

Who is your trainer?



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TRAINING SESSION OUTLINE

I. The European Court of Human Rights (The Court of Strasbourg)

What Court is that ? How does it work ? How do I get there ? What to expect ?

II. The relevant provisions of the European Convention on Human Rights pertaining to international child abduction cases

What provisions to invoke ? What are their « inner dynamics » ?

III. Past and current case-law of the Court of Strasbourg

What are the applicable principles for each category of case-law?

What were and are the legal issues raised and the answers provided by the Court?

Poll question n°1

If individuals, groups of persons, legal persons and States can go to the Court, can abductor parents lodge an application on behalf of the abducted child?

Answers :

a) no, they cannot ;

b) yes, they can ;

c) yes, they can only if they have sole custody rights

The European Court of Human Rights –

A) Common procedural features

- A written procedure
- Public character of document (article 33 of the Rules of the Court)
- Adversarial proceedings (only after communication)
- Direct access to the Court
- Representation of the Contracting Parties and of the applicants
- Official languages

The European Court of Human Rights – B) Who can go to the Court ?

- Individual petition right / State petition right (Articles 33 & 34 ECHR)
- Locus Standi of the abducted child

Poll Question n°2

An application may be declared inadmissible when it has been already submitted to “another procedure of international investigation or settlement” (article 35 § 2 b).

In child abduction cases, is it the case when it has been already submitted :

- a) To the Brussel Commission?
- b) To the Petition Committee of the EU Parliament?
- c) To the National Ombudsman?

The European Court of Human Rights –

C) How my application is in fact handled by the Court ?

- Rules for introducing your application (article 47 of the Rules)
- Priority treatment (article 41 of the rules)
- Interim measures in child abduction cases (Rule 39 requests)
- Different processing channels (filtering mechanism, chamber)
- Communication of the application
- Public Hearing
- Third intervention
- Friendly settlement
- Legal aid scheme and Execution process

The European Court of Human Rights –

D) Admissibility criterion of the application

- Articles 34 and 35 of the ECHR
- Main legal issues in relation with international child abduction cases:
 - ✓ Locus Standi
 - ✓ Exhaustion of available and effective domestic remedies
 - ✓ 6 month time delay
 - ✓ Submitted to “another procedure of international investigation or settlement” (article 35 § 2 b)
 - ✓ Manifestly ill-founded

II. What are the relevant provisions of the European Convention on Human Rights to invoke ?

- Essentially Article 8 ECHR (right to respect for family life)
- Structure and essence of Article 8:
 - ✓ Negative obligations: the protection against arbitrary actions of the public authorities
 - Interference / legal basis / legitimate aim / proportionality test
 - ✓ Positive obligations of the authorities aiming at the reunification of the family (substantive and procedural)
- Article 6 and 13 of the ECHR

Poll question n°3

If the defending Contracting Party has not ratified the Hague Convention, can an applicant lodge an application to the Court of Strasbourg and complain about a violation of the Hague Convention ?

- a) No
- b) Yes, but only about the substantive provisions of the Hague Convention
- c) Yes, but only under the angle of Article 8 of the ECHR

III. Past and current relevant case-law of the Court

A. First category of cases: applications lodged by the parent whose child has been abducted

1. What are the applicable principles stemming from Article 8 of the ECHR in that category of cases?

- Substantive obligation
- Procedural obligation

2. What are the legal issues raised and the answers provided by the Court ?

III. Past and current relevant case-law of the Court

- 1) The necessity to put in place a sound legal framework to secure a prompt response to international child abduction cases
 - See Bajrami v. Albania, 12.12.2016, § 66, and Hromadka v. Russia, 11.12.2014, § 154

- 2) A coherent and consistent interpretation of the Hague Convention
 - See X. V. Latvia, GC, 26.11.2013
 - See Monory v. Romania & Hungary, 05.04.2005, § 80

III. Past and current relevant case-law of the Court

3) The obligation to act swiftly – the exceptionnal diligence criteria

- The passage of time issue
- Article 11 of the Hague Convention

4) The fairness of the decision-making process

- See Ignacolo-Zenide v. Romania, 25.01.2000
- See Lopez Guio Fernandez v. Slovakia, 03.06.2014
- See Maumousseau & Washington v. France, 15.11.2007

Poll question n°4

May « Central Authorities » engage the international responsibility of their respective States for their acts or omissions before the Court of Strasbourg ?

- a) No, only the Tribunals or Courts can
- b) Yes, as an administrative organ of the State
- c) So far, there is no case-law on the matter

III. Past and current relevant case-law of the Court

5) All reasonable steps must have been taken by the Member State

- The use of Article 7 of the Hague Convention
- No passive or inactive period without explanation (Sylvester v. Austria and Maire v. Portugal and Raw & others v. France)
- The use of coercive measures if need be (See Shaw v. Hungary, 2011, Cavani v. Hungary, 2014, Raw & others, Paradis v. Germany, 2007)
- The preparation of the return of the child (Ignacolo-Zenide)

III. Past and current relevant case-law of the Court

6) Safeguarding contact rights during the Hague proceedings

- Applicable principle
- See Monory v. Romania, and G.N. v. Poland, 19.10.2016, § 80

7) The behavior of the Central Authorities in international public law

- See Maumousseau v. France
- See Furman v. Slovenia & Austria, 05.02.2015, § 131

Poll question n° 5

In the case-law of the Court, the personal opinion of the child:

- a) Must be heard by the judge, by virtue of article 12 of the UN Convention on the Child, and if not the order of return is null and void.
- b) Must be heard by the judge only if the child is mature enough
- c) Outweight all other considerations

III. Past and current relevant case-law of the Court

B. Second category of cases: applications lodged by the parent who had abducted the child

1. What are the applicable principles in that category of cases?
2. What are the legal issues and the answers given (satisfactory or not)?

III. Past and current relevant case-law of the Court

a) The conditions of enforcement of the return order

- Applicable principle
- See *Maumousseau v. France* cited above

b) The importance of the child's personal opinion

- See *Raw v. France*, *Blaga v. Romania*, *Rouiller and Gajtani v. Switzerland*

III. Past and current relevant case-law of the Court

- c) The interpretation of the « best interest of the child » in the light of Article 13 of the Hague Convention
- A limited control operated by the Court (See *Eskenazy and Chellouche v. Turkey*, 2005, *Tiemann v. France and Germany*, 2000, *Paradis v. Germany*)
 - The in-depth analysis of the child's personal situation criteria (See *Maumousseau v. France*)

III. Past and current relevant case-law

c) The passage of time and the integration criteria

- See Neulinger & Shuruk v. Switzerland, GC, 06.07.2010
- See Sneerson & Kampanella v. Italy, 12.07.2011
- See B. Belgium, 10.07.2012

d) The X v. Latvia case criteria – the need of clarification

e) Today's criteria: full or limited control? (See G.S. v. Georgia, 2015, Ferrari v. Romania, 2015, Phostira & Fernandes v. Portugal, 2015, G.N & K.J. v. Poland)