania and Hungary*, no. 71099/01, § 70, 5 April 2005; *Raban v. Romania*, no. 25437/08, § 32, 26 October 2010).

53.  The Court must accordingly determine whether the interference in question was “necessary in a democratic society” within the meaning of the second paragraph of Article 8 of the Convention.

54.  Under Article 3 of the Hague Convention, which was signed and ratified by Hungary on 1 July 1986, the removal or retention of a child is to be considered “wrongful” where it is in breach of rights of custody attributed to a person under the law of the State in which the child was “habitually resident” immediately before the removal or retention. The Court firstly observes that in the present case the Hungarian courts agreed with the applicant and the French courts that L. had been wrongfully removed from his habitual residence in France, where the applicant and his common-law wife had exercised jointly parental responsibility and rights of custody over him. However, the Hungarian courts found that the exception under Article 13 §1 (b) of the Hague Convention was applicable and that they were not bound to order the return of the child.

55.  The Court notes in particular, that the domestic first-instance court, the appeal court and the *Kúria* were unanimous as to the response to be given to the application for the return of the child submitted by the applicant. The Hungarian courts were of the view that the execution of the foreign judgments and the return of the child in line with the French court judgments – which would result in his immediate separation from his mother and only very restricted contact with her in the future – was to be ruled out on account of the likelihood of it causing him psychological harm, which fell under the exception provided by Article 13 § 1 (b) of the Hague Convention (see paragraph 18 above).

56.  The Court reiterates in this respect that the exception provided for in Article 13, first paragraph (b) of the Hague Convention cannot be read in the light of Article 8 of the Convention as covering all kinds of inconvenience necessarily linked to the experience of return, but concerns only situations which go beyond what a child might reasonably bear (see *X v. Latvia,* cited above, § 116). With regard more specifically to the Hungarian courts’ reasoning, the Court reiterates that Article 8 of the Convention imposed a procedural obligation on the Hungarian authorities, requiring that an arguable allegation of grave risk to a child in the event of return be effectively examined by the courts and their findings set out in a reasoned court decision (*X v. Latvia,* cited above,§ 107).

57.  In the present case the Court observes that the *Kúria* complied with this procedural obligation and dismissed the applicant’s petition in a well-reasoned decision. In particular, it held that the child’s young age, his close connection to the parent living in Hungary, and his Hungarian roots could not in themselves serve a basis for the refusal to order his return to France.  Nonetheless, it still concluded, as did the lower-level courts, that there were grounds to find that the child’s best interests excluded his return to France, which would have only caused him psychological trauma.

58.  Moreover, the Hungarian courts took into account the evidence submitted by both parties, the psychological evaluation of the child, the applicant’s submissions on the way he proposed to provide care for L., and the judgments of the French courts. They contrasted the child’s best interests with the existing evidence to the effect that L. had had no contact with the applicant for a considerable amount of time and that if L. were taken back to France he would be looked after by a person unknown to him in an environment also unknown to him and that he would have had only limited contact with his mother, despite his very young age. The Hungarian courtsalso considered the question of whether arrangements had been made to secure the protection of the child after his return to France.

59.  The Court finds it relevant that similar conclusions were reached in the two additional set of proceedings conducted before the Hungarian courts, where the applicant sought the recognition and enforcement of the French courts’ judgments granting custody to him. In these proceedings the domestic courts found that although Article 21 of the Brussels II *bis* Regulation provided that such a judgment is to be recognised without any special procedure, the exception under Article 23(a) of the Brussels II *bis* Regulation was applicable, as the French courts’ judgments were contrary to the public policy of Hungary. Namely, according to the courts’ reasoning, the French judgments had taken into account the child’s best interests only in a purely formalistic manner (see paragraph 24 above) and had infringed fundamental rights, in particular the respect for the child’s best interest (see paragraph 34 above).

60.  As the Court has already held many times, it cannot question the assessment of the domestic authorities, unless there is clear evidence of arbitrariness (see *Sisojeva and Others v. Latvia* [GC], no. 60654/00, § 89, ECHR 2007‑II).

61.  Based on the above, no such clear evidence of arbitrariness appears in the present case; on the contrary, the Hungarian courts examined the case and gave judgments that paid particular consideration to the principle of the paramount interests of the child – who had been very young (two and a half months old) at the time of his departure from France, and who now appeared to be very well integrated into his new environment (see, by contrast, *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, §§ 145‑151, ECHR 2010). The Court therefore finds no imperative reason to depart from the domestic courts’ findings in the case.

62.  The Court concludes that, having particular regard to the *in concreto* approach required for the handling of cases involving child-related matters, the Hungarian courts’ assessment of the case in the light of the Hague Convention requirements did not amount to a violation of Article 8 of the European Convention, as it was proportionate to the legitimate aim pursued.

63.  It follows that there has been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1.  *Declares* the application admissible;

2.  *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 6 March 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Ganna Yudkivska  
 Registrar President