Opening Pandora's Box – The interaction between human rights and private international law: the specific case of the European Court of Human Rights and the HCCH Child Abduction Convention

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It is undeniable that there is an increasing interaction between human rights and private international law (and other areas of law). This of course adds an additional layer of complexity to private international law cases, whether we like it or not. Indeed, States can be sanctioned if they do not fulfill specific criteria specified by the European Court of Human Rights (ECtHR). Importantly, the European Convention on Human Rights has been considered to be an instrument of European public order (*ordre public*), to which 47 States are currently parties.

I have recently published an article entitled "The controversial role of the ECtHR in the interpretation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, with special reference to *Neulinger and Shuruk v. Switzerland* and *X v. Latvia*" (in Spanish only but with abstracts in English and Portuguese in the Anuario Colombiano de Derecho Internacional). To view it, click on "*Ver artículo*" and then click on "*Descargar el archivo PDF*", currently pre-print version, published online in March 2020.

Below I include briefly a few highlights and comments.

As its name suggests, this article explores the controversial role of the ECtHR in the interpretation of the HCCH Child Abduction Convention. It analyses two judgments rendered by the Grand Chamber: *Neulinger and Shuruk v. Switzerland* (Application no. 41615/07) and *X v. Latvia* (Application no. 27853/09). And then it goes on to analyse three more recent judgments and in particular, whether or not they are in line with *X v Latvia*.

The article seeks to clarify the applicable standard that should be applied in child abduction cases as there has been some confusion as to the extent to which *Neulinger* applies and the impact of *X v. Latvia*. Indeed *Neulinger* seemed to suggest that courts should conduct a full examination of the best interests of the child during child abduction proceedings, which is blatantly wrong. *X v. Latvia* clarifies *Neulinger* and provides a detailed and thoughtful standard to avoid conducting "an in-depth examination of the entire family situation and of a whole series of factors…" but at the same time upholds the human rights of the persons involved and strikes, in my view and as noted by the Court, a fair balance between the competing interests at stake – those of the child, of the two parents, and of public order.

The article then examines three recent judgments rendered by several chambers of the ECtHR (not the Grand Chamber): *K.J. v. Poland* (Application no. 30813/14), *Vladimir Ushakov v. Russia* (Application no. 15122/17), and *M.K. v. Grèce* (Requête n° 51312/16). *M.K. v. Grèce*, which was rendered in 2018, has put the ECtHR in the spotlight again. Surprisingly, this precedent has ignored the standard established in *X v. Latvia* and has followed only *Neulinger*. The precedents of the Grand Chamber of the ECtHR are binding on the chambers so it is stupefying that this could happen. Nevertheless, I have concluded that the outcome of the case is correct.

By way of conclusion, the legal community seems to be divided as to whether or not *X v Latvia* sets a good precedent. Human rights lawyers seem to regard this precedent favourably, whereas private international law lawyers seem to be more cautious. This article concludes that *X v. Latvia* was correctly decided for several reasons based on Article 13(1)(b), Article 3 of the HCCH Child Abduction Convention and the need to provide for measures of protection. Both human rights and private international law can interact harmoniously and complement each other. The efforts of the human rights community to understand the Child Abduction Convention are evident in the change of direction in *X v. Latvia*. Both human rights lawyers and private international law lawyers should make an effort to understand each other as we have a common goal and objective: the protection of the rights of the child.