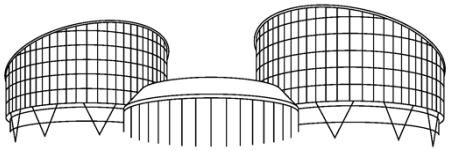

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF X v. THE CZECH REPUBLIC

(Application no. 64886/19)

JUDGMENT

Art 8 • Family life • Positive obligations • Enforcement of return order of the applicant's child to the United States of America under the Hague Convention • Domestic courts' examination in compliance with procedural requirements imposed by Art 8

This judgment was revised in accordance with Rule 80 of the Rules of Court in a judgment of 30 March 2023

STRASBOURG

12 May 2022

Request for referral to the Grand Chamber pending

In the case of X v. the Czech Republic,

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

Síofra O'Leary, *President,*
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Lətif Hüseynov,
Ivana Jelić,
Arnfinn Bårdsen,
Kateřina Šimáčková, *judges,*

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 64886/19) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Czech national, Ms X ("the applicant"), on 12 December 2019;

the decision to give notice to the Czech Government ("the Government") of the complaint concerning the applicant's right to respect for her family life, and to declare inadmissible the remainder of the application;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the decision not to disclose the applicant's name (Rule 47 § 4 of the Rules of Court);

the parties' observations;

Having deliberated in private on 5 April 2022,

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

INTRODUCTION

1. The present case mainly concerns the alleged violation of the applicant's right to respect for her family life under Article 8 of the Convention as a result of the enforcement by the Czech courts of their decision to return the applicant's child to the United States of America under the Hague Convention on the Civil Aspects of International Child Abduction.

THE FACTS

2. The applicant was born in 1980 and indicated as her place of living the Czech Republic. It appears from the facts of the case that she is currently living in the United States of America. She was represented by Ms M. Vilímková, a lawyer practising in Prague.

3. The Government were represented by their Agent, Mr V. A. Schorm, Ministry of Justice.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. In 2007 the applicant married a US national in the United States of America where their daughter was born in March 2014. As a consequence of her marriage, the applicant acquired US citizenship. Both the applicant and her daughter now have dual citizenship.

6. According to the applicant, she was the sole person taking care of the child and providing for their family. After the child's father, who was unemployed, physically attacked her in November 2014, he was arrested and prohibited from approaching her and the child; no criminal proceedings were initiated because the applicant refused to testify against him.

7. It appears from the file that in March 2015 a US court approved the parents' agreement according to which she was entrusted with the child's care and the father was given visiting rights, and determined the conditions under which the applicant could travel outside the United States of America. Later, they returned to live together and exercised joint custody of their daughter.

8. On 19 June 2016 the family travelled to the Czech Republic. The applicant alleged that they were intending to settle there on a long-term basis, given the child's health problems and the difficulties in getting her sufficient medical insurance in the United States of America; the father argued that it was only a temporary visit since they were in possession of return tickets booked for September 2016. Eventually, the father left the Czech Republic alone and went back to the United States of America in the autumn of 2016.

9. In May 2017, the father briefly returned to the Czech Republic and asked the Czech Office for International Legal Protection of Children ("the Children Office") to facilitate contact with his daughter.

I. RETURN PROCEEDINGS

10. On 25 August 2017 the father initiated proceedings before the Brno Municipal Court for the child's return to the United States of America, submitting that she had been wrongfully removed within the meaning of the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980 ("the Hague Convention").

11. On 6 October 2017 the Municipal Court dismissed the application. The court found, firstly, that on 16 September 2016 the child's habitual residence had been in the United States of America, where both parents had exercised joint custody, and that the applicant had wrongfully retained her in the Czech Republic. It considered, however, that it followed from the father's conduct, including the delay in lodging the application for return and his lack of interest in the child, that he had acquiesced in the child's retention in the Czech Republic, as provided by Article 13 (a) of the Hague Convention. In view of that conclusion, the court did not consider it necessary to examine

whether there was a grave risk that the child's return would expose her to physical or psychological harm.

12. On 9 January 2018, following the father's appeal, the Brno Regional Court reversed the above judgment and ordered the applicant to make arrangements to return the child to the United States of America within one month, provided that the father put in place several safeguards aimed at the child's "soft landing". The father was thus charged with finding and paying for separate housing for the applicant and the child, buying them plane tickets, depositing a maintenance payment for six months in the applicant's bank account and refraining from removing the child from the applicant's *de facto* care until the US courts' ruling on the matter.

According to the Regional Court, the situation in the case before it did not fall within the scope of the exception provided by Article 13 (a) of the Hague Convention. Indeed, it could not be established, given the evidence showing the father's attempts to maintain contact with the child, that he had consented to the relocation of the child's place of habitual residence to the Czech Republic, even though he had only initiated the return proceedings in August 2017. As to Article 13 (b) of the Hague Convention, the court was of the view that the child's return would not expose her to physical or psychological harm or otherwise contribute to a worsening of her health conditions, nor place her in an intolerable situation, given that the applicant was expected to return to the United States of America with her and the father was to provide them with suitable housing. It observed, in particular, that the child no longer suffered from febrile seizures, that the paediatric care and treatment available in the United States of America were similar to those provided in the Czech Republic and that the father had proven that the child had medical insurance covering the necessary care. Also, as to the applicant's argument that the child did not speak English, the court observed that, given the child's young age, she would adapt and learn English without difficulties.

Responding to the applicant's argument that the child was already well settled in the Czech Republic, the court noted that under Article 12 §§ 1 and 2 of the Hague Convention, this could only warrant a non-return decision if the return proceedings had been initiated more than a year after the wrongful retention, which was not the case in the case before it.

13. On 28 February 2018 the applicant lodged a constitutional appeal. At the same time, she applied to the Constitutional Court to suspend the enforceability of the return order pending that appeal, which the Constitutional Court agreed to on 15 March 2018.

14. In its decision no. I. ÚS 735/18 of 11 December 2018, the Constitutional Court dismissed the applicant's constitutional appeal as manifestly ill-founded. It observed that the applicant's conduct amounted to a wrongful retention and that the application for return had been lodged within one year, which obliged the courts to order the child's return regardless of whether the latter had settled in her new environment. It also endorsed the

conclusion that the father's behaviour could not be interpreted as his consent to the child's long-term stay in the Czech Republic.

As to the exception provided by Article 13 (b) of the Hague Convention, the Constitutional Court noted that mere differences between the living conditions (available housing, health insurance) in the two countries could not be regarded as constituting a grave risk even if the return could entail a worsening of those conditions. In the present case, the Regional Court had considered the child's health as well as other potential problems without concluding to any grave risk within the meaning of the above provision. Moreover, it had imposed undertakings on the child's father which were exclusively to the benefit of the applicant and the child and were not unenforceable, illogical or arbitrary.

II. ENFORCEMENT OF THE ORDER TO RETURN THE CHILD

15. On 20 December 2018 the father applied to the Municipal Court for enforcement of the return decision, which had become enforceable on 13 December 2018 following the decision of 11 December 2018 of the Constitutional Court.

16. On 15 January 2019 the applicant applied to suspend the enforceability of that decision and to discontinue the enforcement proceedings, submitting that the father had not put in place the necessary safeguards and that circumstances had changed with the passage of time; in this connection, she submitted new evidence as to the consequences of the child's return on her mental health and development.

17. On 27 February 2019 the Municipal Court rejected the father's application on account of his failure to comply with the undertaking to provide suitable housing for the applicant and the child, as set out in the return order of 9 January 2018. The applicant's application of 15 January 2019 was likewise rejected. Both parents appealed.

18. On 27 May 2019 the Children Office, appointed as the child's guardian *ad litem*, organised an out-of-court mediation session with both parents who were informed, *inter alia*, that the court could proceed to the enforcement by removing the child from their care. Subsequently, the Children Office proposed to dismiss the father's application for enforcement, observing, *inter alia*, that he intended to lodge a criminal complaint against the applicant in the United States of America, which would prevent the latter from taking care of the child, and that it was contrary to the best interests of a five-year-old child to return her, after three years of living in the Czech Republic and without any preparatory measures, to an unknown environment.

19. At the hearings held on 23 April and 28 May 2019, the Regional Court examined numerous documents concerning the undertaking to provide suitable housing. It appears from the relevant records that the court noted the

content of several documents concerning the child's health, which were included in the case file, but refused to accept some other written evidence.

20. On 4 June 2019 the Brno Regional Court allowed the father's appeal, reversed the Municipal Court's decision and ordered the enforcement of its return decision. It was satisfied that the father had declared before the court that he would not take the child out of the applicant's care, and accepted a rental agreement concluded by the father as a tenant. The court observed that, given that the applicant had refused to comply with the return decision and to cooperate, and that the father did not know with any certainty the return date and therefore the date on which the housing needed to be available, it had been fair to allow him a longer period to submit additional evidence and explanations, which he had done by submitting to the Regional Court a rental agreement concluded in his name and a proof of having paid six months of rent. Providing further evidence concerning the provision of the safeguards by the father, namely a rental agreement indicating the applicant as a co-tenant or another formal document proving the flat owner's undertaking to make the housing available to the applicant and her daughter upon their arrival, was not necessary since they were to be put in place only if the applicant voluntarily complied with the return decision. Since she refused to do so and was hampering the efficient enforcement of the decision, there was no other option than to remove the child from her and hand her over to the father, as set out in the return order.

As to the best interests of the child and the existence of reasons not to return her under Article 13 of the Hague Convention, the court referred to the previous proceedings and to the reasoning of the Constitutional Court in its decision of 11 December 2018, and reiterated that the child's expedient return to the United States of America was in her best interests. Considering that the applicant's arguments mainly challenged the correctness of the return order, it observed that in the enforcement proceedings its task was only to establish whether the return order was final and whether both parents had complied with the obligations imposed by that order, not to examine whether the decision to be enforced was correct from a substantive point of view nor to review the circumstances having led to the adoption of that decision or to order an expert report on the child's health conditions. In the present case, no grounds for suspending or discontinuing the enforcement existed, since the new medical and psychological reports submitted by the applicant (see paragraph 19 above) did not show any change in the child's situation compared to when it had been considered during the return proceedings; other reports proposed by the applicant were considered redundant. The court also observed that there was no information about any criminal proceedings for abduction having been initiated in respect of the applicant in the United States of America, and urged the father to refrain from initiating any.

21. On the same day, the applicant lodged a new application to suspend the enforceability of the return decision and to discontinue the enforcement proceedings.

22. On 14 June 2019 a case conference was organised by the Children Office with a view to discussing the practical issues of the child's return. Despite having been warned about the possibility of the child's forced removal, the parents were unable to reach an agreement. According to the applicant, it was recommended that preparatory measures be taken before the return of the child, which the father did not accept.

23. It appears from an official record of 27 June 2019 that it was agreed over the telephone with the father's counsel that the return order would be enforced on 1 July 2019. The arrangements for the enforcement were discussed with the Children Office (the child's guardian), and police assistance was requested.

24. On 1 July 2019 the return order was enforced by removing the child from the applicant and handing her over to the father, who was advised that it was in the child's best interests to return to the United States of America together with her mother. The following day, there was an incident between the applicant, the father and the child in front of the US embassy in Prague, which was video-recorded by the media, who had been invited by the father. The father's counsel informed the Children Office that the applicant had tried to forcibly take the child away, which the applicant denied. Later, the Children Office contacted the parents' counsels asking them to urge the parents to calm the situation down.

25. On 2 July 2019 the applicant lodged a constitutional appeal to challenge the decision of 4 June 2019. Relying mainly on the best interests of the child, their right to their private and family life and the right to a fair trial, she argued that the Regional Court had failed to examine the quality and enforceability of the return decision, particularly in respect of the safeguards which had not been duly complied with by the father since the rental agreement he had submitted contained many formal errors.

26. On 3 July 2019 the Municipal Court rejected the applicant's application of 4 June 2019 (see paragraph 21 above), given that the return order had already been enforced; this was upheld on a subsequent appeal by the Regional Court on 1 November 2019.

27. In decision no. I. ÚS 2160/19 of 16 July 2019, the Constitutional Court dismissed the applicant's constitutional appeal of 2 July 2019 as manifestly ill-founded, referring to its previous decision (see paragraph 14 above) and finding that the applicant's objections had been duly dealt with. It endorsed the Regional Court's opinion that the decision to be enforced could not be reviewed in the enforcement proceedings, that there were no grounds to discontinue those proceedings and that the father had complied with the guarantees imposed on him by the courts in the return proceedings. It further observed that the situation in issue resulted from the inability of the child's

parents to reach an agreement and that it was necessary to stabilise the situation. Referring to the Hague Convention, the Constitutional Court concluded that only after the child had been returned to the State of her habitual residence, matters of custody would be dealt with by the courts in the United States of America.

III. SUBSEQUENT DEVELOPMENTS IN THE UNITED STATES OF AMERICA

28. On 4 July 2019 the father and the child returned to the United States of America, where they were joined by the applicant on 10 July 2019. According to the applicant, no housing had been arranged for her and the child and she had to rent a flat herself.

29. According to the Government, the Children Office contacted the father with a view to establishing his place of residence in the United States of America and arranging contact between the applicant and her child, and repeatedly invited the parents to cooperate. On 9 August 2019 it also drew up a comprehensive report for the purposes of the court proceedings in the United States of America (see the following paragraphs), which the Czech consul handed over to the applicant's US counsel, as well as a statement of the legal consequences of the decision to return the child.

30. On 9 July 2019 a US District Court issued a temporary protective order awarding temporary custody of the child to the father, mainly on account of the applicant's conduct at the US embassy (see paragraph 24 above) which was deemed to amount to mental abuse of the child. The applicant was allowed to have contact with the child via telecommunications.

31. The validity of that temporary order ended with the decision of a County Circuit Court adopted at a hearing on 28 August 2019, to the effect that the applicant was no longer prevented from meeting the child in person.

32. At the hearing held before the County Circuit Court on 9 September 2019, the father was awarded temporary custody of the child and the applicant was granted visits several times a week under the supervision of a social worker, without any overnight stays. According to the applicant, those visits were able to take place only occasionally since supervisors needed to be approved by the father who was not cooperating; moreover, the hearings in the custody proceedings had been adjourned several times, at the father's request, and the next hearing was scheduled only for December 2021.

33. Following a physical conflict between the parents which happened at a childcare establishment on 28 August 2019, the father pressed charges against the applicant for assault. Another set of criminal proceedings for domestic violence was instituted concerning the incident of 2 July 2019 (see paragraph 24 above). According to the applicant, the father also pressed charges against her for the child's abduction, which was denied by the Government on the basis of information obtained from the relevant US judge

via the International Hague Network of Judges. According to the latest information submitted by the applicant, the US courts acquitted her of the assault charges in the summer of 2021.

RELEVANT LEGAL FRAMEWORK

34. At the domestic level, return proceedings in cases of international child abduction are governed by sections 478 et seq. of the Special Court Proceedings Act (Law no. 292/2013). In particular, section 489 § 2 provides that the court can make the child's return conditional on the claimant complying with adequate safeguards.

THE HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

35. The relevant provisions of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction state as follows:

> "The States signatory to the present Convention,
>
> Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,
>
> Desiring 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 residence, as well as to secure protection for rights of access,
>
> Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions (...)
>
> **Article 1**
>
> The objects of the present Convention are –
>
> a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
>
> b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States. (...)
>
> **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 5

For the purposes of this Convention –

a) 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;

b) 'rights of access' shall include the right to take a child for a limited period of time to a place other than the child's habitual residence. (...)

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. (...)

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.

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

36. The applicant complained that the Czech courts had ordered the enforcement of the decision to return her daughter to the United States of America, in violation of her right to respect for her family life under Article 8 of the Convention.

37. Relying on Article 6 of the Convention, the applicant also asserted that her case had *de facto* been decided at one (appellate) level, that her applications and evidence she had submitted had not been dealt with or had been rejected, that the child's guardian's views had been disregarded, that the return decision had not been reviewed in the enforcement proceedings and that the safeguards imposed by the return decision had not been complied with.

38. The Court reiterates that it has previously held that while Article 8 contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8 (see, among other authorities, *Kutzner v. Germany*, no. 46544/99, § 56, ECHR 2002-I).

39. In the instant case the Court, being the master of the characterisation to be given in law to the facts of the case, considers that all the complaints raised by the applicant, in so far as they raise issues under the Convention, fall to be examined as part of her main complaint under Article 8 of the Convention (see, *mutatis mutandis*, *Macready v. the Czech Republic*, nos. 4824/06 and 15512/08, § 41, 22 April 2010). That provision reads as follows:

> "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."

A. Admissibility

40. The Government objected that, in so far as the applicant's complaints concerned the return proceedings, in which the domestic court had been called upon to examine the applicant's objections relating to the exceptions to the return rule under Article 13 of the Hague Convention, the application had been lodged outside the six-month time-limit since those proceedings had ended with the decision by the Constitutional Court of 11 December 2018 (see paragraph 14 above). Although both the return and the enforcement proceedings were linked, the applicant should have anticipated that following the above decision of the Constitutional Court, the return decision would actually be enforced.

41. While confirming that she saw no breach of her rights in the domestic courts' findings in the return proceedings and that her application focused mainly on the enforcement proceedings, the applicant maintained that both sets of proceedings were closely linked and interrelated and had to be viewed as a whole. This was all the more so as the Regional Court had not considered the exceptions under Article 13 (b) of the Hague Convention in the return proceedings and should thus have duly examined them in the enforcement proceedings, by determining whether the safeguards imposed had been complied with.

42. The Court observes that the applicant is not challenging the return order as such but rather the courts' conclusion, reached in the enforcement proceedings, that that order was capable of being enforced. It will thus focus on the enforcement proceedings, which ended with the decision by the Constitutional Court of 16 July 2019 (see paragraph 27 above) and in respect of which the application has been lodged in time, and assess whether the domestic courts conducted an adequate examination of the enforcement and its consequences.

43. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

44. The applicant observed that it had taken the father more than eleven months to lodge his application for the child's return, which ought to have been enough to apply Article 13 (a) of the Hague Convention and to reject the application on account of the passage of time. In her view, the courts had not considered the child's best interests, adopting a simplistic approach according to which every application lodged within the one-year time-limit was to be granted.

45. The applicant maintained that the breach of Article 8 stemmed in particular from the fact that the Brno Regional Court, whose decisions were decisive, had never truly examined the exceptions set out in Article 13 (b) of the Hague Convention and had interpreted that provision in a very restrictive way. She submitted that since, in the return decision (see paragraph 12 above), the court had ignored that issue by assuming that she would return to the United States of America with the child and benefit from the safeguards imposed on the father, she had expected those elements to be examined in the enforcement proceedings; however, in those proceedings, the court had limited itself to ruling that the return decision was presumed to be correct (see paragraph 20 above). Regardless of the limits of the enforcement proceedings, the applicant was of the view that the court should have examined the new evidence supporting her applications to suspend the enforceability of the return decision. That evidence, which concerned, *inter alia*, the family's original intention to stay long term in the Czech Republic, the child's health and development issues other than the febrile seizures, and the environment to which she was to be returned, proved in the applicant's view that the issue of unlawful retention was highly questionable and that the return decision had been incorrect. However, the above-mentioned evidence had been rejected (see, in particular, paragraph 19 above), without due consideration, as had her respective applications (see paragraphs 16 and 26 above), which amounted to a violation of her rights under Article 8.

46. Furthermore, the applicant blamed the father and the Czech courts for the delays which had resulted in her and her daughter living in uncertainty and the child eventually being returned to the United States of America after three years of her living in the Czech Republic. She denied having refused to travel to the United States of America with her daughter, stating that she had been willing to return there but only after the relevant safeguards had been put in place. However, the father had never asked for any cooperation from her in that respect, nor had he participated in any sort of out-of-court negotiations. He had then failed to provide any credible evidence of having secured separate housing for her and their daughter, such as a proper rental agreement. In the applicant's view, the return judgment should thus never have become enforceable. The applicant observed that her doubts regarding the safeguards had proved to be justified since she had discovered, after relocating to the United States of America, that no housing had been procured.

47. As to the situation after the child's return to the United States of America, the applicant submitted that she had at first had no information about the child's whereabouts and had subsequently only been granted supervised visits without any overnight stays, which could rarely take place (see paragraph 32 above). According to the applicant, the key factor having made the US courts grant the child's temporary custody to the father was the Brno Regional Court's judgment of 9 January 2018, which they had

mistakenly taken for a decision on custody; in her view, the respondent State was thus responsible for the consequences produced in the United States of America by the domestic court's ruling. She further maintained that the US courts had never interviewed the child nor had there been any inquiry into the father's household; allegedly, the child's health was poor, she was showing signs of trauma, the father did not provide her with proper care and he prevented her from attending school.

48. The Government reiterated that the applicant's arguments concerning the exceptions to the return rule could only be examined in the return proceedings, not in the enforcement proceedings in which the court was not called upon to review whether the return decision was correct as to its substance. While a change in the relevant facts might exceptionally justify the non-enforcement of a final return order, the Court had to be satisfied that such a change was not brought about by the State's failure to take all measures that could reasonably be expected to facilitate the execution of the return order (the Government cited *Sylvester v. Austria*, nos. 36812/97 and 40104/98, § 63, 24 April 2003, and *Makhmudova v. Russia*, no. 61984/17, § 68, 1 December 2020).

49. In the present case, the Regional Court had differed from the Municipal Court in assessing, in the course of the return proceedings, the existence of the exception set out in Article 13 (a) of the Hague Convention, since it had found that the father had not consented to or acquiesced in the child's retention (see paragraph 12 above). Under Article 13 (b) of the Hague Convention, the applicant had submitted that their housing in the United States of America was not adequate, that the child did not speak English, that she was used to living in the Czech Republic and that her health was bad. While the Municipal Court had not considered it necessary to examine those objections (see paragraph 11 above), the Regional Court had found that the child would suffer no harm if she was returned to the United States of America with the applicant (who was also a US citizen), that she no longer had febrile seizures, that no serious adaptation problems could be expected since she was only four years old, and that the housing issue would be resolved by the safeguards imposed on the father. Thus, the applicant's arguments had been thoroughly examined, extensive evidence had been taken into account and the Regional Court had duly substantiated its conclusions, in compliance with the procedural requirements under Article 8 of the Convention.

50. The Government further pointed out that the Regional Court had made the child's return conditional on the father agreeing to several safeguards aimed at the child's "soft landing", including providing separate housing for the applicant and the child. In the enforcement proceedings the applicant had mainly complained that the father had not complied with the housing safeguard since he had failed to prove that he had concluded a valid rental agreement on her behalf. The Regional Court had held two hearings on that

issue (see paragraph 19 above). Observing that the above undertaking only applied if the applicant returned to the United States of America with her daughter, the court had eventually conceded that in a situation where the applicant had not been cooperative and had refused to return to the United States of America, it was understandable that the father had not included her on the rental agreement (see paragraph 20 above). The Government was thus of the view that the Regional Court had made sufficient findings to prove that adequate safeguards and tangible protection measures had been convincingly provided for in the United States of America. It had also found no changes to the child's health which would prevent her return. For all those reasons, it had ordered the enforcement of its return decision, considering that it was in the best interests of the child, and had urged the father to refrain from lodging a criminal complaint against the applicant (see paragraph 20 *in fine* above).

51. The Government observed that the applicant had refused to return her daughter voluntarily, despite having been repeatedly warned about the possibility of the child's forced removal, nor had she submitted any evidence showing that the child was facing a risk of serious harm. This had made it necessary to hand the child over to the father with the assistance of the police and the child's guardian (see paragraphs 23-24 above). According to the Government, on that day the applicant and her daughter had been taken to a psychiatric ward of a hospital where social workers had successfully prepared the child for leaving with her father. The Government added that they could not be held responsible for the facts that had occurred after the child's return to the United States of America.

2. The Court's assessment

(a) General principles

52. The relevant principles regarding the interference with the right to respect for family life and the State's positive obligations under Article 8 of the Convention in cases concerning the return of a child under the Hague Convention, are summarised in *X v. Latvia* ([GC], no. 27853/09, §§ 92-108, ECHR 2013).

53. For the purposes of the present case, the Court observes in particular that the Grand Chamber found that 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. The Grand Chamber

also emphasised that, 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., §§ 106-108).

(b) Application to the present case

54. In the specific circumstances of the instant case, the Court is not called upon to review the proceedings which led to the adoption of the return order but rather the subsequent enforcement proceedings in which the domestic courts concluded that the order was capable of being enforced (see paragraph 42 above).

55. In this respect the Court also emphasises that a number of issues raised by the applicant during the enforcement proceedings before the Municipal Court had already been, or could have been, raised during the return proceedings, culminating with the Constitutional Court's decision of 11 December 2018 (see paragraph 14 above). This is the case notably regarding the applicant's arguments related to the application of the exceptions under Articles 12 and 13 of the Hague Convention. Indeed, exceptionally, a change in the relevant facts between the return order and its execution may justify a reassessment (see *Sylvester*, cited above, § 63, and *Makhmudova*, cited above, § 68). However, the mere fact that the domestic procedural law, within the particular framework of the Hague Convention, barred the applicant from having the Municipal Court's findings regarding these issues made in the return proceedings reviewed in the subsequent enforcement proceedings, does not as such raise an issue under Article 8 of the Convention.

56. The Court notes that it was established in the return proceedings that the applicant had acted "wrongfully" within the meaning of the Hague Convention when retaining her daughter in the Czech Republic (see paragraph 11 above). It was moreover concluded that none of the exceptions set out in Articles 12 and 13 of the Hague Convention were applicable. Thus, as the applicant did not comply with the final return order voluntarily and the father therefore initiated proceedings for judicial enforcement, it became incumbent on the enforcement courts to carry out the enforcement proceedings provided for by national law.

57. The Court further notes that, when ordering the return of the child to the United States of America, the Brno Regional Court proceeded on the basis that, in accordance with the parties' submissions, the applicant would accompany her daughter; there was no evidence to suggest that a return in such circumstances would expose the child to physical or psychological harm or would place her in an intolerable situation. In order to accommodate the applicant's concerns relating to the housing situation and the father's previous behaviour, the court ordered the father to provide the applicant and her

daughter with suitable separate housing, thus complying with the obligation to put in place tangible protection measures (see *X v. Latvia*, cited above, §§ 93-108).

58. It does not appear from the information in the case file that in the subsequent enforcement proceedings the applicant provided pertinent objective reasons to justify her new preference, manifested only after the return proceedings, not to return to the United States of America together with her daughter. She explained her position merely by claiming that the father had not complied with the housing safeguard (see paragraphs 16 and 46 above), which the Regional Court refuted after examining the evidence. In this connection it found it sufficient that the father had submitted a rental agreement concluded in his name, considering that in a situation where the applicant refused to return to the United States of America and to cooperate with the father, it was understandable that the latter had not included her in the lease (see paragraphs 19-20 above). The Court notes in this context that the applicant had not only lived in the United States of America for several years but had also acquired US citizenship (see paragraphs 5-8 above). It also appears that, following the departure of her daughter, she returned to live in the United States of America, where she has found accommodation (see paragraph 28 above).

59. In this respect, the Court moreover points to its judgment in *Maumousseau and Washington v. France* (no. 39388/05, § 69, 6 December 2007), in which it stated that the aim of the Hague Convention was to prevent the "abducting" parent from succeeding in legitimising, by the passage of time operating in his or her favour, a *de facto* situation which he or she had created unilaterally. In that case the national authorities had stressed, in particular, that the mother, contrary to what she maintained, could accompany her daughter to the State in which she had her habitual residence in order to assert her rights there. That factor was regarded as essential by the Court, as the mother had unrestricted access to the territory of the State in question and could bring proceedings before the competent courts of that State (ibid., § 74).

60. The Court agrees with the applicant that the concept of the child's best interests should be paramount in the procedures put in place by the Hague Convention. However, it should not be overlooked that among the constitutive elements of that concept is also the fact of the child not being removed from one of its parents and retained by the other, who rightly or wrongly considers that their right over the person of the child is as important or more important (see *Eskinazi and Chelouche v. Turkey* (dec.), no. 14600/05, ECHR 2005-XIII (extracts)).

61. In the present case the Regional Court in the enforcement proceedings eventually concluded that the child's best interest required that she be promptly returned to the United States of America. Admittedly, it observed that since the return order was final, there had been no room to examine

whether that decision was correct from a substantive point of view or to review the circumstances having led to its adoption. However, noting also the scope of the case and the Court's examination (see paragraphs 42 and 54 above), it cannot be said that the Regional Court failed to take into account the developments that had occurred since the judgment ordering the child's return. Indeed, it follows from its decision of 4 June 2019 that it had examined several new medical and psychological reports submitted by the applicant but concluded, albeit succinctly, that they did not show any change in the child's situation compared to when it had been considered during the return proceedings (see paragraph 20 above).

62. The Court notes, finally, that the way in which the enforcement was carried out (see paragraph 24 above) was largely the result of the applicant's constant refusal to hand the child over to her father voluntarily, despite a court order which had been enforceable for more than six months, and of her behaviour towards the father. The Czech Constitutional Court in its decision of 16 July 2019 (see paragraph 27 above) pointed to the inability of the applicant and her husband to reach an agreement and required stabilisation.

63. In these circumstances the Court is of the view that the examination by the domestic courts of the claims made by the applicant in the enforcement proceedings satisfied the procedural requirements imposed by Article 8 of the Convention and that the decision to enforce her daughter's return did not breach that provision.

64. Accordingly, 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 12 May 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Síofra O'Leary President