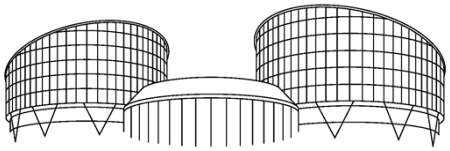

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ANDERSENA v. LATVIA

(Application no. 79441/17)

JUDGMENT

STRASBOURG

19 September 2019

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Andersena v. Latvia,

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

Angelika Nußberger, *President,*
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
André Potocki,
Síofra O'Leary,
Mārtiņš Mits,
Lado Chanturia, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 27 August 2019,

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

PROCEDURE

1. The case originated in an application (no. 79441/17) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Ms Kerija Andersena ("the applicant"), on 20 November 2017.

2. The applicant, who had been granted legal aid, was represented by Ms I. Nikuļceva, a lawyer practising in Riga. The Latvian Government ("the Government") were represented by their Agent, Ms K. Līce.

3. The applicant alleged that a decision by the Latvian courts ordering her daughter's return to Norway violated her right to family life and had been taken in a flawed procedure. She invoked Article 6 and Article 8 of the Convention.

4. On 23 November 2017 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background information

5. The applicant is a Latvian national who was born in 1970 and lives in Riga.

6. On 3 August 2013 the applicant married a Norwegian citizen, S.I.E.A. Their daughter, K.S.A. – a citizen of both Latvia and Norway – was born on 3 December 2013. At that time the family lived in Latvia.

7. The Government submitted that in February 2014 the family had moved to Rælingen, Norway. However, the applicant maintained that both Latvia and Norway should be regarded as their countries of residence, as she and her daughter had maintained strong ties with Latvia – they had spent a lot of time there, she had continued to receive child support benefit and unemployment benefit from Latvia, and her daughter had remained registered with a family doctor in Latvia. In addition, the applicant had not been employed in Norway.

8. Between August 2015 and June 2017 K.S.A. attended a kindergarten in Norway.

9. In spring 2017 the relationship between the spouses deteriorated. In June 2017 S.I.E.A. moved out of the family home.

10. In spring 2017 S.I.E.A. attended some meetings concerning issues in the family at the Office for Children, Youth and Family Affairs (*Bufetat*) in Romerike, Norway. In June a marriage mediation meeting – a prerequisite for divorce and child custody proceedings – was organised, but the applicant did not attend it.

11. The applicant alleged that S.I.E.A. had become physically violent towards her. She had complained to her family doctor in Norway in that regard. The applicant claimed that she had also approached the Office for Children, Youth and Family Affairs, the Norwegian Child Welfare Services (*Barnevernet*), the Oslo Crisis Centre and the local crisis centre in Romerike, as well as an advice centre for women in Norway. According to the applicant, those institutions had been unable help her as she had not been a taxpayer in Norway.

12. The applicant further submitted that on 2 July 2017 S.I.E.A. had come to the family house without prior warning, had behaved aggressively, had attempted to steal her bag containing passports, and had struck K.S.A. After S.I.E.A. had left, the applicant had made a recording of her daughter reiterating that he had struck her on the eye with her own hand. The applicant submitted that following this incident she had left for Latvia with K.S.A. On 4 July she had sent a text message to S.I.E.A. stating that they had left Norway and were safe.

13. Shortly afterwards the applicant found a job in Latvia and K.S.A. started attending a kindergarten there.

B. Proceedings under the Hague Convention

1. Application for K.S.A.'s return

14. On 5 July 2017 S.I.E.A. applied to the Norwegian Central Authority with a view to having K.S.A. returned to Norway under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ("the Hague Convention"). That application was received by the Riga City Ziemeļu District Court (*Rīgas pilsētas Ziemeļu rajona tiesa*) on 11 August 2017.

15. At the first hearing of 24 August 2017 the applicant requested an adjournment so that she could obtain legal representation. The court adjourned the hearing to 7 September 2017.

16. On 6 September 2017 the applicant issued written authorisation entitling A.R. and I.M., advocates, to represent her in relation to all issues concerning her daughter's return to Norway. The document stated that authorisation was given to A.R. "and/or" I.M. The applicant submitted that she had only met with A.R. and had been convinced that only A.R. would represent her in the proceedings.

17. The applicant did not attend the hearing on 7 September 2017 owing to medical reasons. She was represented by I.M. on the basis of the above-mentioned authorisation and an order (*orderis*) – a formal document certifying that an advocate acts in his or her official capacity as a member of the Latvian Council of Sworn Advocates. I.M. requested that the hearing be adjourned owing to the applicant's absence. However, the court decided to proceed with the examination of the case on the grounds that the applicant was represented, the hearing had already been adjourned once, and the proceedings required particularly expeditious examination.

18. With respect to the merits, I.M., relying on Article 13 (b) of the Hague Convention, argued that returning to Norway would be harmful to K.S.A. The advocate referred to S.I.E.A.'s alleged violence towards the applicant and argued that it had amounted to emotional violence towards K.S.A. She also referred to the occasion when S.I.E.A. had allegedly struck the girl.

19. On 8 September 2017 the Riga City Ziemeļu District Court ruled that K.S.A. should be returned to Norway. Firstly, the court established that prior to moving to Latvia K.S.A.'s habitual place of residence had been in Norway, her parents had enjoyed joint custody, and S.I.E.A. had not consented to K.S.A.'s removal. Accordingly, there had been a wrongful removal and retention of a child within the meaning of Article 3 of the Hague Convention.

20. Secondly, the court refused to apply Article 13 (b) of the Hague Convention. Having outlined the evidence before it, the court concluded that it could not make a finding that K.S.A.'s return to Norway would cause her

physical or psychological harm or would otherwise create an intolerable situation. In particular, the court analysed the following evidence:

- an acknowledgement of 18 August 2017 from the Office for Children, Youth and Family Affairs in Romerike concerning the contact which S.I.E.A. had had and the meetings and consultations which he had attended in the period between 9 February 2017 and 13 July 2017;
- a transcript of a phone conversation of 11 May 2017 in which an employee of the Office for Children, Youth and Family Affairs in Romerike had detailed his concerns about the applicant's psychological well-being and its effects on K.S.A.'s well-being;
- a statement of 17 August 2017 from the child support service of the Rælingen municipality indicating that at no point during its review had it been concluded that, in this case, custody rights should be removed or the child could not live with her parents;
- a statement from the Norwegian kindergarten confirming that from August 2015 until the summer of 2017 K.S.A. had attended the kindergarten, and that during this time period there had been no reason to suspect that the child had been suffering from physical or emotional violence;
- medical documentation from the applicant's consultations with her family doctor in Norway on 24 March 2017, 3 April 2017, 26 May 2017, and 9 June 2017 outlining her complaints concerning conflict in the family (the issue of violence on the part of her husband was also raised in the last two consultations);
- information obtained by the Latvian custodial authority on 16 August 2017 concerning K.S.A.'s conduct in the Latvian kindergarten which she had started attending on 17 July 2017, indicating that the child was active, communicative, open and friendly, showed no aggression and had adapted well to her new environment, and that no health problems had been detected and the applicant had provided no information about such problems;
- information received from K.S.A.'s family doctor in Latvia stating that the last visit had taken place in August 2015, the family lived in Norway and there was no information concerning violence in the family;
- testimony of 23 August 2017 from the applicant's adult son attesting to S.I.E.A.'s aggressive behaviour and stating that he had struck K.S.A.;
- an excerpt of 17 August 2017 from medical documentation concerning K.S.A.'s consultations with a psychiatrist in Latvia detailing the girl's anxious behaviour when she was questioned about her father or life in Norway;

- a report of 25 August 2017 by a clinical psychologist and family psychotherapist in Latvia concerning a psychological examination of K.S.A., which concluded that K.S.A. had been involved in psychologically traumatising events and her father had been physically violent towards her and her mother.

21. The court noted that there was a serious conflict between the parents, which undoubtedly had a negative effect on the child. Nonetheless, the evidence in the case file was contradictory. While some of it pointed to a possibility of emotional or maybe even physical violence on the part of S.I.E.A., it had to be assessed in conjunction with the other evidence, the majority of which showed that the child had not been subjected to any kind of violence in the family. Moreover, the case file did not contain any information that the applicant had approached the Norwegian law-enforcement authorities or child protection institutions in order to deal with the alleged violence in the family, or that she had made use of any civil-law or criminal-law remedies designed to protect people from violence. On the contrary, in the court's view, the evidence indicated that the applicant had evaded the mechanisms created to resolve problems in the family.

2. Ancillary-complaint proceedings

22. On 22 September 2017 the applicant withdrew the authorisation given to A.R. and I.M. There is no indication that the domestic courts were informed of that fact.

23. On 25 September 2017 the applicant lodged an ancillary complaint against the decision of 8 September 2017. In accordance with the Civil Procedure Law, the accelerated ancillary-complaint procedure was the type of appeal to use to challenge the merits of a decision ordering the return of a child (see paragraphs 50-51 below). The complaint was signed by the applicant. Among other documents, the applicant submitted a transcript of the recording from 2 July 2017 (see paragraph 12 above), along with a privately-hired Latvian forensic expert's conclusion that the file had not been tampered with or falsified. In her complaint, the applicant noted, *inter alia*, that she had agreed with A.R. that they would seek an adjournment of the hearing of 7 September because of her health and the fact that her daughter was in hospital. Owing to mobility difficulties, she had been unable to gather some significant pieces of evidence before the date of the court hearing; however, she had not been prescribed bedrest. Had she known what the consequences would be, she would have come to the hearing despite the difficulties.

24. On 6 October 2017 the Riga Regional Court (*Rīgas apgabaltiesa*) informed the applicant in writing that her ancillary complaint would be examined in written proceedings on 23 October 2017, and that she had a right to ask for judges to recuse themselves up to seven days before that date. The notification was addressed to her personally.

25. On 13 October 2017 the applicant submitted an application, seeking that the case be examined at an oral hearing. She argued that the hearing was necessary to establish additional circumstances that were significant for deciding her ancillary complaint, particularly as she had not had an opportunity to express herself before the first-instance court. However, the applicant did not specify what those additional circumstances were. On 16 October 2017 she was personally informed that the application had been transferred to the presiding judge.

26. On 3 October, 12 October and 23 October 2017 the applicant lodged additional submissions further to her ancillary complaint. The latter submissions were received by the Riga Regional Court after the delivery of its decision of 23 October 2017.

27. On 17 October 2017 S.I.E.A. submitted written explanations with respect to the applicant's ancillary complaint, and on 22 October 2017 he submitted written explanations in relation to her additional submissions of 12 October 2017. The latter explanations were received by the Riga Regional Court on 23 October 2017, after the delivery of the decision.

28. The applicant's ancillary complaint and her additional submissions, as well as S.I.E.A.'s written explanations, were uploaded to the judicial system of electronic services. The applicant herself did not have access to the judicial system of electronic services and she also was not personally informed of S.I.E.A.'s submissions. The Government claimed that notifications about the submissions uploaded to the judicial system of electronic services had been sent to I.M. According to the Government's information, I.M. had opened the applicant's case in the judicial system of electronic services ten times – four times after the ancillary complaint had been lodged (on 25, 27 and 29 September and on 23 October 2017) – and had downloaded the first-instance court's decision three times.

29. On 23 October 2017 the Riga Regional Court delivered its decision. It dismissed the application for the case to be examined at an oral hearing on the grounds that it lacked adequate reasoning and no new circumstances that needed to be established had been put forward. Also, the ancillary complaint had not mentioned any arguments as to why additional circumstances, if they existed, could only be established at an oral hearing. The court noted that the ancillary complaint contained a great number of arguments which it was also bound to address in written proceedings, and that the case had a sufficient amount of evidence, which allowed the case to be examined in written proceedings.

30. With respect to the applicant's legal representation, the court pointed out that the first hearing had been adjourned at her request so that she could obtain legal representation. The written authorisation for the advocates A.R. "and/or" I.M. indicated that the applicant had chosen to conduct the proceedings via her authorised representatives. The court dismissed the applicant's contention that authorisation had been given only to A.R., as

that was contrary to the text of the written authorisation, which the applicant must have understood when she signed. Furthermore, the written authorisation had not been revoked, thus there were grounds to consider that the applicant was still exercising her procedural rights through her authorised representatives.

31. Concerning the applicant's absence from the first-instance hearing on 7 September 2017, the court considered that she had not indicated how her presence at that hearing could have affected the outcome of the case. As the applicant had not attended the hearing owing to health reasons and had been represented by her authorised representative, the first-instance court could proceed with the examination of the case.

32. In relation to the merits of the case, the Riga Regional Court upheld the decision of the first-instance court. It agreed that the evidence, when assessed in its entirety, was not sufficient to conclude that there was a grave risk that K.S.A.'s return to Norway would cause her physical or psychological harm or would otherwise place her in an intolerable situation. Referring to the Office for Children, Youth and Family Affairs where S.I.E.A. had sought help, as well as the documents produced by the municipal child support service, the court concluded that there were legal means in Norway that could protect the child from danger if necessary. The court considered that K.S.A. and the applicant would be able to receive adequate protection and support in Norway upon their return.

3. Suspension

33. On 15 November 2017 the applicant lodged an application with the Riga City Ziemeļu District Court, seeking that enforcement of the return order be suspended. She submitted that there had been changes in significant circumstances – K.S.A.'s state of health had deteriorated and she required inpatient medical treatment.

34. On 21 November 2017 K.S.A. commenced inpatient treatment in a State psychiatric hospital, Ģintermuiža. She was diagnosed as having: an adjustment disorder with neurotic reactions, anxiety, fears, sleep disturbances, enuresis, a phobic childhood anxiety disorder, and a transient tic disorder. She was accompanied by her grandmother and remained in the hospital until 14 December 2017. K.S.A. had already undergone similar inpatient treatment at the same hospital from 4 to 8 September 2017, on the basis of the same diagnosis.

35. On 21 December 2017 the Riga City Ziemeļu District Court suspended the enforcement proceedings until 21 February 2018. However, on 13 February 2018 the Riga Regional Court revoked that decision. It considered that there had been no changes in significant circumstances, as K.S.A.'s diagnosis had already been known to the domestic courts when her return to Norway had been ordered. Also, there were no indications that K.S.A. could not continue the treatment in Norway, where a professional

system of treatment and support was in place. The court considered that it would be in the best interests of the child to return to Norway and receive psychological and medical treatment there.

36. On 15 February 2018 the applicant lodged a new application with the Riga City Vidzeme District Court (*Rīgas pilsētas Vidzemes rajona tiesa*), again requesting that enforcement of the return order be suspended. On 5 April 2018 the court denied that application. It noted that the notion of a change in significant circumstances had to be given a very narrow interpretation. That decision was upheld by the Riga Regional Court on 28 June 2018.

37. The applicant then requested that the case be reopened on the grounds of newly discovered circumstances. That application was denied by a final decision of 24 August 2018.

4. Enforcement

38. On 9 March 2018 the Riga City Vidzeme District Court issued a writ of execution. On 28 March 2018 an application by the applicant to revoke the writ of execution was denied.

39. On 12 March 2018 a bailiff sent the applicant official notification obliging her to hand K.S.A. over to S.I.E.A. or a member of the competent administrative authority (*bāriņtiesa*) by 23 March 2018. On 26 March 2018 the bailiff dismissed an application by the applicant to suspend the enforcement proceedings. On the same date he officially established that she had failed to comply with the decision ordering K.S.A.'s return.

40. On the basis of an application by the bailiff, on 25 April 2018 the Riga City Vidzeme District Court fined the applicant 750 euros (EUR) for failing to comply with the return order.

41. On 12 September 2018 the Riga City Vidzeme District Court granted an application by the bailiff for the police to commence a search for K.S.A., as her whereabouts could not be located and the applicant could not be contacted.

C. Other proceedings

1. Proceedings in Norway

42. On 7 July 2017 S.I.E.A. brought divorce and custody proceedings against the applicant before the Norwegian courts.

43. The documents concerning those proceedings were sent to the applicant's known residential address in Riga and to her representative, A.R. By an email of 22 September 2017 A.R. informed the applicant that she had received these documents. The applicant responded by saying that A.R. should return the documents to the sender with a note stating that she no longer represented the applicant in any proceedings.

44. On 24 November 2017 the Nedre Romerike Regional Court (*Nedre Romerike tingrett*) issued an interim decision concerning parental custody and K.S.A.'s place of residence. On the basis of the documents before it, the court considered that there was no indication that S.I.E.A. could not take good care of his daughter. On the contrary, the court expressed concern about K.S.A. staying with her mother, who had illegally removed her from her habitual place of residence and had deprived her of normal contact with her father, and whose parenting skills and mental health were questionable. It held that it would be in K.S.A.'s best interests to live in Norway with her father until the dispute was finally resolved. The applicant was granted three hours of supervised contact per week.

45. That decision was amenable to appeal. There is no information that the applicant availed herself of that remedy.

2. Proceedings in Latvia

46. On 30 October 2017 the applicant requested that the Riga City Vidzeme District Court issue a restraining order against S.I.E.A. on account of a violent incident that had allegedly occurred on 9 October 2017. On 31 October 2017 the court issued the restraining order, prohibiting S.I.E.A. from coming within 100 metres of the applicant's place of residence and from communicating with the applicant via any means. The applicant was given a deadline, and had until 31 January 2018 to lodge a civil claim relating to the restraining order.

47. On 6 December 2017 the applicant lodged a claim against S.I.E.A., requesting a divorce, division of their joint property and sole custody of K.S.A.

48. On 6 April 2018 the Riga City Vidzeme District Court concluded that these issues fell within the jurisdiction of the Norwegian courts, and did not examine the claim. It also revoked the restraining order. On 10 May 2018 that decision was upheld on appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Application for return of a child

49. Section 644^{19} of the Civil Procedure Law sets out the procedure for examining applications for the return of children wrongfully removed to or retained in Latvia. It provides:

> "(1) The application shall be examined at a court hearing in the presence of the parties, within 15 days of the case being initiated. ...
>
> (2) If, after being summoned by the court, the defendant fails to attend [the hearing] without a justified reason, [he or she] may be brought to the court by coercive measures.

(3) If one of the parties lives far away or, owing to other reasons, cannot attend [the hearing] in accordance with the court's summons, the court may regard the written submissions of this party or the participation of [his or her] representative as sufficient for [the purposes of] examining the case.

(4) In examining the application, the court shall request evidence of its own motion, using the most appropriate procedural options and the quickest way of acquiring evidence.

...

(6) If the court determines that the child has been wrongfully removed to or retained in Latvia, it shall take a decision on returning the child to the country of [his or her] place of residence.

(7) The court shall take a decision on returning or not returning the child to the country of [his or her] residence by applying the provisions of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ..."

50. Section 644^{20} provides that a person can appeal against the court's decision on returning or not returning the child by lodging an ancillary complaint.

51. Section 644^{21} regulates the competence of an appeal court to examine ancillary complaints against decisions ordering or refusing to order a child's return. This provision states:

"(1) A regional court shall examine the ancillary complaint within 15 days of the ... proceedings being initiated. When examining the ancillary complaint, the regional court has the right to:

1) leave the decision unaltered, [and] dismiss the complaint; [or]

2) quash the decision and decide the issue on its merits.

(2) The decision takes effect and becomes enforceable immediately."

2. Ancillary complaint

52. Section 441 of the Civil Procedure Law provides that parties to proceedings may appeal against the decisions of a first-instance court or an appeal court in proceedings separate from an appeal against the relevant judgment by lodging an ancillary complaint when such a possibility is provided for in this Law, or when the court's decision hinders the proceedings.

53. Section 446 of the Civil Procedure Law sets out the actions a court has to take following the receipt of an ancillary complaint. Section 446(1) requires a judge to send a copy of the ancillary complaint and the documents attached to the parties to the proceedings, and section 446(2) states that after the expiry of the time-limit for lodging the ancillary complaint, the judge has to send the case file and the ancillary complaint to the level of court to which the complaint is addressed. There is no regulation with respect to the exchange of observations.

54. Section 447 states that the ancillary complaint shall be examined in written proceedings. The court shall notify the parties to the proceedings about the date of the examination of the ancillary complaint. A copy of the decision shall be sent to the parties to the proceedings within three days of the ancillary complaint being examined. Section 15(3) allows the court to also hold a court hearing in situations where this Law provides for written proceedings, if it considers such a hearing necessary to establish additional circumstances which may be significant for deciding the application, the complaint and the question put before it.

3. Suspension of enforcement

55. Chapter 74^3 of the Civil Procedure Law regulates the enforcement of decisions concerning the return of children to their country of habitual residence. Section 620^{16}, which forms part of that chapter, sets out the grounds for suspending such a decision or refusing to enforce it. It provides:

> "(1) The [defendant] may submit to the district ... court ... an application to suspend enforcement of the decision or an application [for the court] to refuse to enforce the decision if there has been a change in significant circumstances.
>
> (2) The following shall be considered a change in significant circumstances within the meaning of this section:
>
> 1) [where] the return of the child to [his or her] country of residence is not possible owing to the child's health or psychological condition, [where this condition] is certified by the statement of a hospital or a psychiatrist;
>
> 2) [where] the child's objections to the return to [his or her] country of residence are confirmed by the assessment of a psychologist appointed by the [custodial authority]; or
>
> 3) [where] the [claimant] shows no interest in renewing [his or her] connection with the child.
>
> (3) The application referred to in subsection 1 of this section may be lodged if more than a year has passed since the taking of the decision on returning the child to the country of [his or her] residence ..., except in the circumstances referred to in the first point of subsection 2 of this section.
>
> ...
>
> (6) The decision becomes enforceable immediately. An ancillary complaint may be lodged with respect to this court decision. The lodging of the ancillary complaint does not suspend the enforcement of the decision."

4. Representation

56. Section 85 of the Civil Procedure Law sets out the requirements for formalising representation in the following terms:

> "(1) Representation of a natural person shall be formalised with authorisation certified by a notary. ...

> (3) Authorisation that an advocate may provide legal assistance shall be confirmed by an order. If an advocate acts as an authorised representative of a party, this authorisation shall be confirmed by written authorisation."

57. By decision no. 278 of 20 December 2010, the Latvian Council of Sworn Advocates approved instructions concerning the contents of an order confirming authorisation. Paragraph 3 of the instructions provides that an order has to state the name of the particular court before which a person is to be legally represented. It is not acceptable to include a statement that the advocate may represent the person at all levels of jurisdiction.

58. Further, section 86(1) of the Civil Procedure Law states that if a natural person is conducting proceedings through an authorised representative, then all notifications and documents shall be sent to the representative only.

59. Section 87(1) of the Civil Procedure Law provides that the person who is being represented may at any moment withdraw the authorisation given to the representative, simultaneously notifying the court in writing of the authorisation being withdrawn.

5. The Supreme Court's practice as regards representation

60. In a decision of 26 November 2015 (case no. SKC-2391/2015), the Civil Cases Department of the Supreme Court (*Augstākās tiesas Civillietu departaments*) stated:

> "[7.2] ... The formalities with respect to formalising representation in cases where a person is represented by a sworn advocate are set out in section 85(3) of the Civil Procedure Law ... From the above-mentioned [provision] it can be seen that, in contrast with any other person in respect of whom notarised authorisation is required, with respect to a sworn advocate – a professional belonging to the judicial system – simple written authorisation supplemented by an order [confirming authorisation] suffices.
>
> ...
>
> [7.7] ... the court ... has rightly found that a sworn advocate has to submit both an order and authorisation in order to lodge an ancillary complaint in the name of the represented person.
>
> [7.8] From the documents submitted by the sworn advocate ... it cannot be concluded that [the appellant], in a procedure set out by law, authorised [the advocate] to represent his interests before the court, as, contrary to the requirements of section 85(3) of the Civil Procedure Law, the ancillary complaint was not accompanied by authorisation."

61. By a decision of 17 June 2016 (case no. SKC-1788/2016), the Civil Cases Department of the Supreme Court approved a decision not to accept an appeal lodged by a sworn advocate, even though in that case an order confirming authorisation had been lodged before the first-instance court and the appeal had been accompanied by written authorisation. The Supreme Court reasoned:

"[5.3] ... the order [confirming authorisation] certifies not only authorisation *per se*, but also the special status of a sworn advocate as a person belonging to the judicial system.

[5.4] With respect to authorisation of an advocate, as a person belonging to the judicial system, the Civil Procedure Law (section 85(3)) ... provides for a special (in essence, simplified) manner of formalising the authorisation – simple written authorisation, together with an order.

The same finding already forms part of the case-law – the Civil Cases Department, in its decision of 26 November 2015 in case no. SKC-2391, when examining the case in an extended composition, indicated that ..., with respect to a sworn advocate, ... simple written authorisation that is supplemented by an order suffices for providing legal assistance. ... [That finding] was made in a case where ... the sworn advocate had only attached an order and had not attached an authorisation from which the court could verify the extent of the authorisation. This fact does not change the finding that both an order and authorisation are required. ...

[5.5] It is uncontested that, as with any other individual, the law does not deprive a sworn advocate of the freedom to conclude an agency agreement ... and act outside the framework of his professional activity ... However, in all situations the court has to be able to verify whether, in the particular case, the representative acts as a private person or as a sworn advocate – a person belonging to the judicial system. Besides, in the Civil Cases Department's view, a change of status within one set of civil proceedings is not justified.

[5.6.] The material in the present case clearly indicates that the sworn advocate ... represented the defendant ... before the first-instance court in her professional capacity by providing legal assistance as an advocate. This is confirmed by the authorisation .... concerning representation at all levels of jurisdiction, the order ... concerning legal assistance before the [first-instance court], the procedural action of preparing and signing the appeal, and the order concerning legal assistance before the [appeal court] that is attached to the present ancillary complaint ...

[5.7.] The argument ... that when lodging an appeal an advocate acts on the basis of the order issued for the representation before the first-instance court is unfounded. ...

[5.8.] Accordingly, in a situation where a sworn advocate wishes to conduct proceedings by legally representing a person as part of [his or her] professional activity, the appeal has to be accompanied by an order concerning representation before the appeal court, in addition to authorisation ..."

62. On 27 June 2017 the Civil Cases Department of the Supreme Court delivered a decision in a case (no. SKC-1299/2017) where an appeal lodged by a sworn advocate had not been accepted because the order attached to it had concerned representation before all levels of jurisdiction and had not specifically mentioned the appeal court. While the Supreme Court noted that the order had been drawn up "in clear contravention of the instructions approved by the Latvian Council of Sworn Advocates" (see paragraph 57 above), it took into account the inconsistent conduct of the appeal court, as several ancillary complaints previously lodged by the same advocate on the basis of the same order had been accepted and examined by that court. For that reason, the Supreme Court annulled the decision. However, it added the following passage:

"[5.3.] ... It has to be reiterated here that if the Latvian Council of Sworn Advocates, acting within its competence afforded [by law], has approved instructions which regulate the manner of drawing up the order – the document that confirms the legal status of the advocate – then this internal normative act is binding on all advocates. By ignoring the requirements of the above-mentioned normative act, the sworn advocate ... has put the represented person's right to a fair trial at risk ... [and] drawing up the order [confirming authorisation] in a manner that does not correspond to the criteria clearly defined by the above-mentioned normative act notably [hinders] the court [in its] duty to verify the advocate's status and rights to perform procedural actions ..."

III. RELEVANT INTERNATIONAL LAW

63. The relevant international law is set out in *X v. Latvia* [GC], no. 27853/09, §§ 34-40, ECHR 2013. The most pertinent provisions of the Hague Convention read as follows:

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 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."

Article 20

"The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 AND 8 OF THE CONVENTION

64. The applicant complained that the Latvian courts, when ordering that her daughter should return to Norway, had failed to sufficiently take into account her objections, and had not provided adequate reasoning. Furthermore, the proceedings had been flawed, for the following reasons: before the first-instance court, the applicant had not participated in the hearings and had not been represented by her authorised representative; her application to have an oral hearing during the ancillary-complaint proceedings had been dismissed; she had not been informed of the other party's written submissions lodged in response to her ancillary complaint; and the final decision taken by the Riga Regional Court had not been sent to her. The applicant relied on Article 6 and Article 8 of the Convention, which, in so far as relevant, provide:

Article 6

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 8

"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."

65. The Court reiterates the difference in the nature of the interests protected by Articles 6 and 8 of the Convention. While Article 6 affords a procedural safeguard, namely the "right to a court" in the determination of one's "civil rights and obligations", Article 8 serves the wider purpose of ensuring proper respect for, *inter alia*, family life. The difference between the purpose pursued by the respective safeguards afforded by Articles 6 and 8 may, in the light of the particular circumstances, justify the examination of the same set of facts under both Articles (see *Sylvester v. Austria*, nos. 36812/97 and 40104/98, § 76, 24 April 2003). Where the complaints raised by the applicant are essentially directed against the merits of the decision, the Court may find it more appropriate to examine them under Article 8 (see, for example, *R.S. v. Poland*, no. 63777/09, § 40, 21 July 2015; *Karrer v. Romania*, no. 16965/10, §§ 25-26, 21 February 2012; and *López Guió v. Slovakia*, no. 10280/12, §§ 76-77, 3 June 2014); however, where the complaint more specifically concerns the procedural flaws of the decision-making process, it may proceed with a separate examination under Article 6 (see, for example, *Anghel v. Italy*, no. 5968/09, §§ 44 and 64, 25 June 2013; *H.N. v. Poland*, no. 77710/01, §§ 91-95, 13 September 2005; and *Hoholm v. Slovakia*, no. 35632/13, §§ 45-53, 13 January 2015).

66. With respect to the present case, the Court considers that the applicant's complaints of the domestic courts' failure to have sufficient regard to her objections are directed at the merits of the dispute, and fall to be assessed under Article 8. However, her complaints that there were shortcomings in the proceedings before the domestic courts should be considered under Article 6 of the Convention.

A. Complaints under Article 6 of the Convention

1. Admissibility

67. The Government submitted that the proceedings concerning the applicant's daughter's return to Norway under the Hague Convention did not fall within the scope of Article 6 of the Convention. In particular, there had been no "dispute" ("*contestation*") over civil rights or obligations in terms of civil law. Judicial proceedings under the Hague Convention were intended to deal expeditiously with the issue of the wrongful removal of children from the jurisdiction of their habitual residence. They were thus entirely different from any other possible subsequent domestic proceedings dealing with the custody, residence or other needs of a child. In other words, in the present case, the Hague Convention proceedings had not resolved any existing legal dispute between the applicant and S.I.E.A.

68. The applicant submitted that the Government's objection did not correspond to the Court's case-law.

69. The Court has already had an opportunity to assess Hague Convention proceedings with respect to their compliance with Article 6 of the Convention (see, for example, *Anghel*, cited above, §§ 44-45, 54-65; *Adžić v. Croatia*, no. 22643/14, §§ 42-25, 55-67, 12 March 2015; see also *H.N. v. Poland*, cited above, §§ 90-95; *Hoholm*, cited above, §§ 39, 45-53; and *Deak v. Romania and the United Kingdom*, no. 19055/05, §§ 72, 77-78, 3 June 2008). While it is beyond dispute that such proceedings do not determine parental custody and other issues that fall to be resolved by the courts of a person's country of habitual residence, they do, nonetheless, determine an important dispute as to whether there has been a wrongful removal or retention of a child, and whether there are any obstacles to the child's return (see *Hoholm*, cited above, § 47). In other words, those proceedings resolve a dispute over the right to secure the prompt return of a child wrongfully removed from his or her country of habitual residence. Such a right emanates from the Hague Convention, and Latvia, as a Contracting State to that Convention, has set up the procedural framework necessary to have that right enforced through its domestic courts. The Court sees no reason to question that the Latvian courts, when deciding on S.I.E.A.'s request for the return of his daughter, determined a dispute over a right which was, at least on arguable grounds, recognised under domestic law. It follows that the Government's objection as to the applicability of Article 6 § 1 of the Convention must be dismissed.

70. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

(i) The applicant

71. The applicant complained that the application before the first-instance court for K.S.A.'s return had been examined in her absence, and without the participation of a representative authorised by her, as she had only authorised A.R. to act for her and had never met I.M. Despite that, the Riga Regional Court, which had been called upon to decide the dispute on its merits, had dismissed her application for an oral hearing.

72. Furthermore, the applicant had not been informed of S.I.E.A.'s written submissions which he had filed in response to her ancillary complaint. Those submissions had only been uploaded to the judicial system of electronic services, to which the applicant had had no access. Thus, the

applicant's ancillary complaint and her additional observations had been available to S.I.E.A., but his submissions had not been available to her. This had violated the principle of equality of arms and the right to adversarial proceedings, as she had not been placed in equal conditions with the opposite party and had been deprived of the opportunity to have knowledge of and comment on the observations filed or evidence adduced by the other party.

73. With respect to the fact that I.M. had accessed the judicial system of electronic services, the applicant submitted that I.M. had never legally represented her and had never sent her a single document. Besides, on 22 September 2017 she had withdrawn the written authorisation issued with respect to A.R. Furthermore, referring to the domestic regulations and case-law (see paragraphs 57 and 60 above), the applicant emphasised that neither I.M. nor A.R. could have been regarded as her representatives in the appeal proceedings, as neither of them had submitted an order confirming that they were authorised to act as her representative before the Riga Regional Court. Accordingly, during the proceedings before the Riga Regional Court, the applicant had represented herself, and all the correspondence and documents should have been sent to her personally.

74. Lastly, the decision of 23 October had not been sent to the applicant. She had obtained it only on 27 October 2017 when she had requested it at the court's administrative office.

75. Following notice of the case being given to the Government, the applicant additionally complained that in the domestic proceedings she had not been given enough time to prepare her position and that equality between the parties had not been respected, as S.I.E.A. had been granted legal aid.

(ii) The Government

76. The Government submitted that the applicant's complaints were closely linked to her representation. On 6 September 2017 she had issued written authorisation in respect of A.R. and I.M. On the following day I.M. had represented her at the court hearing. The applicant had continued to cooperate with both advocates, who had prepared her ancillary complaint. After that, the applicant had informed A.R. that her services were no longer required. However, she had failed to inform the Riga Regional Court that the authorisation had been withdrawn, contrary to the requirements of section 87 of the Civil Procedure Law. Thus, in its decision of 23 October 2017 the Riga Regional Court had mentioned that, despite disagreements, the advocates continued to represent the applicant. In addition, it had analysed the applicant's complaint about her absence from the first-instance hearing and, after examining the audio-recording of that hearing, had concluded that the applicant had been represented by I.M., whose participation had not been a mere formality.

77. With respect to the proceedings before the Riga Regional Court, the Government emphasised that they had been ancillary-complaint proceedings designed "to examine the issues that had not been adjudicated on the merits". In such proceedings, a court did not require any written submissions from the parties. The ancillary complaint was sent to the other party and both parties were informed about the date a decision would be delivered. If a party had appointed a legal representative, all material and information were sent to the legal representative only. All relevant material, including judicial decisions, was uploaded to the judicial system of electronic services, from which the parties received electronic notifications.

78. Accordingly, after the applicant had lodged the ancillary complaint, the court had informed all parties about their procedural rights and obligations and the fact that a decision would be available on 23 October 2017. All subsequent correspondence had been via the judicial system of electronic services, to which the parties' submissions had been uploaded. Thus, both parties to the proceedings had been notified of each other's submissions and had been granted access to those documents on equal terms. This was demonstrated by S.I.E.A.'s submissions of 22 October 2017, which explicitly stated that they were a response to the applicant's additional submissions of 12 October 2017. In the absence of written revocation of the authorisation given by the applicant, I.M. had been considered the applicant's representative and had continued to receive system notifications. In the period between 14 September and 23 October she had accessed the applicant's case ten times.

79. The Government contended that the applicant's right to a fair trial had been respected, as the specific nature of ancillary-complaint proceedings did not require any parties to provide observations. As to the submissions made by both parties on their own initiative, the parties had been granted equal rights in terms of access to these documents by means of the judicial system of electronic services. All issues referred to by the applicant had been caused by her own failure to observe the mandatory procedural rules, and therefore the notifications had been sent to her representative, with whom she had ceased all communication.

(b) The Court's assessment

80. At the outset, the Court notes that the scope of a case referred to the Court in the exercise of the right of individual application is determined by the applicant's complaint or "claim" (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 108-09 and 120-22, 20 March 2018). In the Court's view, the new complaints which the applicant raised after notice of the case had been given to the Government (see paragraph 75 above) are not an elaboration of her original complaint to the Court, as they concern previously unmentioned issues with respect to the fairness of the proceedings. Accordingly, the Court will not take them into account in its

assessment (compare *Piryanik v. Ukraine*, no.75788/01, § 20, 19 April 2005).

81. The applicant complained, in essence, that she had not been heard in person in the proceedings concerning her child's return, as she had been absent from the first-instance court's hearing and her application for an oral hearing before the appeal court had been dismissed.

82. The Court has held that Article 6 of the Convention does not guarantee the right to appear before a civil court in person, but rather a more general right to present one's case effectively. Representation may be an appropriate solution in cases where a party cannot appear in person before a civil court (see *Margaretić v. Croatia*, no. 16115/13, §§ 127-128, 5 June 2014). Furthermore, where an oral hearing has been held at first instance, a less strict standard applies to the appellate level, where the absence of such a hearing may be justified by the special features of the proceedings at issue (see *McIlwrath v. Russia*, no. 60393/13, § 146, 18 July 2017).

83. At the same time, the Court keeps in mind that Article 8 requires the domestic courts to genuinely take into account the factors raised by the parties to the proceedings which are capable of constituting an exception to the child's immediate return (see *X v. Latvia* [GC], no. 27853/09, § 106, ECHR 2013). In such proceedings, the Court attaches great importance to the opportunities given to the parties to be involved in the decision-making process and to present their case effectively before the judge deciding the matter (see, for example, *R.S. v. Poland*, §§ 68-69, and *Adžić*, §§ 55-67 and 83-94, both cited above).

84. With respect to the present case, the Court observes that the first hearing that was held before the first-instance court was adjourned at the applicant's request so that she could obtain legal representation. While the applicant herself was absent from the second hearing, she was represented by an advocate. Like the domestic courts, the Court dismisses the applicant's contention that she had only intended to authorise A.R. to act for her, as the written authorisation was clearly issued with respect to I.M. as well. Furthermore, I.M. submitted an order formally certifying her capacity to act as an advocate at that stage of the proceedings, and proceeded to represent the applicant. She did not, however, argue that owing to alleged personal experiences capable of constituting an exception to the child's immediate return, the applicant would need to be heard in person. Accordingly, the Court considers that the grounds on which the first instance court proceeded to hear the case in the applicant's absence (see paragraph 17 above) were sufficient at that stage of the proceedings (contrast *Selmani and Others v. the former Yugoslav Republic of Macedonia*, no. 67259/14, §§ 39-42, 9 February 2017, where the court of first and only instance held no hearing, without giving any reasons).

85. The Court also notes that the applicant was not denied the opportunity to request an oral hearing with respect to her

ancillary-complaint proceedings, although it was for the Riga Regional Court to decide whether a hearing was necessary (compare *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 74, ECHR 2007-II). The Riga Regional Court responded to the arguments put before it and considered that the case could be adequately dealt with in written proceedings (see paragraph 29 above). The Court agrees with the domestic court's assessment that the applicant failed to formulate any circumstances that would need to be assessed at an oral hearing and thereby failed to sufficiently substantiate her application. The Court is also mindful of the fact that the applicant did not provide convincing justification for her absence from the first-instance court's hearing (see paragraph 23 above). Accordingly, the decision of the Riga Regional Court to dispense with an oral hearing cannot be regarded as unjustified (contrast *Adžić*, cited above, §§ 55-67, where no hearing was held at any level of jurisdiction, despite the fact that the applicant's appeal was allowed precisely because of the absence of a hearing).

86. Overall, while the Court finds it regrettable that the applicant was not heard in person by the domestic courts, in the particular circumstances of the case, it is unable to conclude that she made full use of the opportunities afforded to her by the domestic law to present her case effectively.

87. The Court now turns to the complaint that the applicant was not informed of the other party's submissions. The Court reiterates that the principle of equality of arms and the right to adversarial proceedings, which are closely linked, are fundamental components of the concept of a "fair hearing" within the meaning of Article 6 § 1 of the Convention. They require a "fair balance" between the parties: each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent or opponents (see *Regner v. the Czech Republic* [GC], no. 35289/11, § 146, 19 September 2017). Additionally, the right to adversarial procedure entails the parties' right to have knowledge of and comment on all evidence adduced or observations filed with a view to influencing the court's decision (see *Kress v. France* [GC], no. 39594/98, §§ 65 and 74, ECHR 2001-VI, and *Milatová and Others v. the Czech Republic*, no. 61811/00, § 59, ECHR 2005-V).

88. The Court takes note of the Government's argument that in the present case, the specific nature of ancillary-complaint proceedings, which under the domestic law did not require any exchange of observations, should be taken into account. The Court has held that proceedings under the Hague Convention require urgent handling, as the passage of time can have irremediable consequences for relations between the child and the parent who does not live with the child (see, for example, *M.A. v. Austria*, no. 4097/13, §§ 109 and 134, 15 January 2015, and *López Guió*, cited above, § 109). Accordingly, the Court has endorsed the creation of

streamlined proceedings in the context of the Hague Convention, and has pointed to systemic problems in domestic procedures that have not sufficiently taken the expediency requirement into account (see *M.A. v. Austria*, § 136; *López Guió*, §§ 108-09; and *Hoholm*, § 49, all cited above).

89. Nonetheless, the Court has also held that the special characteristics of an adjudication do not justify disregarding such fundamental principles of a fair trial as the right to adversarial proceedings and equality of arms (with respect to family law, see *McMichael v. the United Kingdom*, 24 February 1995, § 80, Series A no. 307-B; with respect to other types of accelerated procedures, see *Beer v. Austria*, no. 30428/96, § 18, 6 February 2001; *Nideröst-Huber v. Switzerland*, 18 February 1997, § 30, *Reports of Judgments and Decisions* 1997-I; and *Özgür Keskin v. Turkey*, no. 12305/09, § 33, 17 October 2017). Parties to a dispute may legitimately expect to be consulted as to whether a specific document calls for their comments. What is particularly at stake here is the litigants' confidence in the workings of justice, which is based on, *inter alia*, the assumption that they are afforded the opportunity to express their views on every document in the case file (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 43, 3 March 2000; *Ferreira Alves v. Portugal (no. 3)*, no. 25053/05, § 41, 21 June 2007; and *Nideröst-Huber*, cited above, § 29). In addition, the Court notes that in the present case, the ancillary-complaint procedure had to be used to appeal against the merits of the return order (see paragraphs 50-51 above). Thus, the issue before the Riga Regional Court did not concern an ancillary procedural question, but the assessment of the merits of the dispute in the appeal.

90. The Court observes that, pursuant to the Civil Procedure Law, the Riga Regional Court had to send the applicant's ancillary complaint to the other party to the proceedings. The domestic law provided for no further exchange of observations. Nonetheless, S.I.E.A. filed written submissions of his own motion. The Riga Regional Court added those submissions to the case file and summarised them at length in its final decision. The applicant learned of those submissions when she received the final decision of the Riga Regional Court.

91. The Court emphasises that those submissions, which were filed by the other party to the proceedings, related directly to the grounds of the appeal and were clearly aimed at influencing the court (compare *Milatová and Others*, cited above, §§ 64-65; contrast *Stepinska v. France*, no. 1814/02, § 18, 15 June 2004, and *Sale v. France*, no. 39765/04, § 19, 21 March 2006). An appellant's right to be informed of and to reply in writing to the other party's written observations lodged in response to his or her appeal has already been recognised by the Court (see *Milatová and Others*, cited above, §§ 60-66; *Zahirović v. Croatia*, no. 58590/11, §§ 44-50, 25 April 2013; and *Wynen v. Belgium*, no. 32576/96, § 32, ECHR

2002-VIII). Accordingly, it was up to the applicant to decide whether or not that document called for her comments (compare *Ferreira Alves*, §§ 40-41, and *Nideröst-Huber*, § 29, both cited above). The extent to which those submissions influenced the court's assessment is not decisive from the point of view of the applicant's right to a fair hearing (see *Kuopila v. Finland*, no. 27752/95, § 35, 27 April 2000; see also *Milatová and Others*, § 65, and *Nideröst-Huber*, § 27, both cited above).

92. Therefore, as a matter of fairness, it was incumbent on the court to inform the applicant that those written submissions had been filed and that she could, if she so wished, comment on them in writing (compare *Milatová and Others*, cited above, § 61). The Court has held that various ways are conceivable in which national law may meet the requirement that both parties be given the opportunity to have knowledge of and comment on the observations filed by the other party. However, whatever method is chosen, it should ensure that the other party will have a real opportunity to comment on those observations (see *Zahirović*, cited above, § 42).

93. The Court observes that the domestic law did not require the applicant to be informed of the other party's submissions that were filed in response to her ancillary complaint or to be given a possibility to prepare a reply to those submissions. The Court considers that such a shortcoming may create situations that are incompatible with the right to adversarial proceedings (see, for example, *Yvon v. France*, no. 44962/98, § 39, ECHR 2003-V and *Zahirović*, cited above, § 47). It does, however, take note of the Government's argument that all relevant information had been uploaded to the judicial system of electronic services, informing the parties' representatives of and granting them access to the submissions filed by their adversaries, as well as enabling the parties to file their replies of their own motion. In that regard the present case should be distinguished from cases where parties have been required to consult the case file at the court's registry on their own initiative in order to learn about relevant submissions (see *Göç v. Turkey* [GC], no. 36590/97, § 57, ECHR 2002-V; *Milatová and Others*, cited above, § 61; and *Özgür Keskin*, cited above, §§ 35-36).

94. Notwithstanding that, the Court cannot but note the evident procedural uncertainty surrounding the parties' submissions during the proceedings before the Riga Regional Court. In the absence of an express provision in the Civil Procedure Law or clear instructions from the court concerning the parties' rights to file submissions and the applicable time-limits, both parties proceeded to lodge numerous addendums and submissions of their own motion, some of which were received even after the court's decision had been formally adopted (see paragraphs 26-27 above). In this regard the Court underlines that the Contracting States must exercise "diligence" to ensure that the rights guaranteed by Article 6 are enjoyed in an effective manner (compare, *mutatis mutandis*, *Fretté v. France*, no. 36515/97, § 49, ECHR 2002-I).

95. The Court further observes that, according to the Government's submissions, which were not challenged by the applicant, the representatives of both parties received notifications about new documents uploaded to the judicial system of electronic services (see paragraphs 77-79). Accordingly, S.I.E.A.'s representative was notified of the applicant's ancillary complaint and about her additional submissions providing him with a possibility to prepare a reply (see paragraph 27 above). In contrast, the system notifications about S.I.E.A.'s submissions were sent to I.M., who was no longer authorised to represent the applicant. Accordingly, the applicant, who herself had no access to the judicial system of electronic services, received no information about S.I.E.A.'s submissions of 17 October 2017 and had no opportunity to respond to his arguments. In that respect, the Government argued that the failure to notify the applicant personally had been due to her omission to inform the domestic courts about the withdrawal of the authorisation she had given in respect of her representation. The applicant, in turn, submitted that in accordance with the domestic rules concerning representation, she had represented herself before the Riga Regional Court, and therefore all notifications and documents should have been sent to her personally.

96. In that regard, the Court observes that the applicant lodged her ancillary complaint in her own name, and no order concerning her representation before the Riga Regional Court was submitted to the domestic courts. In view of that, the Court takes into account the domestic requirement of the compulsory filing of orders and the Supreme Court's interpretation of that requirement (see paragraphs 56-57 and 60-62 above). Considering the approach followed by the Supreme Court, the Court finds merit in the applicant's argument that I.M.'s representation before the Riga Regional Court was not formalised in accordance with the domestic law requirements and hence could not be regarded as valid. While the Civil Procedure Law does provide that the domestic courts should be notified of authorisation being withdrawn, given the domestic case-law (see, in particular, paragraphs 61 and 62 above), the Court cannot conclude that, in the absence of such notification, a person would be presumed to be represented by the same advocate at different levels of jurisdiction. Moreover, the Court observes that the Riga Regional Court corresponded with the applicant personally, despite the domestic law requirement that all documents and notifications be sent to a person's representative when such a representative has been appointed (see paragraphs 24 and 58 above).

97. Thus, while the applicant did not comply with the requirement to notify the court of the withdrawal of her authorisation, the Riga Regional Court corresponded with her instead of the lawyer, as required by domestic law, and it did not verify whether an order authorising representation in the appeal proceedings had been issued. As a consequence, the applicant

received no information about S.I.E.A.'s submissions and was thereby placed at a disadvantage *vis-à-vis* her opponent.

98. Accordingly, the Court finds that the failure to inform the applicant of S.I.E.A.'s submissions and her inability to respond to those submissions meant that she could not participate in the proceedings before the Riga Regional Court in conformity with the principle of equality of arms and the right to adversarial proceedings. There has therefore been a violation of Article 6 of the Convention.

99. Lastly, the Court does not consider that the fact that the applicant obtained the final decision three days after it had been adopted had any further negative effects on the fairness of those proceedings.

B. Complaints under Article 8 of the Convention

1. Admissibility

100. At the outset, the Court observes, and it is not in dispute between the parties, that the possibility of the applicant and her daughter continuing to live together is a fundamental consideration that clearly falls within the scope of family life within the meaning of Article 8 of the Convention, and that Article is therefore applicable in the present case (see, among many other authorities, *Maumousseau and Washington v. France*, no. 39388/05, § 58, 6 December 2007).

101. Further, the Government submitted that after the applicant had lodged her application with the Court she had continued to pursue domestic remedies with a view to suspending enforcement of the return order. The subsequent suspension of the enforcement on 21 December 2017 demonstrated that that remedy had been effective and accessible and had provided reasonable prospects of success. Accordingly, at the time the applicant had lodged her application with the Court, she had not yet exhausted the available domestic remedies.

102. The applicant disagreed. She pointed out that the decision of 8 September 2017 ordering K.S.A.'s return to Norway had been upheld on 23 October 2017 and was binding and enforceable. The proceedings referred to by the Government had only dealt with the temporary suspension of enforcement of the return order.

103. Without addressing the question of whether the remedy referred to by the Government was effective and had to be exhausted by the applicant, the Court notes that the applicant did in fact exhaust it. Enforcement of the return order was suspended by the decision of 21 December 2017. On 13 February 2018 that decision was revoked on appeal and the suspension was lifted. The applicant's subsequent attempts to suspend enforcement of the return order were unsuccessful. Accordingly, the Government's argument as to non-exhaustion is dismissed.

104. Finally, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

(i) The applicant

105. Firstly, the applicant contested the domestic courts' conclusion that prior to moving to Latvia her daughter's habitual place of residence had been Norway, and that their trip to Latvia had constituted a wrongful removal.

106. Secondly, the domestic courts had not attempted to determine the best interests of the child. The courts had been under an obligation to conduct an in-depth examination of the entire family situation and of a whole series of factors, in particular factors of a factual, emotional, psychological, material and medical nature. Instead, the domestic courts had noted that they did not need to determine parental custody and had refused to examine important factors or obtain additional evidence. The best interests of the child had not even been mentioned. The courts had also considered it irrelevant that the applicant herself, because of emotional and financial reasons, would probably be unable to go to Norway, where she had no home, relatives or job.

107. Above all, the courts had not considered the evidence confirming S.I.E.A.'s violence credible. The applicant had submitted the written conclusions of a psychiatrist and a family psychotherapist attesting to K.S.A.'s traumatic memories of life with her father. These documents had convincingly shown that K.S.A. had been subjected to, at the very least, emotional violence from her father, and had witnessed physical violence towards her mother. The courts had only recounted the contents of those documents and had chosen not to take them into account. Thus, with its decision of 8 September 2017, the district court had ordered the return to Norway – in fact, the return to the father – of a child who at the time had been hospitalised in a psychiatric hospital on account of the father's violence.

108. Furthermore, the applicant had submitted additional documents concerning her husband's violence to the appeal court, which had failed to analyse them. Amongst other things, she had referred to an expert's conclusion of 6 September 2017 concerning the audio-recording of 2 July (see paragraphs 12 and 23 above).

109. Lastly, the courts had failed to carry out an in-depth examination of the adequate safeguards and tangible protection measures in Norway. They

had considered that a serious risk of harm might only exist if the applicant had previously applied to the Norwegian law-enforcement institutions and those institutions had been unable to prevent violence towards the child. The courts had disregarded the attempts the applicant had made to involve the Norwegian institutions.

(ii) The Government

110. The Government did not contest that the return order had constituted an interference with the applicant's family life. However, that interference had been in accordance with law, as it had been based on the Hague Convention and the Civil Procedure Law. The Government emphasised that determining such concepts as "habitual residence" and "wrongful removal" fell within the competence of the national authorities. Furthermore, the interference had had the legitimate aim of protecting the rights and interests of the applicant's daughter and her father.

111. The Government disagreed that the courts had failed to conduct an in-depth examination of the overall family situation, as a whole series of factors, including those of a factual, emotional, psychological and medical nature had been taken into account. Such an "in-depth examination of the entire family situation" was not supposed to amount to an assessment of parental custody, which would be contrary to the primary purpose of the Hague Convention. The courts had taken a balanced and reasonable decision with the utmost concern for the best interests of the abducted child. They had provided a thorough assessment of the particular circumstances of the case and had given extensive consideration to the allegations about potential harm to the child upon her return. On the basis of the documents before them, the domestic courts had been convinced that K.S.A.'s return to Norway would not subject her to the risks outlined in Article 13 of the Hague Convention.

112. The domestic courts had also ascertained that there were social welfare and law-enforcement authorities in Norway, and that those authorities could provide adequate protection if required. At the time the relevant decisions had been made, the Norwegian authorities had already been aware of the applicant's family situation, as S.I.E.A. had asked them to become involved, and specific individually tailored measures were to be put in place upon K.S.A.'s return to Norway. The applicant had not specified what type of further guarantees should have been obtained.

(b) The Court's assessment

113. The Court finds that the decision ordering K.S.A.'s return to Norway constituted an interference with the applicant's family life. Accordingly, it remains to be determined whether that interference was "in accordance with the law", pursued one or more legitimate aims and was

"necessary in a democratic society" (see *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 91, ECHR 2010).

114. The applicant submitted that the domestic courts had erred in concluding that Article 3 of the Hague Convention was applicable, as both Latvia and Norway had been her daughter's habitual places of residence and their trip to Latvia could not be characterised as "wrongful removal". The Court considers that she thus contended that the interference had not been in accordance with law.

115. The Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention, and it is for the domestic courts to resolve problems of interpretation and application of domestic legislation, and of rules of general international law and international treaties (see *X v. Latvia* [GC], no. 27853/09, § 62, ECHR 2013). The applicant's objections to the application of Article 3 of the Hague Convention were thoroughly addressed by the domestic courts. They provided clear reasoning as regards their findings, and the approach followed by them displays no arbitrariness. Accordingly, the Court has no reason to call in question the domestic courts' findings on the applicability of Article 3 of the Hague Convention. It follows that the impugned interference was in accordance with the law within the meaning of Article 8 of the Convention.

116. Further, the Court agrees that the decision on K.S.A.'s return had the legitimate aim of protecting her rights and freedoms and those of her father.

117. Therefore, the main issue to be determined in the present case is whether the interference was "necessary in a democratic society". The general principles to be followed by the domestic courts when assessing requests for return under the Hague Convention, and the Court when reviewing complaints about such proceedings, have been set out in *X v. Latvia* (cited above, §§ 92-108). In particular, the Court held:

> "106. The Court considers 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 (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."

118. Accordingly, the Court has to ascertain whether the applicant's objections to her daughter's return were genuinely taken into account by the domestic courts, whether the decisions on this point were sufficiently reasoned, and whether the courts satisfied themselves that adequate safeguards and tangible protection measures were available in the country of return.

119. In view of the applicant's allegations, the Court finds it necessary to reiterate that "the best interests of the child" cannot be understood in an identical manner irrespective of whether a 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 best interests of the child form part of the Hague Convention rationale, and in the context of return proceedings they must be evaluated in the light of the exceptions provided for by the Hague Convention (see *X v. Latvia*, cited above, §§ 100-01). Accordingly, the domestic courts' dismissing certain information and evidence as irrelevant to the particular proceedings cannot be taken to imply that the best interests of the child were disregarded.

120. With respect to the arguments supposedly disregarded by the domestic courts, the documents before the Court do not indicate that the applicant voiced her concerns about her alleged inability to return to Norway before the domestic courts, or informed them that she had attempted to involve the Norwegian institutions in the dispute. Accordingly, it does not appear that the failure to address these issues could be attributed to the domestic courts.

121. In contrast, the applicant's allegations about violence on the part of S.I.E.A. and the question of whether that could constitute the circumstances outlined in Article 13 of the Hague Convention were at the very core of the domestic courts' assessment. Before concluding that the conditions of Article 13 of the Hague Convention were not met, the domestic courts detailed the evidence before them and carried out an assessment of the likelihood of violence on the part of S.I.E.A. In particular, they drew

attention to the contradictory nature of the evidence, and gave their reasons for attaching greater weight to the majority of evidence that pointed to the absence of violence in the family. They also took into account the applicant's failure to involve the Norwegian law-enforcement authorities, as well as her behaviour in avoiding conflict resolution with S.I.E.A. (see paragraphs 20-21 and 32 above).

122. With respect to the domestic courts' assessment of the credibility of the evidence, the Court emphasises that the domestic courts have the benefit of direct contact with the parties to proceedings, and they hear evidence directly (compare *Anghel*, cited above, §§ 80 and 85). Not attaching decisive weight to psychiatric or other medical examinations put forward by a party, particularly when the evidence is contradictory, is compatible with the margin of appreciation given to the domestic courts (compare *B. v. Belgium*, no. 4320/11, § 72, 10 July 2012, and *M.R. and L.R. v. Estonia* (dec.), no. 13420/12, § 44, 15 May 2012). A domestic court's coming to a different conclusion from that desired by one of the parties to a case cannot be equated with failing to take a particular argument or piece of evidence into account. In the light of the reasoning provided by the domestic courts, the Court considers that all objections raised by the applicant were genuinely taken into account and addressed by the domestic courts, even if the evidence submitted by her was not given the weight which she desired (contrast *X v. Latvia*, cited above, § 114, and *Karrer*, cited above, § 46).

123. Furthermore, in coming to the conclusion that adequate safeguards and tangible protection measures were available in Norway, the domestic courts referred to the Norwegian authorities whose help S.I.E.A. had sought and which had already been involved in the family's dispute (see paragraph 32 above). The applicant has not put forward any arguments as to why those authorities would not be capable of carrying out their functions.

124. With respect to the ancillary-complaint proceedings, the Court notes that the majority of the evidence put forward by the applicant was in fact analysed by the appeal court. However, the expert report concerning the recording of 2 July 2017 (see paragraph 23 above) was only mentioned when the applicant's arguments were summarised by the court. While the Court finds the appeal court's failure to directly address that particular piece of evidence regrettable, it does not regard that omission alone as capable of leading to a finding of a violation of the applicant's right to family life. The Riga Regional Court did state that the finding on the lack of a risk of physical or psychological harm was based on the evidence in its entirety (see paragraph 32 above). Furthermore, the courts' conclusion on the lack of violence was, *inter alia*, based on the analysis of psychiatric reports and other evidence attesting to the supposed consequences of the alleged incident, including the information provided by the Latvian custodial authority (see paragraph 20 above). Thus, having viewed the expert report

in its broader context, the Court does not consider that it was capable of affecting the conclusions reached by the domestic courts.

125. Lastly, despite its findings with respect to Article 6 (see paragraphs 87-98 above), the Court does not consider that this procedural deficiency in the proceedings before the Riga Regional Court resulted in a failure to take the legitimate interests of the applicant and her daughter into account (contrast *R.S. v. Poland*, §§ 68-69, and *Karrer*, §§ 52-53, both cited above). Before the first-instance court, the applicant was able to present her case through her authorised representative, and before the appeal court she submitted an ancillary complaint and made several additional submissions. All the arguments which she put forward were genuinely taken into account by the domestic courts, and their decisions were sufficiently reasoned. On the basis of the documents put before it, the Court is satisfied that the domestic courts, within their margin of appreciation, struck a fair balance between the competing interests at stake, particularly taking into account that the best interests of the child must be the primary consideration.

126. There has accordingly been no violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

127. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

128. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

129. The Government argued that the applicant had failed to establish the existence of non-pecuniary damage, and that a finding of a violation would constitute sufficient compensation. With reference to the Court's case-law on violations of Article 8 in proceedings under the Hague Convention, the Government contended that any award in this regard should not exceed EUR 7,000 in any event.

130. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

131. The applicant claimed no costs or expenses. Accordingly, the Court makes no award under this head.

C. Default interest

132. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 of the Convention with respect to the right to adversarial proceedings and equality of arms;

3. *Holds* that there has been no violation of Article 6 of the Convention with respect to the remainder of the applicant's complaints under this provision;

4. *Holds* that there has been no violation of Article 8 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 September 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President