

ECtHR Rules on Return of a Child to Her Country of Origin under the Hague Abduction Convention

On 26 November 2013, the Grand Chamber of the European Court of Human Rights (ECtHR) delivered its judgment in the case of X v. Latvia (application no. 27853/09).

The case concerned the procedure for the return of a child to Australia, her country of origin, which she had left with her mother at the age of three years and five months, in application of the Hague Convention on the Civil Aspects of International Child Abduction, and the mother's complaint that the Latvian courts' decision ordering that return had breached her right to respect for her family life within the meaning of Article 8 of the European Convention on Human Rights (ECHR).

The Court considered that the ECHR and the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980 had to be applied in a combined and harmonious manner, and that the best interests of the child had to be the primary consideration. In the present case, it considered that the Latvian courts had not complied with the procedural requirements of Article 8, in that they had refused to take into consideration an arguable allegation of a "serious risk" to the child in the event of her return to Australia.

It may be worth noting that since the case concerned the relationship between Australia (as requesting State) and Latvia (as requested State), the special regime applying between member States of the EU bound by the Brussels IIbis Regulation was inapplicable. This explains that the obligations that Article 8 of the ECHR implies for the requesting State applied in this case, contrary to what was the case in *Povse v Austria*, where the incidence of the Brussels IIbis Regulation was at stake.

H/T: Patrick Kinsch