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L'interesse superiore del minore nei casi di sottrazione internazionale. Spunti dalla giurisprudenza di Strasburgo

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Nelle pagine che seguono, pubblichiamo alcuni estratti dalla giurisprudenza della Corte europea dei diritti dell'uomo in materia di sottrazione internazionale di minori scelti dalla dott.ssa Maria Pappalardo, tutor del corso, e preceduti da una sua nota introduttiva.

Sottrazione internazionale di minori e Convenzione europea dei diritti dell'uomo

di Maria Manuela Pappalardo

Con l'espressione "sottrazione internazionale di minori" si indica sia la situazione in cui un minore viene illecitamente condotto all'estero da chi non esercita la potestà esclusiva, senza alcuna autorizzazione, sia quella in cui il minore non viene ricondotto nel Paese di residenza abituale a seguito di un soggiorno all'estero. Le fattispecie richiamate si presentano con frequenza maggiore quando la rottura del nucleo familiare insorge in unioni tra persone di diversa nazionalità, cultura, tradizioni oltre che ordinamento giuridico. Anche la crescente mobilità delle persone e l'aumento delle unioni di fatto incidono sul fenomeno.

I casi di sottrazione internazionale di minori portati all'attenzione della Corte europea dei diritti umani sono stati numerosi nel corso degli anni e la Corte li ha trattati in applicazione dell'articolo 8 della Convenzione, che così recita:

> "1. Ogni persona ha diritto al rispetto della propria vita privata e familiare, del suo domicilio e della sua corrispondenza
> 2. Non può esservi ingerenza di una autorità pubblica nell'esercizio di tale diritto a meno che tale ingerenza sia prevista dalla legge e costituisca una misura che, in una società democratica, è necessaria alla sicurezza nazionale, alla pubblica sicurezza, al benessere economico del paese, alla difesa dell'ordine e alla prevenzione dei reati, alla protezione della salute o della morale, o alla protezione dei diritti e delle libertà altrui."

Dalla formulazione dell'articolo si evince chiaramente che esso contiene enunciazioni generali, e proprio per questo, la Corte ha costantemente ritenuto che, in materia di sottrazione internazionale di minori, gli obblighi imposti dall'articolo 8 debbano essere interpretati alla luce di quelli scaturenti dalla Convenzione dell'Aia del 1980 sugli aspetti civili della sottrazione internazionale di minori e dalla Convenzione sui diritti dell'infanzia del 20 novembre 1989 nonché dalle pertinenti

norme e principi di diritto internazionale applicabili nei rapporti tra le parti contraenti.

Ciò ha impegnato la Corte in una costante opera di coordinamento normativo tra i vari testi sopra richiamati e la Convenzione stessa. L'esame della giurisprudenza, invero assai copiosa, prodotta dalla Corte presenta dunque un duplice interesse. Per un verso, attraverso tale giurisprudenza, la Corte ricostruisce i principi di diritto applicabili alla fattispecie della sottrazione internazionale del minore; per altro verso, poi, offre materiale interessantissimo allo studio dei meccanismi di coordinamento normativo nel diritto internazionale.

Tale coordinamento è ispirato all'esigenza di salvaguardia del superiore interesse del minore, come previsto dall'articolo 3 della Convenzione sui diritti del fanciullo, secondo il quale:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration"

La Convenzione de l'Aja non contiene una disposizione comparabile, tuttavia, pur prevedendo all'articolo 12 l'obbligo della restituzione del minore, all'articolo 13.1 (b) contempla quale eccezione al detto obbligo il caso in cui:

"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"[1].

Elementi questi che, come vedremo più avanti, giocano un ruolo rilevante nel definire i poteri degli organi giudiziari coinvolti.

Per lungo tempo, la Corte ha ritenuto che il rispetto degli obblighi posti a carico degli Stati dalla Convenzione de L'Aja fosse di per sé idoneo ad attuare l'interesse superiore del minore in concreto e in termini coerenti con il divieto di

[1] La Convenzione de L'Aja va coordinata con il Regolamento (CE) 2201/2003, secondo quanto stabilito dal considerando n. 17 del Regolamento, secondo il quale lo strumento internazionale continuerà ad applicarsi come integrato dalle disposizioni dello strumento comunitario, in particolare (ma non solo) l'articolo 11. Vedi in argomento GENTILE, *La disciplina sul ritorno del minore nello stato di residenza tra la Convenzione de L'Aja del 25 Ottobre 1980 e il Regolamento (CE) n. 2201/2003. Spunti dalla giurisprudenza italiana*, in *Fogli di Lavoro per il Diritto Internazionale* 2010-2 http://www.lex.unict.it/sites/default/files/files/Crio/FogliLavoro/FLADI_2010-2_Gentile.pdf

ingerenza nella vita privata e familiare sancito dall'art. 8 della CEDU, al quale per giurisprudenza costante è stata ricondotta la tutela dei minori nelle relazioni familiari. Infatti, numerose sono state le pronunce che hanno accertato la violazione di tale norma per mancato o incompleto rispetto della Convenzione de L'Aja quanto all'obbligo di emanare l'ordine di ritorno o di darvi esecuzione, nell'assunto che il ripristino dello *status quo* imposto dalla Convenzione, a discapito del genitore non affidatario, concretizzasse proprio la *ratio* del rispetto della vita familiare del genitore affidatario imposto dall'art. 8. In sostanza, copiosa giurisprudenza della Corte ha affermato che la conformità degli atti giurisdizionali alla Convenzione de L'Aja è in ultima analisi condizione della conformità dei provvedimenti anche alla CEDU [2].

Nel caso *Ignaccolo-Zenide v Romania,* la Corte così si esprime:

"95. Lastly, the Court considers that the positive obligations that Article 8 of the Convention lays on the Contracting States in the matter of reuniting a parent with his or her children must be interpreted in the light of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction" [3]

E successivamente nella sua decisione sul caso *Maumousseau and Washington v. France* riprende il medesimo punto di vista:

"68. The Court is of the view that the concept of the child's "best interests" is also a primary consideration in the context of the procedures provided for in the Hague Convention. Inherent in that concept is the right for a minor not to be removed from one of his or her parents and retained by the other, that is to say by a parent who considers, rightly or wrongly, that he or she has equal or greater rights in respect of the minor. In this connection it is appropriate to refer to Recommendation No. 874 (1979) of the Council of Europe's Parliamentary Assembly which states: "Children must no longer be considered as parents' property, but must be recognised as individuals with their own rights and needs". The Court further observes that in the Preamble to the Hague Convention the Contracting Parties express their conviction that "the interests of children are of paramount importance in matters relating to their custody" and stress their desire to "protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual

[2] DISTEFANO, *Interesse superiore del minore e sottrazione internazionale di minori,* Padova 2012

[3] *Ignaccolo-Zenide v. Romania*, no 31679/96, Chamber Judgment of 25 January 2000 § 95

residence, as well as to secure protection for rights of access". These stipulations must be regarded as constituting the object and purpose, within the meaning of Article 31 § 1 of the Vienna Convention on the Law of Treaties, of the Hague Convention (see, to that effect, *Paradis and Others v. Germany* (dec.), no. 4783/03, 15 May 2003).

69. The Court is entirely in agreement with the philosophy underlying the Hague Convention. Inspired by a desire to protect children, regarded as the first victims of the trauma caused by their removal or retention, that instrument seeks to deter the proliferation of international child abductions. It is therefore a matter, once the conditions for the application of the Hague Convention have been met, of restoring as soon as possible the *status quo ante* in order to avoid the legal consolidation of *de facto* situations that were brought about wrongfully, and of leaving the issues of custody and parental authority to be determined by the courts that have jurisdiction in the place of the child's habitual residence, in accordance with Article 19 of the Hague Convention (see, to that effect, among other authorities, *Eskinazi and Chelouche*, cited above)"[4]

Nel 2010, però, con la celeberrima decisione nel caso Neulinger la Corte sembra sostenere che l'articolo 8 della Convenzione richieda un autonomo approccio al problema, non essendo sufficiente la meccanica applicazione dei criteri della Convenzione de L'Aja.[5]

Pronunce della Corte successive alla sentenza *Neulinger* hanno confermato tale nuova impostazione del rapporto fra l'art. 8 della CEDU e la Convenzione del 1980. Nel caso *Sneersone e Kampanella*, richiamandosi al nuovo indirizzo interpretativo che impone la verifica in concreto dell'interesse superiore del minore, la Corte giunge alla conclusione che un provvedimento di ritorno emesso da un giudice italiano ai sensi del regolamento 2201/2003, dopo una decisione di rifiuto di ritorno ai sensi dell'art. 13 della Convenzione de L'Aja, non può essere considerato conforme allo standard di tutela imposto dall'art. 8, in particolare per non avere considerato a

[4] *Maumousseau and Washington v. France (Application no. 39388/05)* Chamber Judgment 6 December 2007, §§ 68-69

[5] *Neulinger and Shuruk v Switzerland, (Application no. 41615/07)* Grand Chamber Judgment, 6 July 2010. Vedi gli estratti riprodotti *infra* alle pp. In dottrina si veda tra gli altri DISTEFANO, *La Grande Camera si pronuncia sul caso Neulinger e … recupera l'interesse superiore del minore*, in *Quaderni di Diritto e Politica Ecclesiastica* 2009, p. 883 e ss.

sufficienza le conseguenze che sarebbero derivate al minore nel caso di rientro in Italia[6].

La sentenza *Neulinger* fu letta da molti come il tentativo di una rivendicazione da parte della Corte dell'autonomia dell'articolo 8 della Convenzione rispetto alla Convenzione de L'Aja. In una successiva decisione, nel caso *X contro Lettonia*, la Corte così precisò il suo punto di vista, meglio delineando i termini di una "armoniosa applicazione della Convenzione europea con la Convenzione de L'Aja[7].

In conclusione, è possibile affermare che secondo la giurisprudenza della Corte europea dei diritti dell'uomo l'interesse del minore va accertato caso per caso, in concreto.

Nel contesto di una domanda di rimpatrio presentata ai sensi della Convenzione dell'Aia, che va tenuta distinta dalle procedure di affidamento, ciò che è meglio per il bambino deve essere valutato dunque caso per caso, e certamente alla luce delle eccezioni previste dalla Convenzione dell'Aia, concernenti il passare del tempo e l'esistenza di un "grave rischio".

Nell'adempiere al loro compito ai sensi dell'articolo 8, i tribunali nazionali godono di un margine di apprezzamento, che, come sempre, rimane oggetto del controllo operato dalla Corte.

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[6] *Sneersone and Kampanella v. Italy*, *(Application no. 14737/09*), Chamber Judgment, 12 July 2011. Vedi gli estratti riprodotti *infra* alle pp. e, sull'intera problematica concernente l'Italia, GENTILE, *La disciplina europea della sottrazione internazionale di minori e la sua applicazione in Italia. La sentenza della Cassazione civile, Sezione I, del 14 luglio 2010 n. 16549,* in *Fogli di Lavoro per il Diritto Internazionale,* 2013-2 http://www.lex.unict.it/sites/default/files/files/Crio/FogliLavoro/FLADI_2013-2_Gentile.pdf

[7] *X v. Latvia (Application no. 27853/09),* Judgment of the Great Chamber 26 november 2013, §§ 93-108 riprodotti *infra* alle pp.

Caso Neulinger and Shuruk v. Switzerland

"1. The Court notes that there is currently a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (see the numerous references in paragraphs 49-56 above, and in particular Article 24 § 2 of the European Union's Charter of Fundamental Rights). As indicated, for example, in the Charter, "[e]very child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests".

2. The child's interest comprises two limbs. On the one hand, it dictates that the child's ties with its family must be maintained, except in cases where the family has proved particularly unfit. It follows that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family (see *Gnahoré*, cited above, § 59). On the other hand, it is clearly also in the child's interest to ensure its development in a sound environment, and a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see, among many other authorities, *Elsholz v. Germany* [GC], no. 25735/94, § 50, ECHR 2000-VIII, and *Maršálek v. the Czech Republic*, no. 8153/04, § 71, 4 April 2006).

3. The same philosophy is inherent in the Hague Convention, which in principle requires the prompt return of the abducted child unless there is a grave risk that the child's return would expose it to physical or psychological harm or otherwise place it in an intolerable situation (Article 13, sub-paragraph (b)). In other words, the concept of the child's best interests is also an underlying principle of the Hague Convention. Moreover, certain domestic courts have expressly incorporated that concept into the application of the term "grave risk" under Article 13, sub-paragraph (b), of that Convention (see paragraphs 58-64 above). In view of the foregoing, the Court takes the view that Article 13 should be interpreted in conformity with the Convention.

4. It follows from Article 8 that a child's return cannot be ordered automatically or mechanically when the Hague Convention is applicable. The child's best interests, from a personal development perspective, will depend on a variety of individual circumstances, in particular his age and level of maturity, the presence or absence of his parents and his environment and experiences (see the UNHCR Guidelines, paragraph 52 above). For that reason, those best interests must be assessed in

each individual case. That task is primarily one for the domestic authorities, which often have the benefit of direct contact with the persons concerned. To that end they enjoy a certain margin of appreciation, which remains subject, however, to a European supervision whereby the Court reviews under the Convention the decisions that those authorities have taken in the exercise of that power (see, for example, *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299-A, and *Kutzner*, cited above, §§ 65-66; see also *Tiemann v. France and Germany* (dec.), nos. 47457/99 and 47458/99, ECHR 2000-IV; *Bianchi*, cited above, § 92; and *Carlson*, cited above, § 69).

5. In addition, the Court must ensure that the decision-making process leading to the adoption of the impugned measures by the domestic court was fair and allowed those concerned to present their case fully (see *Tiemann*, cited above, and *Eskinazi and Chelouche v. Turkey* (dec.), no. 14600/05, ECHR 2005-XIII). 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 *Maumousseau and Washington*, cited above, § 74)

"6. The Court reiterates that the second applicant's return to his father in Italy was ordered by the Rome Youth Court decision of 21 April 2008 (see above, paragraph 28), which was upheld on appeal by the decision of the Rome Court of Appeal adopted on 21 April 2009 (see above, paragraph 37). The return was ordered on the basis of sub-paragraphs (4), (7) and (8) of Article 11 of the Regulation. Article 11 refers to the procedure for the return of a wrongfully removed child. That procedure is set out in Articles 12 and 13 of the Hague Convention.

7. The respondent Government have argued that there has been no interference with the applicants' family life (see above, paragraph 76). The Court has previously found that an interference occurs where domestic measures hinder the mutual enjoyment by a parent and a child of each other's company (see, for example, *Raban v. Romania*, no. 25437/08, § 31, 26 October 2010). In the present case a psychologist, whose report was solicited by the applicants' representative, has confirmed that Marko is suffering psychological stress and anxiety in connection with his potential return to Italy (see above, paragraph 33). That cannot but have a significant impact on the applicants' enjoyment of their family life. Furthermore, the Court has more than once found that an order for return, even if it has not been enforced, in itself constitutes an interference with the right to respect for family life (see, for example, *Neulinger and Shuruk*, cited above, §§ 90-91, and *Lipkowsky and McCormack v. Germany* (dec.), no. 26755/10, 18 January 2011). In the present case there are no reasons requiring a departure from that approach. Accordingly, the Rome Youth Court's order to return Marko to Italy constituted an interference with the applicants' right to respect for family life.

8. Turning to the question of whether the interference complained of was "in accordance with the law" within the meaning of Article 8 § 2 of the Convention, the Court observes that in the present case the parties have not disputed that the first applicant's removal of Marko from Italy was wrongful within the meaning of Article 3 of the Hague Convention (compare with *Neulinger and Shuruk*, cited above, §§ 99-105). Article 12 of the Hague Convention requires the return of wrongfully removed children, subject to exceptions set out in Article 13 of that Convention. In such circumstances the Court does not doubt that the interference was ordered in accordance with the law, namely Article 11 of the Regulation in combination with Article 12 of the Hague Convention.

9. As to the question of whether the order to return Marko to Italy pursued one of the legitimate aims exhaustively listed in Article 8 § 2 of the Convention, the re-

spondent Government advanced two theories: that the interference was necessary to protect Marko's father's right to respect for family life, or to safeguard the best interests of the child. There is no real dispute between the parties that the decision of the Italian courts to return Marko to Italy pursued the legitimate aim of protecting the rights and freedoms of the child and his father. Consequently, the Court accepts that it was the case (see also *Neulinger and Shuruk*, § 106).

10. 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, the decisive issue being whether a fair and proportionate 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 paragraph 85 above, (iv)).

11. In that regard the Court emphasises that it is not its task to take the place of the competent authorities in examining whether there would be a grave risk that Marko would be exposed to psychological or physical harm, within the meaning of Article 13 of the Hague Convention, if he returned to Italy. However, the Court is competent to ascertain whether the Italian courts, in applying and interpreting the provisions of that Convention and of the Regulation, secured the guarantees set forth in Article 8 of the Convention, particularly taking into account the child's best interests (see *Neulinger and Shuruk*, cited above, § 141). It is essential also to keep in mind that the Hague Convention is essentially an instrument of a procedural nature and not a human rights treaty protecting individuals on an objective basis (see *Neulinger and Shuruk*, cited above, § 145).

12. The Court cannot but observe that the reasoning contained in the Italian courts' decisions of 21 April 2008 (see above, paragraph 28) and 21 April 2009 (see above, paragraph 37) was rather scant (see also the opinion of the European Commission, above, paragraph 45). Even if the Court accepted the Italian courts' theory that their role was limited by Article 11 (4) of the Regulation to assessing whether adequate arrangements had been made to secure Marko's protection after his return to Italy from any identified risks within the meaning of Article 13 (b) of the Hague Convention, it cannot fail to observe that the Italian courts in their decisions failed to address any risks that had been identified by the Latvian authorities. Thus, for example, the conclusions contained in the Rīga Custody Court's report (see above, paragraph 18), the expert psychologist's report (see above, paragraph 19) and the Rīga City Vidzeme District Court's decision of 11 April 2007 (see above, paragraph 22) were not explicitly mentioned in either of the two decisions.

It is therefore necessary to verify whether the arrangements for Marko's protection listed in the Italian courts' decisions can be in any case considered to have reasonably been taken into account his best interests.

13. The measures proposed by Marko's father and subsequently accepted as adequate by two levels of Italian courts are summarised in paragraph 28 above. The considerations identified by the Latvian authorities were that the child was well adjusted to living with his mother in Rīga (paragraph 18), that his separation from his mother would adversely affect his development and might create neurotic problems, illnesses or both (paragraph 19), and that strong ties had formed between Marko and his mother (paragraph 22). In addition, in their observations before this Court the applicants indicated that the first applicant was unable to accompany the child to Italy, since she did not have sufficient financial means to reside there and was essentially unemployable, since she did not know any Italian, and that the child and his father had no language in common, had never lived together without the mother, and had not seen each other for more than three years at the time when the Rome Court of Appeal dismissed the first applicant's appeal against the decision of 21 April 2008 (see also *Neulinger and Shuruk*, cited above, § 150). The Latvian judicial authorities in their decisions also found that it was financially unfeasible for the first applicant to return to Italy (the Rīga City Vidzeme District Court decision of 11 April 2007, see above, paragraph 22), confirmed that Marko's father had not seen his son since 2006 (the Custody Court's opinion of 8 January 2008, see above, paragraph 24) and had made no effort to establish contact with Marko in the meantime (the Rīga Regional Court decision of 24 May 2007, see above, paragraph 23).

14. The Italian courts did not refer to the two psychologists' reports that had been drawn up in Latvia pursuant to requests from the applicants' representative and then relied upon by the Latvian courts. Neither did the Italian courts refer to the potential dangers to Marko's psychological health that had been identified in those reports. Had those courts considered the reports unreliable, they certainly had the opportunity to request a report from a psychologist of their own choosing. However, that was not done either. As to the residence that Marko's father proposed as his accommodation after his return to Italy, no effort was made by any Italian authorities to establish whether it was suitable as a home for a young child. The house was not inspected, either by the courts or by another person of their choosing. Those conditions, taken cumulatively, leave the Court unpersuaded that the Italian courts sufficiently appreciated the seriousness of the difficulties which

Marko was likely to encounter in Italy (see *Neulinger and Shuruk*, cited above, § 146, with further references).

15. As to the adequacy of the "safeguards" of Marko's well-being proposed by his father and accepted by the Italian courts as adequate, the Court considers that allowing the first applicant to stay with the child for fifteen to thirty days during the first year and then for one summer month every other year after that is a manifestly inappropriate response to the psychological trauma that would inevitably follow a sudden and irreversible severance of the close ties between mother and child. In the opinion of the Court, the order to drastically immerse a child in a linguistically and culturally foreign environment cannot in any way be compensated by attending a kindergarten, a swimming pool and Russian-language classes. While the father's undertaking to ensure that Marko receives adequate psychological support is indeed laudable, the Court cannot agree that such an external support could ever be considered as an equivalent alternative to psychological support that is intrinsic to strong, stable and undisturbed ties between a child and his mother.

16. Lastly, the Court observes, with the third-party Government, that the Italian courts had not considered any alternative solutions for ensuring contact between Marko and his father.

17. For these reasons the Court concludes that the interference with the applicants' right to respect for their family life was not "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention. There has accordingly been a violation of Article 8 of the Convention on the account of the Italian courts' order for Marko's return to Italy

Caso X v. Latvia

"93. As regards, more specifically, the question of the relationship between the Convention and the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980, the Court reiterates that in the area of international child abduction the obligations imposed by Article 8 on the Contracting States must be interpreted in the light of the requirements of the Hague Convention (see *Ignaccolo-Zenide*, cited above, § 95; *Iglesias Gil and A.U.I. v. Spain*, no. 56673/00, § 51, ECHR 2003-V; and *Maumousseau and Washington*, cited above, § 60) and those of the Convention on the Rights of the Child of 20 November 1989 (see *Maire v. Portugal*, no. 48206/99, § 72, ECHR 2003-VII; *Maumousseau and Washington*, cited above; and *Neulinger and Shuruk*, cited above, § 132), and of the relevant rules and principles of international law applicable in relations between the Contracting Parties (see *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 67, ECHR 2008).

94. This approach involves a combined and harmonious application of the international instruments, and in particular in the instant case of the Convention and the Hague Convention, regard being had to its purpose and its impact on the protection of the rights of children and parents. Such consideration of international provisions should not result in conflict or opposition between the different treaties, provided that the Court is able to perform its task in full, namely "to ensure the observance of the engagements undertaken by the High Contracting Parties" to the Convention (see, among other authorities, *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 93, Series A no. 310), by interpreting and applying the Convention's provisions in a manner that renders its guarantees practical and effective (see, in particular, *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37, and *Nada*, cited above, § 182).

95. The decisive issue is whether the fair balance that must exist between the competing interests at stake – those of the child, of the two parents, and of public order – has been struck, within the margin of appreciation afforded to States in such matters (see *Maumousseau and Washington*, cited above, § 62), taking into account, however, that the best interests of the child must be of primary consideration and that the objectives of prevention and immediate return correspond to a specific conception of "the best interests of the child" (see paragraph 35 above).

96. The Court reiterates that there is a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (see paragraphs 37-39 above).

97. The same philosophy is inherent in the Hague Convention, which associates this interest with restoration of the status quo by means of a decision ordering the child's immediate return to his or her country of habitual residence in the event of unlawful abduction, while taking account of the fact that non-return may sometimes prove justified for objective reasons that correspond to the child's interests, thus explaining the existence of exceptions, specifically in the event of 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 (Article 13, first paragraph, (b)). The Court further notes that the European Union subscribes to the same philosophy, in the framework of a system involving only European Union member States and based on a principle of mutual trust. The Brussels II *bis* Regulation, whose rules on child abduction supplement those already laid down in the Hague Convention, likewise refers in its Preamble to the best interests of the child (see paragraph 42 above), while Article 24 § 2 of the Charter of Fundamental Rights emphasises that in all actions relating to children the child's best interests must be a primary consideration (see paragraph 41 above).

98. Thus, it follows directly not only from Article 8 of the Convention but also from the Hague Convention itself, given the exceptions expressly enshrined therein to the principle of the child's prompt return to his or her country of habitual residence, that such a return cannot be ordered automatically or mechanically (see *Maumousseau and Washington*, cited above, § 72, and *Neulinger and Shuruk*, cited above, § 138).

99. As the Court reiterated in *Neulinger and Shuruk* (cited above, § 140), the obligations incumbent on States in this connection were defined in *Maumousseau and Washington* (cited above, § 83).

100. The child's best interests do not coincide with those of the father or the mother, except in so far as they necessarily have in common various assessment criteria related to the child's individual personality, background and specific situation. Nonetheless, they cannot be understood in an identical manner irrespective of whether the court is examining a request for a child's return in pursuance of the Hague Convention or ruling on the merits of an application for custody or parental authority, the latter proceedings being, in principle, unconnected to the purpose of the Hague Convention (Articles 16, 17 and 19; see also paragraph 35 above).

101. Thus, in the context of an application for return made under the Hague Convention, which is accordingly distinct from custody proceedings, the concept of the best interests of the child must be evaluated in the light of the exceptions provided for by the Hague Convention, which concern the passage of time (Article

12), the conditions of application of the Convention (Article 13 (a)) and the existence of a "grave risk" (Article 13 (b)), and compliance with the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms (Article 20). This task falls in the first instance to the national authorities of the requested State, which have, *inter alia*, the benefit of direct contact with the interested parties. In fulfilling their task under Article 8, the domestic courts enjoy a margin of appreciation, which, however, remains subject to a European supervision whereby the Court reviews under the Convention the decisions that those authorities have taken in the exercise of that power (see, *mutatis mutandis*, *Hokkanen v. Finland*, 23 September 1994, § 55, Series A no. 299-A; and also *Maumousseau and Washington*, cited above, § 62, and *Neulinger and Shuruk*, cited above, § 141).

102. Specifically, in the context of this examination, the Court reiterates that it does not propose to substitute its own assessment for that of the domestic courts (see, for example, *Hokkanen*, cited above, and *K. and T. v. Finland* [GC], no. 25702/94, § 154, ECHR 2001-VII). Nevertheless, it must satisfy itself that the decision-making process leading to the adoption of the impugned measures by the domestic courts was fair and allowed those concerned to present their case fully, and that the best interests of the child were defended (see *Eskinazi and Chelouche v. Turkey* (dec.), no. 14600/05, ECHR 2005-XIII; *Maumousseau and Washington*, cited above; and *Neulinger and Shuruk*, cited above, § 139).

103. In this connection, the Government considered, in particular, that the overall family situation had to be examined according to the circumstances of each case (see paragraph 75 above). For their part, the third-party interveners either considered that the requirement of an "in-depth examination of the entire family situation" (see *Neulinger and Shuruk*, cited above) conflicted with the Hague Convention (see paragraphs 84 and 88 above), or asked the Court to clarify this question (see paragraph 91 above) and to set limits on the examination of the family situation by the court deciding on an application for a child's return (see paragraph 89 above).

104. On this point, the Court observes that the Grand Chamber judgment in *Neulinger and Shuruk* (cited above, § 139) to which a number of subsequent judgments refer (see, *inter alia*, *Raban v. Romania*, no. 25437/08, § 28, 26 October 2010; *Šneersone and Kampanella*, cited above, § 85; and, more recently, the decision in *M.R. and L.R. v. Estonia*, cited above, § 37) may and has indeed been read as suggesting that the domestic courts were required to conduct an in-depth examination of the entire family situation and of a whole series of factors. That wording had already been used by a Chamber in *Maumousseau and Washington* (cited above, § 74),

such an in-depth examination having, in fact, been carried out by the national courts.

105. Against this background the Court considers it opportune to clarify that its finding in paragraph 139 of *Neulinger and Shuruk* does not in itself set out any principle for the application of the Hague Convention by the domestic courts.

106. The Court considers that a harmonious interpretation of the European Convention and the Hague Convention (see paragraph 94 above) 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 (see *Neulinger and Shuruk*, cited above, § 133).

107. In consequence, the Court considers that 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 (see *Maumousseau and Washington*, cited above, § 73), 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.

108. 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