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**CASES BEFORE THE ECHR INVOLVING ISSUES
OF PUBLIC INTERNATIONAL LAW**

Document submitted by the delegation of Romania

***IOSUB CARAS vs. Romania (2006)*¹**

The case concerns the application of the Hague Convention on the Civil Aspects of International Child Abduction by the Romanian authorities; in this context, the European Court examined the impact of Romania's compliance with its obligations under the Convention on the applicant's right to respect for family life.

In this case, the applicant had appealed to the Romanian Ministry of Justice, in its capacity as the main authority responsible for the application of the provisions of the Hague Convention, to have his daughter, a minor detained on Romanian territory by his wife without his agreement, returned to him. The Ministry had initiated legal proceedings against the applicant's wife, which were examined by the internal instances more than eighteen months later; in the meantime, the applicant's wife had initiated divorce proceedings before the Romanian's instances which accepted her claim and awarded her custody of the daughter, a minor, although the applicant has asked the Ministry of Justice to inform the instances of the existence of the procedure pursuant to the Hague Convention and to suspend the examination of the petition for divorce. In view of the result of the divorce proceedings, the procedure pursuant to the Hague Convention was disallowed because at the moment of the examination of the merits of the case, parental authority had been transferred to the child's mother.

In his application before the European Court, the applicant invoked the violation of his right and that of his daughter, a minor, to respect for family life in view of the result of the proceedings initiated under the Hague Convention.

The European Court found that Article 8 of the Convention imposes on national authorities a positive obligation to ensure the reunion between a parent and his/her child; thus the provisions of the Hague Convention aiming at the early return of the child contain a non-exhaustive list of measures which the State Party must take in order to comply with his positive obligation.

The European Court examined the Romanian State's compliance of his obligations arising from the Hague Convention and concluded that the main Romanian authority did not take all the national measures necessary to prevent any prejudice to the parties concerned; in particular, the authority did not take the necessary measures to suspend the divorce proceedings initiated by the applicant's wife, although it was aware of the concurrent procedures and the applicant had expressly solicited the suspension of the divorce proceedings through which the applicant's ex-wife ensured that she would be awarded custody of the child. In the European Court's opinion, the Romanian authorities, in so doing, disregarded the Hague Convention. Furthermore, the European Court noted the non-respect by Romania's legal instances of the time limits set out in the Hague Convention, in the absence of a satisfactory explanation for the delay.

Consequently, the European Court concluded that there was a violation of the right to respect for family life both in respect of the applicant and of his daughter, a minor, because the reaction of the national authorities had not respected the urgency of the situation.

¹ *Iosub Caras v. Romania*, No. 7198/04, Judgment of 27 July 2006 (English only).

MANOILESCU and DOBRESCU vs. Romania and Russia (2005)²

This case deals with the jurisdictional and diplomatic immunity of states in the context of a procedure aiming at the execution of a final administrative decision amounting to a document of title to a property for the applicants.

The applicants' right to the restitution of a piece of property, comprising a building and land, was acknowledged by a domestic decision; the Russian Federation owned title to the property which is used by officials of the Federation's Embassy. They took action before the national authorities aiming to oblige the administrative authorities to execute the domestic decision, but their claim was rejected on grounds of the property being in the possession of another State.

The European Court considered in its judgment that the right to a fair trial, which includes the right of execution of a domestic decision in favour of the applicants, is limited, *inter alia*, by the principle of State immunity. In this context, the Strasbourg Court recalled that the European Convention on Human Rights must be interpreted in the light of the principles stipulated in the Convention on the Law of Treaties, in order to accommodate the other rules of international law. In the facts of the case, the Court qualified the building as "mission premises" which benefit, albeit tacitly, from diplomatic immunity. Citing the Convention on Diplomatic Relations, the resolution of the Institute of International Law on Immunity from Execution and the United Nations Convention on Jurisdictional Immunities of States and Their Property (not yet entered into force) the Court noted that the property in issue was used by a foreign State in accordance with its sovereign power and that the entitlement to immunity from execution did not depend on the legal or illegal nature of the property's passage into State ownership; the Court concluded that if the property was used for the purposes of a mission, the principle of immunity from execution applied as a legal limitation of the right to a fair trial.

Under the right to the peaceful enjoyment of possessions, the Court found that the non-execution of the domestic decision did not cause the applicants to lose their claim against the Romanian State since they would be able to claim compensation for the wrongful seizure of the property by the Romanian State. Therefore the Romanian authorities' failure to take any measures to ensure the execution of the domestic decision was in the public interest – observance of the principle of State immunity – and did not upset the requisite balance between the various interests at stake.

² *Manoilescu and Dobrescu v. Romania and Russia*, No. 60861/100, Decision of 3 March 2005, Report of Judgments and Decisions 2005-VI.