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Committee of Experts on the Rights and the Best interests of the Child in Parental Separation and in Care Proceedings (CJ/ENF-ISE)

First meeting (24-25 September 2020)

Agenda item 6. Best interests of the child and children's rights in parental separation – compilation of excerpts of relevant international and European instruments

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The best interests of the child and children's rights in parental separation

1. International treaties

UN General Assembly, *United Nations Convention on the Rights of the Child (UNCRC)*, 1989.

[Available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>]

Article 3:

- 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*
- 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*
- 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*

UN Committee on the Rights of the Child (CRC), General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1).

[Available at: http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf]

Paragraph 56: *Regarding religious and cultural identity, for example, when considering a foster home or placement for a child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background (art. 20, para. 3), and the decision-maker must take into consideration this specific context when assessing and determining the child's best interests. The same applies in cases of adoption, separation from or divorce of parents. [...]*

Paragraph 60: *Preventing family separation and preserving family unity are important components of the child protection system, and are based on the right provided for in article 9, paragraph 1, which requires "that a child shall not be separated from his or her parents against their will, except when [...] such separation is necessary for the best interests of the child". Furthermore, the child who is separated from one or both parents is entitled "to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests" (art. 9, para. 3). This also extends to any person holding custody rights, legal or customary primary caregivers, foster parents and persons with whom the child has a strong personal relationship.*

Paragraph 67: *The Committee is of the view that shared parental responsibilities are generally in the child's best interests. However, in decisions regarding parental responsibilities, the only criterion shall be what is in the best interests of the particular child. It is contrary to those interests if the law automatically gives parental responsibilities to either or both parents. In assessing the child's best interests, the judge must take into consideration the right of the child to preserve his or her relationship with both parents, together with the other elements relevant to the case.*

Paragraph 70: *Preservation of the family environment encompasses the preservation of the ties of the child in a wider sense. These ties apply to the extended family, such as grandparents, uncles/aunts as well friends, school and the wider environment and are particularly relevant in cases where parents are separated and live in different places.*

Article 9

- 1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately, and a decision must be made as to the child's place of residence.*
- 2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.*
- 3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.*
- 4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.*

Article 10(2)

- 2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.*

Article 11

- 1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.*

Article 12

- 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*
- 2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

UN Committee on the Rights of the Child (CRC), General Comment No. 12 (2009) on the right of the child to be heard. [Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CR%2fC%2fGC%2f12&Lang=en]

Divorce and separation

51. *In cases of separation and divorce, the children of the relationship are unequivocally affected by decisions of the courts. Issues of maintenance for the child as well as custody and access are determined by the judge either at trial or through court-directed mediation. Many jurisdictions have included in their laws, with respect to the dissolution of a relationship, a provision that the judge must give paramount consideration to the “best interests of the child”.*

52. *For this reason, all legislation on separation and divorce has to include the right of the child to be heard by decision makers and in mediation processes. Some jurisdictions, either as a matter of policy or legislation, prefer to state an age at which the child is regarded as capable of expressing her or his own views. The Convention, however, anticipates that this matter be determined on a case-by-case basis, since it refers to age and maturity, and for this reason requires an individual assessment of the capacity of the child.*

Article 18(1)

1. *States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.*

Hague Conference on Private International law, Hague Convention on the Civil Aspects of International Child Abduction, 1980. [Available at: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=24>]

Preamble

Firmly convinced that the interests of children are of paramount importance in matters relating to their custody [...]

Perez-Vera, E., Explanatory Report on the HCCH Hague Convention on International Child Abduction, 1982. [Available at: <https://assets.hcch.net/upload/expl28.pdf>]

C. Importance attached to the best interests of the child

Paragraph 20: *Above all, one has to justify the reasons for including an examination of this matter within the context of a consideration of the Convention’s objects. These reasons will appear clearly if one considers, on the one hand, that the interests of the child are often invoked in this regard, and on the other hand, that it might be argued that the Convention’s object in securing the return of the child ought always to be subordinated to a consideration of the child’s interests.*

Paragraph 21: *In this regard, one fact has rightly been highlighted, viz. that ‘the legal standard of the best interests of the child’ is at first view of such vagueness that it seems to resemble more closely a sociological paradigm than a concrete juridical standard. How can one put flesh on its bare bones without delving into the assumptions concerning the ultimate interests of a child which are derived from the moral framework of a particular culture? The word ‘ultimate’ gives rise to immediate problems when it is inserted into the equation since the general statement of the standard does not make it clear whether the interests of the child to be served are those of the immediate aftermath of the decision, of the adolescence of the child, of young adulthood, maturity, senescence or old age’.*

Paragraph 22: *On the other hand, it must not be forgotten that it is by invoking ‘the best interests of the child’ that internal jurisdictions have in the past often finally awarded the custody in question to the person who wrongfully removed or retained the child, it can happen that such a decision is the most just, but we cannot ignore the fact that recourse by internal authorities to such a notion involves the risk of their expressing particular cultural, social, etc. attitudes which themselves derive from a given national community and thus basically imposing their own subjective value judgments upon the national community from which the child has recently been snatched.*

Paragraph 23: *For these reasons, among others, the dispositive part of the Convention contains no explicit of their qualifying the Convention’s stated object, which is to secure the prompt return of children who have been wrongfully removed or retained. However, its silence on this point ought not to lead one to the conclusion that the Convention ignores the social paradigm which declares the necessity of considering the interests of children in regulating all the problems which concern them. On the contrary, right from the start the signatory States declare themselves to be ‘firmly convinced that the interests of children are of paramount importance in matters relating to their custody’; it is precisely of this conviction that they drew up the Convention, ‘desiring to protect children internationally from the harmful effects of their wrongful removal or retention’.*

Paragraph 24: *These two paragraphs in the preamble reflect quite clearly the philosophy of the Convention in this regard. It can be defined as follows: the struggle against the great increase in international child abductions must always be inspired by the desire to protect children and should be based upon an interpretation of their true interests. Now, the right not to be removed or retained in the name of more or less arguable rights concerning its person is one of the most objective examples of what constitutes the interests of the child. In this regard, it would be as well to refer to Recommendation 874(1979) of the Parliamentary Assembly of the Council of Europe, the first general principle of which states that ‘children must no longer be regarded as parents’ property but must be recognized as individuals with their own rights and needs’. [...]*

Paragraph 25: *It is thus legitimate to assert that the two objects of the Convention – the one preventive, the other designed to secure the immediate reintegration of the child into its habitual environment – both correspond to a specific idea of what constitutes the ‘best interests of the child’. However, even when viewing from this perspective, it has to be admitted that the removal of the child can sometimes be justified by objective reasons which have to do with its person, or with the environment with which it is most closely connected. Therefore, the Convention recognizes the need for certain exceptions to the general obligations assumed by States to secure the prompt return of children who have been unlawfully removed or retained. For the most part, these exceptions are only concrete illustrations of the overly vague principle whereby the interests of the child are stated to be the guiding criterion in this area.*

HCCH, Guide to Good Practice Part VI – Article 13(1)(b), 2020. [Available at: <https://assets.hcch.net/docs/225b44d3-5c6b-4a14-8f5b-57cb370c497f.pdf>]

ii. Wrongful removal or retention is harmful to the child

The second underlying concept is that the wrongful removal or retention of a child is prejudicial to the child’s welfare and that, save for the limited exceptions provided for in the Convention, it will be in the best interests of the child to return to the State of habitual residence.

f. Limited Exceptions to the duty to order return forthwith

24. *Through the enumerated exceptions, the Convention recognises that the non-return of a wrongfully removed or retained child can sometimes be justified. The general concept that a prompt return is in the best interests of the child can therefore be rebutted in the individual case where an exception is established.*

26. *In particular, while the exceptions derive from a consideration of the interests of the child, they do not turn the return proceedings into custody proceedings. Exceptions are focussed on the (possible non-)return of the child. They should neither deal with issues of custody nor mandate a full “best interests assessment” for a child within return proceedings. The competent court or authority seised of return proceedings must apply the provisions of the Convention and avoid intervening on questions that are for the State of habitual residence to decide.*

Hague Conference on Private International law, *Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children*, 1996. [Available at: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=70>]

Preamble

Confirming that the best interests of the child are to be a primary consideration, [...].

Article 8

(1) By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or 6, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, may either

- request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or*
- suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State. [...]*

(4) The authority addressed as provided in paragraph 1 may assume jurisdiction, in place of the authority having jurisdiction under Article 5 or 6, if it considers that this is in the child's best interests.

Article 9

(1) If the authorities of a Contracting State referred to in Article 8, paragraph 2, consider that they are better placed in the particular case to assess the child's best interests, they may either

- request the competent authority of the Contracting State of the habitual residence of the child, directly or with the assistance of the Central Authority of that State, that they be authorised to exercise jurisdiction to take the measures of protection which they consider to be necessary, or*
- invite the parties to introduce such a request before the authority of the Contracting State of the habitual residence of the child.*

Article 10

(1) Without prejudice to Articles 5 to 9, the authorities of a Contracting State exercising jurisdiction to decide upon an application for divorce or legal separation of the parents of a child habitually resident in another Contracting State, or for annulment of their marriage, may, if the law of their State so provides, take measures directed to the protection of the person or property of such child if

- a) at the time of commencement of the proceedings, one of his or her parents habitually resides in that State and one of them has parental responsibility in relation to the child, and*
- b) the jurisdiction of these authorities to take such measures has been accepted by the parents, as well as by any other person who has parental responsibility in relation to the child, and is in the best interests of the child.*

Article 22

The application of the law designated by the provisions of this Chapter can be refused only if this application would be manifestly contrary to public policy, taking into account the best interests of the child.

Article 23

(1) *The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.*

(2) *Recognition may however be refused [...]*

d) if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child; [...].

Article 28

Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child.

Lagarde, P., Explanatory Report on the HCCH Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, 1996. [Available at: <https://www.hcch.net/en/publications-and-studies/details4/?pid=2943&dtid=3>]

Chapter II – JURISDICTION

Paragraph 37: *The jurisdiction of authorities other than those of the State of the habitual residence would have, in principle, to have been requested or authorised by the authorities of this State, where it appears that these other authorities would be in a better position to assess the best interests of the child in a particular case (Art. 8 and 9).*

Articles 8 and 9 (jurisdiction transferred to an appropriate forum or requested by one)

Paragraph 52: *These Articles introduce into the Convention a reversible mechanism for forum non conveniens and forum conveniens, where it appears that the child's best interest is that his or her protection be ensured by authorities other than those of the State of the habitual residence. The two articles are parallel. Article 8 allows the authorities of the habitual residence of the child to decline jurisdiction in favour of the authorities of another State, where they are satisfied that such authorities will exercise the jurisdiction entrusted to them. Article 9 allows the authorities of a State other than that of the habitual residence of the child to request that the competent authority of the State of the child's habitual residence abandon its jurisdiction, so that the authorities of this other State may take the measures of protection which they consider necessary.*

Article 10 (the divorce court)

Paragraph 65: *The second series of conditions (subparagraph b) is that the protective jurisdiction of the divorce court has been accepted by both parents and is in the best interests of the child. The text does not require the agreement of the parents on the measures to be taken, but only on jurisdiction. It adds that this jurisdiction should also have been accepted by any other person having parental responsibility in respect of the child. As sub-paragraph a had already required that one of these parents have this parental responsibility, it is necessary, in order to give meaning to this condition set out in sub-paragraph b, to imagine a situation in which parental responsibility would be divided between one of the parents and a third person. The conformity of this jurisdiction to the best interests of the child is to be judged sovereignly by the court which is seised of the request for divorce.*

Article 22 (public policy)

Paragraph 117: *This article reproduces the habitual provision in the Hague Conventions on the public policy exception. It specifies, however, that the intervention of public policy should take into account the best interests of the child, which principle moreover should inspire the application of all the articles of the Convention.*

HCCH Practical Handbook on the Operation of the 1996 Hague Child Protection Convention, 2014. [Available at: <https://www.hcch.net/en/publications-and-studies/details4/?pid=6096&dtid=3>]

d) Jurisdiction in cases where there is a pending divorce or legal separation of the child's parents - Article 10

4.26 It is possible for the authorities of a Contracting State exercising jurisdiction in an application for divorce, legal separation or an annulment of the marriage of the parents of a child habitually resident in another Contracting State to take measures directed to the person and property of such a child if certain conditions are met. These are:

- *The child is habitually resident in another Contracting State and*
- *the law of the Contracting State of the authorities exercising such jurisdiction allows them to take such measures in the circumstances and*
- *at the time the proceedings commence at least one of the parents habitually resides in that Contracting State and*
- *at the time the proceedings commence at least one of the parents has parental responsibility in relation to the child and*
- *the jurisdiction of the authorities to take these measures has been accepted by the parents, as well as by any other person who has parental responsibility in relation to the child and*
- *it is in the best interests of the child that jurisdiction be exercised on this basis.*

A When can jurisdiction to take measures of protection be transferred? - Articles 8 and 9

5.3 A request to transfer jurisdiction can arise in two ways:

- *an authority having general jurisdiction under the Convention, if it considers that another authority without jurisdiction would be better placed in the particular case to assess the best interests of the child, can request to transfer jurisdiction to that authority (Art. 8);*
- *an authority which does not have jurisdiction but believes that it is better placed in the particular case to assess the child's best interests can request that it be allowed to exercise jurisdiction (Art. 9).*

5.4 These articles permit a transfer of jurisdiction when the authority that has jurisdiction is not the best placed to assess the best interests of the child. The best interests of the child should be assessed "in the particular case", i.e., "at the moment when [the] need for protection is being felt, and for the purpose of responding to [that] need".

B What conditions must be fulfilled before a transfer of jurisdiction can take place?

5.9 Under both Articles 8 and 9 jurisdiction may only be transferred when certain conditions are fulfilled:

- *Connection between the child and the Contracting State to whose authorities it is permissible to transfer jurisdiction The Contracting States whose authorities may have jurisdiction transferred to them, or who can request that jurisdiction be transferred to them, must have a connection with the child. The Contracting State must be one of the following:*
 - *a State of which the child is a national;*
 - *a State in which property of the child is located;*
 - *a State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for an annulment of their marriage;*
 - *a State with which the child has a substantial connection.*
- *The best interests of the child. The authority making the request that jurisdiction be transferred must consider that this will allow for a better assessment of the child's best interests. The authority asked to assume or cede jurisdiction can only do so if it believes this is in the child's best interests.*
- *Agreement of the authorities of both Contracting States. [...]*

Hague Conference on Private International law, *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance*, 2007. [Available at: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=131>]

Preamble

Recalling that, in accordance with Articles 3 and 27 of the United Nations Convention on the Rights of the Child of 20 November 1989,

- in all actions concerning children the best interests of the child shall be a primary consideration,*
- every child has a right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development,*
- the parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development, and*
- States Parties should take all appropriate measures, including the conclusion of international agreements, to secure the recovery of maintenance for the child from the parent(s) or other responsible persons, in particular where such persons live in a State different from that of the child, [...]*

Article 15 - Free legal assistance for child support applications

(1) The requested State shall provide free legal assistance in respect of all applications by a creditor under this Chapter concerning maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years.

(2) Notwithstanding paragraph 1, the requested State may, in relation to applications other than those under Article 10(1) a) and b) and the cases covered by Article 20(4), refuse free legal assistance if it considers that, on the merits, the application or any appeal is manifestly unfounded.

2. European treaties

a. Council of Europe

Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms*, 1950. [Available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf]

Article 8 – Right to respect for private and family life

- 1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 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.*

Council of Europe, *Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, 1984. [Available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf]

Article 5 - Equality between spouses

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

Council of Europe, European Social Charter (revised), 1996. [Available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cf93>]

Part I

The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised: [...]

7. Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.

[...]

17. Children and young persons have the right to appropriate social, legal and economic protection.

Article 17 –The right of children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1. a. to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose; [...]

Article 27 –The right of workers with family responsibilities to equal opportunities and equal treatment

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake: [...]

2. to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;

Council of Europe, Convention on preventing and combating violence against women and domestic violence, 2011. [Available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>]

Article 26 – Protection and support for child witnesses

1. Parties shall take the necessary legislative or other measures to ensure that in the provision of protection and support services to victims, due account is taken of the rights and needs of child witnesses of all forms of violence covered by the scope of this Convention.

2. Measures taken pursuant to this article shall include age-appropriate psychosocial counselling for child witnesses of all forms of violence covered by the scope of this Convention and shall give due regard to the best interests of the child.

Article 31 – Custody, visitation rights and safety

- 1. Parties shall take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account.*
- 2. Parties shall take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children.*

Article 45 – Sanctions and measures

- 2. Parties may adopt other measures in relation to perpetrators, such as: [...]*
 - withdrawal of parental rights, if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way.*

Article 56 – Measures of protection

- 2. A child victim and child witness of violence against women and domestic violence shall be afforded, where appropriate, special protection measures taking into account the best interests of the child.*

Explanatory report available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900016800d383a>

Council of Europe, Convention on Contact Concerning Children, 2003. [Available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008370f>]

Preamble

Recognising that, as provided in the different international legal instruments of the Council of Europe as well as in Article 3 of the United Nations Convention on the Rights of the Child of 20 November 1989, the best interests of the child shall be a primary consideration; [...]

Taking into account Article 9 of the United Nations Convention on the Rights of the Child which provides for the right of a child, who is separated from one or both parents, to maintain personal relations and direct contact with both parents on a regular basis, except when this is contrary to the child's best interests; [...]

Agreeing on the need for children to have contact not only with both parents but also with certain other persons having family ties with children and the importance for parents and those other persons to remain in contact with children, subject to the best interests of the child; [...].

Article 4 – Contact between a child and his or her parents

- 1. A child and his or her parents shall have the right to obtain and maintain regular contact with each other.*
- 2. Such contact may be restricted or excluded only where necessary in the best interests of the child.*
- 3. Where it is not in the best interests of a child to maintain unsupervised contact with one of his or her parents the possibility of supervised personal contact or other forms of contact with this parent shall be considered.*

Article 5 – Contact between a child and persons other than his or her parents

- 1. Subject to his or her best interests, contact may be established between the child and persons other than his or her parents having family ties with the child.*

2. *States Parties are free to extend this provision to persons other than those mentioned in paragraph 1, and where so extended, States may freely decide what aspects of contact, as defined in Article 2 letter a shall apply.*

Article 6 –The right of a child to be informed, consulted and to express his or her views

1. *A child considered by internal law as having sufficient understanding shall have the right, unless this would be manifestly contrary to his or her best interests:*

- *to receive all relevant information;*
- *to be consulted;*
- *to express his or her views.*

2. *Due weight shall be given to those views and to the ascertainable wishes and feelings of the child.*

Article 7 – Resolving disputes concerning contact

When resolving disputes concerning contact, the judicial authorities shall take all appropriate measures:

- a. *to ensure that both parents are informed of the importance for their child and for both of them of establishing and maintaining regular contact with their child;*
- b. *to encourage parents and other persons having family ties with the child to reach amicable agreements with respect to contact, in particular through the use of family mediation and other processes for resolving disputes;*
- c. *before taking a decision, to ensure that they have sufficient information at their disposal, in particular from the holders of parental responsibilities, in order to take a decision in the best interests of the child and, where necessary, obtain further information from other relevant bodies or persons.*

Article 8 – Contact agreements

1. *States Parties shall encourage, by means they consider appropriate, parents and other persons having family ties with the child to comply with the principles laid down in Articles 4 to 7 when making or modifying agreements on contact concerning a child. These agreements should preferably be in writing.*

2. *Upon request, judicial authorities shall, except where internal law otherwise provides, confirm an agreement on contact concerning a child, unless it is contrary to the best interests of the child.*

Explanatory report available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d380d>

Council of Europe, *European Convention on the Exercise of Children's Rights*, 1996. [Available at: <https://rm.coe.int/168007cc53>].

Preamble

Convinced that the rights and best interests of children should be promoted and to that end children should have the opportunity to exercise their rights, in particular in family proceedings affecting them;

Recognising that children should be provided with relevant information to enable such rights and best interests to be promoted and that due weight should be given to the views of children;

Recognising the importance of the parental role in protecting and promoting the rights and best interests of children and considering that, where necessary, States should also engage in such protection and promotion;

Considering, however, that in the event of conflict it is desirable for families to try to reach agreement before bringing the matter before a judicial authority,

Article 1 – Scope and object of the Convention

1 This Convention shall apply to children who have not reached the age of 18 years.

2 The object of the present Convention is, in the best interests of children, to promote their rights, to grant them procedural rights and to facilitate the exercise of these rights by ensuring that children are, themselves or through other persons or bodies, informed and allowed to participate in proceedings affecting them before a judicial authority.

3 For the purposes of this Convention proceedings before a judicial authority affecting children are family proceedings, in particular those involving the exercise of parental responsibilities such as residence and access to children.

Article 3 – Right to be informed and to express his or her views in proceedings

A child considered by internal law as having sufficient understanding, in the case of proceedings before a judicial authority affecting him or her, shall be granted, and shall be entitled to request, the following rights:

- a. to receive all relevant information;*
- b. to be consulted and express his or her views;*
- c. to be informed of the possible consequences of compliance with these views and the possible consequences of any decision.*

Article 4 – Right to apply for the appointment of a special representative

1 Subject to Article 9, the child shall have the right to apply, in person or through other persons or bodies, for a special representative in proceedings before a judicial authority affecting the child where internal law precludes the holders of parental responsibilities from representing the child as a result of a conflict of interest with the latter.

2 States are free to limit the right in paragraph 1 to children who are considered by internal law to have sufficient understanding.

Article 5 – Other possible procedural rights

Parties shall consider granting children additional procedural rights in relation to proceedings before a judicial authority affecting them, in particular:

- a. the right to apply to be assisted by an appropriate person of their choice in order to help them express their views;*
- b. the right to apply themselves, or through other persons or bodies, for the appointment of a separate representative, in appropriate cases a lawyer;*
- c. the right to appoint their own representative;*
- d. the right to exercise some or all of the rights of parties to such proceedings.*

Article 6 – Decision-making process

In proceedings affecting a child, the judicial authority, before taking a decision, shall:

- a. consider whether it has sufficient information at its disposal in order to take a decision in the best interests of the child and, where necessary, it shall obtain further information, in particular from the holders of parental responsibilities;*
- b. in a case where the child is considered by internal law as having sufficient understanding:*
 - ensure that the child has received all relevant information;*

- consult the child in person in appropriate cases, if necessary privately, itself or through other persons or bodies, in a manner appropriate to his or her understanding, unless this would be manifestly contrary to the best interests of the child;
- allow the child to express his or her views;
- c. give due weight to the views expressed by the child.

Article 7 – Duty to act speedily

In proceedings affecting a child the judicial authority shall act speedily to avoid any unnecessary delay and procedures shall be available to ensure that its decisions are rapidly enforced. In urgent cases the judicial authority shall have the power, where appropriate, to take decisions which are immediately enforceable.

Article 8 – Acting on own motion

In proceedings affecting a child the judicial authority shall have the power to act on its own motion in cases determined by internal law where the welfare of a child is in serious danger.

Article 9 – Appointment of a representative

1 In proceedings affecting a child where, by internal law, the holders of parental responsibilities are precluded from representing the child as a result of a conflict of interest between them and the child, the judicial authority shall have the power to appoint a special representative for the child in those proceedings.

2 Parties shall consider providing that, in proceedings affecting a child, the judicial authority shall have the power to appoint a separate representative, in appropriate cases a lawyer, to represent the child.

Article 10

1 In the case of proceedings before a judicial authority affecting a child the representative shall, unless this would be manifestly contrary to the best interests of the child:

- a. provide all relevant information to the child, if the child is considered by internal law as having sufficient understanding;
- b. provide explanations to the child if the child is considered by internal law as having sufficient understanding, concerning the possible consequences of compliance with his or her views and the possible consequences of any action by the representative;
- c. determine the views of the child and present these views to the judicial authority.

2 Parties shall consider extending the provisions of paragraph 1 to the holders of parental responsibilities.

Article 11

Parties shall consider extending the provisions of Articles 3, 4 and 9 to proceedings affecting children before other bodies and to matters affecting children which are not the subject of proceedings.

Article 13 – Mediation or other processes to resolve disputes

In order to prevent or resolve disputes or to avoid proceedings before a judicial authority affecting children, Parties shall encourage the provision of mediation or other processes to resolve disputes and the use of such processes to reach agreement in appropriate cases to be determined by Parties.

Article 14 – Legal aid and advice

Where internal law provides for legal aid or advice for the representation of children in proceedings before a judicial authority affecting them, such provisions shall apply in relation to the matters covered by Articles 4 and 9.

Council of Europe, *European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children*, 1980. [Available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/105>]

Article 4

1 Any person who has obtained in a Contracting State a decision relating to the custody of a child and who wishes to have that decision recognised or enforced in another Contracting State may submit an application for this purpose to the central authority in any Contracting State.

2 The application shall be accompanied by the documents mentioned in Article 13.

3 The central authority receiving the application, if it is not the central authority in the State addressed, shall send the documents directly and without delay to that central authority.

4 The central authority receiving the application may refuse to intervene where it is manifestly clear that the conditions laid down by this Convention are not satisfied.

5 The central authority receiving the application shall keep the applicant informed without delay of the progress of his application.

Article 7

A decision relating to custody given in a Contracting State shall be recognised and, where it is enforceable in the State of origin, made enforceable in every other Contracting State.

Article 14

Each Contracting State shall apply a simple and expeditious procedure for recognition and enforcement of decisions relating to the custody of a child. To that end it shall ensure that a request for enforcement may be lodged by simple application.

Article 15

1 Before reaching a decision under paragraph 1.b of Article 10, the authority concerned in the State addressed:

- a. shall ascertain the child's views unless this is impracticable having regard in particular to his age and understanding; and*
- b. may request that any appropriate enquiries be carried out.*

2 The cost of enquiries in any Contracting State shall be met by the authorities of the State where they are carried out.

3 Request for enquiries and the results of enquiries may be sent to the authority concerned through the central authorities.

Explanatory report available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800ca432>

Council of Europe, European Convention on the Legal Status of Children born out of Wedlock, 1975. [Available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/085>]

Article 6

1 The father and mother of a child born out of wedlock shall have the same obligation to maintain the child as if it were born in wedlock.

2 Where a legal obligation to maintain a child born in wedlock falls on certain members of the family of the father or mother, this obligation shall also apply for the benefit of a child born out of wedlock.

Article 7

1 Where the affiliation of a child born out of wedlock has been established as regards both parents, parental authority may not be attributed automatically to the father alone.

2 There shall be power to transfer parental authority; cases of transfer shall be governed by the internal law.

Article 8

Where the father or mother of a child born out of wedlock does not have parental authority over or the custody of the child, that parent may obtain a right of access to the child in appropriate cases.

Article 9

A child born out of wedlock shall have the same right of succession in the estate of its father and its mother and of a member of its father's or mother's family, as if it had been born in wedlock.

Article 10

The marriage between the father and mother of a child born out of wedlock shall confer on the child the legal status of a child born in wedlock.

Explanatory report available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800c96ca>

b. European Union

European Union, Charter of Fundamental Rights of the European Union, 2012. [Available at: https://www.europarl.europa.eu/charter/pdf/text_en.pdf].

Article 24 - The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction. [Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELLAR%3A524570fa-9c9a-11e9-9d01-01aa75ed71a1>] Applicable from 1 August 2022.

Preamble

(19) The grounds of jurisdiction in matters of parental responsibility are shaped in the light of the best interests of the child and should be applied in accordance with them. Any reference to the best interests of the child should be interpreted in light of Article 24 of the Charter of Fundamental Rights of the European Union ('the Charter') and the United Nations Convention on the Rights of the Child of 20 November 1989 ('UN Convention on the Rights of the Child') as implemented by national law and procedure.

(20) To safeguard the best interests of the child, jurisdiction should in the first place be determined according to the criterion of proximity. Consequently, jurisdiction should lie with the Member State of the habitual residence of the child, except for certain situations set out in this Regulation, for instance, where there is a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.

Article 12 - Transfer of jurisdiction to a court of another Member State

1. In exceptional circumstances, a court of a Member State having jurisdiction as to the substance of the matter may, upon application from a party or of its own motion, if it considers that a court of another Member State with which the child has a particular connection would be better placed to assess the best interests of the child in the particular case, stay the proceedings or a specific part thereof and either:

(a) set a time limit for one or more of the parties to inform the court of that other Member State of the pending proceedings and the possibility to transfer jurisdiction and to introduce an application before that court; or

(b) request a court of another Member State to assume jurisdiction in accordance with paragraph 2.

2. The court of the other Member State may, where due to the specific circumstances of the case this is in the best interests of the child, accept jurisdiction within six weeks after:

(a) its seisure in accordance with point (a) of paragraph 1; or

(b) receipt of the request in accordance with point (b) of paragraph 1.

Article 13 - Request for transfer of jurisdiction by a court of a Member State not having jurisdiction

1. In exceptional circumstances and without prejudice to Article 9, if a court of a Member State which does not have jurisdiction under this Regulation, but with which the child has a particular connection in accordance with Article 12(4), considers that it is better placed to assess the best interests of the child in the particular case, it may request a transfer of jurisdiction from the court of the Member State of the habitual residence of the child.

2. Within six weeks following receipt of the request pursuant to paragraph 1, the requested court may accept to transfer its jurisdiction, if it considers that due to the specific circumstances of the case such a transfer is in the best interests of the child. Where the requested court accepts to transfer jurisdiction, it shall inform the

requesting court without delay. In the absence of such acceptance within the timeframe, the requesting court shall not have jurisdiction.

Article 25 - Alternative dispute resolution

As early as possible and at any stage of the proceedings, the court either directly or, where appropriate, with the assistance of the Central Authorities, shall invite the parties to consider whether they are willing to engage in mediation or other means of alternative dispute resolution, unless this is contrary to the best interests of the child, it is not appropriate in the particular case or would unduly delay the proceedings.

Council Regulation (EC) No. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. [Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009R0004>]

Preamble

(19) In order to increase legal certainty, predictability and the autonomy of the parties, this Regulation should enable the parties to choose the competent court by agreement on the basis of specific connecting factors. To protect the weaker party, such a choice of court should not be allowed in the case of maintenance obligations towards a child under the age of 18.

(36) On account of the costs of proceedings it is appropriate to provide for a very favourable legal aid scheme, that is, full coverage of the costs relating to proceedings concerning maintenance obligations in respect of children under the age of 21 initiated via the Central Authorities. Specific rules should therefore be added to the current rules on legal aid in the European Union which exist by virtue of Directive 2003/8/EC thus setting up a special legal aid scheme for maintenance obligations. In this context, the competent authority of the requested Member State should be able, exceptionally, to recover costs from an applicant having received free legal aid and lost the case, provided that the person's financial situation so permits. This would apply, in particular, where someone well-off had acted in bad faith.

Article 4 - Choice of court

1. The parties may agree that the following court or courts of a Member State shall have jurisdiction to settle any disputes in matters relating to a maintenance obligation which have arisen or may arise between them:

(a) a court or the courts of a Member State in which one of the parties is habitually resident;

(b) a court or the courts of a Member State of which one of the parties has the nationality;

(c) in the case of maintenance obligations between spouses or former spouses:

(i) the court which has jurisdiction to settle their dispute in matrimonial matters; or

(ii) a court or the courts of the Member State which was the Member State of the spouses' last common habitual residence for a period of at least one year.

The conditions referred to in points (a), (b) or (c) have to be met at the time the choice of court agreement is concluded or at the time the court is seised.

The jurisdiction conferred by agreement shall be exclusive unless the parties have agreed otherwise.

2. A choice of court agreement shall be in writing. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.

3. This Article shall not apply to a dispute relating to a maintenance obligation towards a child under the age of 18.

Article 46 - Free legal aid for applications through Central Authorities concerning maintenance to children

1. *The requested Member State shall provide free legal aid in respect of all applications by a creditor under Article 56 concerning maintenance obligations arising from a parent-child relationship towards a person under the age of 21.*
2. *Notwithstanding paragraph 1, the competent authority of the requested Member State may, in relation to applications other than those under Article 56(1)(a) and (b), refuse free legal aid if it considers that, on the merits, the application or any appeal or review is manifestly unfounded.*

Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. [Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003R2201&from=EN>] Regulation repealed from 1 August 2022.

Preamble

(12) The grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity. This means that jurisdiction should lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.

(13) In the interest of the child, this Regulation allows, by way of exception and under certain conditions, that the court having jurisdiction may transfer a case to a court of another Member State if this court is better placed to hear the case. However, in this case the second court should not be allowed to transfer the case to a third court.

Article 12 - Prorogation of jurisdiction

1. *The courts of a Member State exercising jurisdiction by virtue of Article 3 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in any matter relating to parental responsibility connected with that application where:*

(a) at least one of the spouses has parental responsibility in relation to the child;

and

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility, at the time the court is seised, and is in the superior interests of the child.

2. *The jurisdiction conferred in paragraph 1 shall cease as soon as:*

(a) the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final;

(b) in those cases where proceedings in relation to parental responsibility are still pending on the date referred to in (a), a judgment in these proceedings has become final;

(c) the proceedings referred to in (a) and (b) have come to an end for another reason.

Article 15 - Transfer to a court better placed to hear the case

1. By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child:

(a) stay the case or the part thereof in question and invite the parties to introduce a request before the court of that other Member State in accordance with paragraph 4; or

(b) request a court of another Member State to assume jurisdiction in accordance with paragraph 5. [...]

5. The courts of that other Member State may, where due to the specific circumstances of the case, this is in the best interests of the child, accept jurisdiction within six weeks of their seisure in accordance with paragraph 1(a) or 1(b). In this case, the court first seised shall decline jurisdiction. Otherwise, the court first seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

3. European Union Directives

Council of the European Union, Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. [Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1437981174293&uri=CELEX:32008L0052>]

Article 7 - Confidentiality of mediation

1. Given that mediation is intended to take place in a manner which respects confidentiality, Member States shall ensure that, unless the parties agree otherwise, neither mediators nor those involved in the administration of the mediation process shall be compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information arising out of or in connection with a mediation process, except:

(a) where this is necessary for overriding considerations of public policy of the Member State concerned, in particular when required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person; or

(b) where disclosure of the content of the agreement resulting from mediation is necessary in order to implement or enforce that agreement.

2. Nothing in paragraph 1 shall preclude Member States from enacting stricter measures to protect the confidentiality of mediation.

Council of the European Union, Directive 2003/86/EC of 22 September 2003 on the right to family reunification. [Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0086&from=EN>]

Article 15(3):

3. In the event of widowhood, divorce, separation, or death of first-degree relatives in the direct ascending or descending line, an autonomous residence permit may be issued, upon application, if required, to persons who have entered by virtue of family reunification. Member States shall lay down provisions ensuring the granting of an autonomous residence permit in the event of particularly difficult circumstances.

4. Council of Europe recommendations and resolutions

a. Council of Europe Committee of Ministers Recommendations

Council of Europe, Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents. [Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807b3175]

II. Basic principles

2. *Where a custodial sentence is being contemplated, the rights and best interests of any affected children should be taken into consideration and alternatives to detention be used as far as possible and appropriate, especially in the case of a parent who is a primary caregiver.*

Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted on 17 November 2010. [Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804b2cf3]

III. Fundamental principles

B. Best interests of the child

1. *Member states should guarantee the effective implementation of the right of children to have their best interests be a primary consideration in all matters involving or affecting them.*

2. *In assessing the best interests of the involved or affected children:*

- a. *their views and opinions should be given due weight;*
- b. *all other rights of the child, such as the right to dignity, liberty and equal treatment should be respected at all times;*
- c. *a comprehensive approach should be adopted by all relevant authorities so as to take due account of all interests at stake, including psychological and physical well-being and legal, social and economic interests of the child.*

3. *The best interests of all children involved in the same procedure or case should be separately assessed and balanced with a view to reconciling possible conflicting interests of the children.*

4. *While the judicial authorities have the ultimate competence and responsibility for making the final decisions, member states should make, where necessary, concerted efforts to establish multidisciplinary approaches with the objective of assessing the best interests of children in procedures involving them.*

E. Rule of law

2. *Elements of due process such as the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right to access to courts and the right to appeal, should be guaranteed for children as they are for adults and should not be minimised or denied under the pretext of the child's best interests. This applies to all judicial and nonjudicial and administrative proceedings.*

IV. Child-friendly justice before, during and after judicial proceedings

A. General elements of child-friendly justice

5. Multidisciplinary approach

17. A common assessment framework should be established for professionals working with or for children (such as lawyers, psychologists, physicians, police, immigration officials, social workers and mediators) in proceedings or interventions that involve or affect children to provide any necessary support to those taking decisions, enabling them to best serve children's interests in a given case.

B. Child-friendly justice before judicial proceedings

24. Alternatives to judicial proceedings such as mediation, diversion (of judicial mechanisms) and alternative dispute resolution should be encouraged whenever these may best serve the child's best interests. The preliminary use of such alternatives should not be used as an obstacle to the child's access to justice.

D. Child-friendly justice during judicial proceedings

3. Right to be heard and to express views

47. A child should not be precluded from being heard solely on the basis of age. Whenever a child takes the initiative to be heard in a case that affects him or her, the judge should not, unless it is in the child's best interests, refuse to hear the child and should listen to his or her views and opinion on matters concerning him or her in the case.

4. Avoiding undue delay

50. In all proceedings involving children, the urgency principle should be applied to provide a speedy response and protect the best interests of the child, while respecting the rule of law.

V. Promoting other child-friendly actions

Member states are encouraged to: [...]

1. ensure that all concerned professionals working in contact with children in justice systems receive appropriate support and training, and practical guidance in order to guarantee and implement adequately the rights of children, in particular while assessing children's best interests in all types of procedures involving or affecting them.

Council of Europe, Recommendation Rec(98)1 of the Committee of Ministers to member States on family mediation. [Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804ecb6e>]

Preamble

2. Recognising the growing number of family disputes, particularly those resulting from separation or divorce, and noting the detrimental consequences of conflict for families and the high social and economic cost to states;

3. Considering the need to ensure the protection of the best interests and welfare of the child as enshrined in international instruments, especially taking into account problems concerning custody and access arising as a result of a separation or divorce;

5. Acknowledging the special characteristics of family disputes, namely:

- the fact that family disputes involve persons who, by definition, will have interdependent and continued relationships;
- the fact that family disputes arise in a context of distressing emotions and increase them;
- the fact that separation and divorce impact on all the members of the family, especially children;

7. Taking into account the results of research into the use of mediation and experiences in this area in several countries, which show that the use of family mediation has the potential to:

- improve communication between members of the family;
- reduce conflict between parties in dispute;
- produce amicable settlements;
- provide continuity of personal contacts between parents and children;

III. Process of mediation

States should ensure that there are appropriate mechanisms to enable the process of mediation to be conducted according to the following principles: [...]

viii. the mediator should have a special concern for the welfare and best interests of the children, should encourage parents to focus on the needs of children and should remind parents of their prime responsibility relating to the welfare of their children and the need for them to inform and consult their children;

Council of Europe, Recommendation Rec(95)6 of the Committee of Ministers to member States on the application of the European Convention on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children. [Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680504c6e]

Preamble

Realising that a delay in the repatriation of a child may occur when neither parent is able or willing to pay for the costs of the repatriation and may result in the child being placed in care until the repatriation can take place; [...]

Agreeing on the need to resolve matters relating to the repatriation of children as soon as possible and in the best interests of the children themselves, [...]

Council of Europe, Recommendation Rec(91)9 of the Committee of Ministers to member States on emergency measures in family matters. [Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804bfa85]

Preamble

Noting that, in many cases, the courts and other competent authorities dealing with family matters do not succeed in providing rapid solutions where the interests of children and other persons in need of special protection and assistance are in serious danger;

Recognising that existing emergency measures do not always enable the courts and other competent bodies to deal satisfactorily with certain urgent cases and in particular with cases where children have been improperly removed or their welfare is in serious danger; [...]

Principle 1

Courts and other competent authorities dealing with family matters should have sufficient emergency powers and resources to protect children and other persons in need of special protection and assistance and whose interests are in serious danger.

Particular protection should be given to a child whose welfare is in serious danger owing to neglect or any other physical or mental ill-treatment or who has been or may be improperly removed from a person entitled to custody.

Principle 3

1. Simple and expeditious procedures should be available to ensure that decisions are reached very quickly. To this end, the following measures could be used:

- lodging a request by simple application;*
- allowing a court or competent authority to act on its own motion;*
- provisional measures taken without a hearing;*
- using all modern communication technology to facilitate the introduction and conduct of any proceedings, the transmission of requests and exchanges of information between courts and other competent authorities and the different parties to the proceedings;*
- allowing the court or competent authority to play an active role in conducting the case and in calling for and taking evidence;*
- preventing any party from improperly delaying emergency measures.*

2. National authorities should ensure that information on emergency measures is given to the public and to those to whom a person in need of such measures may turn for help.

3. Legal aid and advice should be provided rapidly when required.

4. Courts and other competent authorities should have the power to grant decisions which are immediately enforceable.

5. Courts and other competent authorities should be given sufficient powers to ensure that their decisions are rapidly enforced.

Council of Europe, Recommendation Rec(84)4 of the Committee of Ministers to member States on parental responsibilities. [Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804de2e4]

Principle 2

Any decision of the competent authority concerning the attribution of parental responsibilities or the way in which these responsibilities are exercised should be based primarily on the interests of the child. However, the equality between parents should also be respected and no discrimination should be made, in particular on grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Principle 3

When the competent authority is required to take a decision relating to the attribution or exercise of parental responsibilities and affecting the essential interests of the children, the latter should be consulted if their degree of maturity with regard to the decision so permits.

Principle 5

Parental responsibilities for a child of their marriage should belong jointly to both parents.

Principle 6

In the case of a dissolution of the marriage or of a separation of the parents, the competent authority requested to intervene should rule on the exercise of parental responsibilities. It should accordingly take any appropriate measures, for example by dividing the exercise of the responsibilities between the two parents or, where the parents consent, by providing that the responsibilities should be exercised jointly. In taking its decision, the authority should take account of any agreement concluded between the parents provided it is not contrary to the interests of the children.

Principle 7

- 1. Where the child is born out of wedlock and a legal filiation link is established with regard to one parent only, the parental responsibilities should belong to that parent.*
- 2. Where the child is born out of wedlock and a legal filiation link is established with regard to both parents, national law may provide that the parental responsibilities should be exercised:*
 - a. subject to the provisions of Principle 8:*
 - i. by the mother alone;*
 - ii. by the father alone, when a decision has been taken by the competent authority or when an agreement has been concluded between the two parents;*
 - b. according to the division between the two parents decided by the competent authority;*
 - c. jointly by both parents if they live together or if an agreement has been concluded between them.*

Principle 8

In all cases both parents should be under a duty to maintain the child. The parent with whom the child does not live should have at least the possibility of maintaining personal relationships with the child unless such relationships would be seriously harmful to the interests of the child.

Principle 10

- 1. Where parental responsibilities are exercised jointly by both parents, any decision affecting the interests of the child should be taken by the agreement of both.*
- 2. Where there is a disagreement and the matter is referred to the competent authority by one of the parents, this authority should, insofar as the interests of the child so require, try to reconcile the parents, and, if this fails, take the appropriate decision.*
- 3. With regard to third parties, the agreement of both parents should be presumed except in cases where national law, having regard to the importance of the interests at stake, requires an express agreement.*

Principle 11

Each parent should normally be informed of the exercise of the responsibilities which have not been given to him, to the extent desired by him and, in any event, when the essential interests of the child are affected.

Council of Europe, Resolution Res(78)37 of the Committee of Ministers on equality of spouses in civil law. [Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804e8e9e]

[The Committee of Ministers recommends the governments of member states]:

18. to take all necessary steps to grant both spouses equal rights and obligations in respect of the children of the marriage and children adopted by them in particular in the following matters:

- i. the use, administration, receipt of profits, disposal of the property or income of the child;
- ii. the legal representation of the child;
- iii. decisions concerning the personal life of the child, in particular matters relating to education, religion, health, travel, consent to marriage, adoption, choice of the first name or first names of the child, access and other rights and obligations concerning the child itself;
- iv. the contribution of spouses towards the maintenance of their children according to the means of each spouse;

19. to take all necessary steps to ensure that, in the case of separation and after the dissolution of the marriage, the rights and obligations granted to spouses or former spouses concerning their common children, shall be given without any discrimination based on the sex of the parents;

b. Council of Europe Parliamentary Assembly Resolutions

Council of Europe, Parliamentary Assembly Resolution 2207 (2018) on Gender equality and child maintenance. [Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=24534&lang=EN&search=YWx0ZXJuYXRpdmUgY2FyZSBjaGlzZHJlbncjYXRIZ29yeV9zdHJfZW46IkFkb3B0ZWQgdGV4dCI=>]

7. In the light of these considerations, the Assembly calls on Council of Europe member and observer States and States whose parliaments enjoy observer status with the Assembly to:

7.2. as regards non-compliance with child-maintenance payments:

7.2.1. in the best interests of the child, introduce effective substitute maintenance mechanisms, based on advance payment by the State in case of non-compliance or partial or irregular compliance with maintenance payment obligations, whether this lack of compliance is intentional or not. Advance payment should be made upon request and be granted within a reasonable time frame with no or minimal fees for the recipient;

7.2.2. ensure adequate and sustainable funding for substitute maintenance payment and adequate investment in the relevant structures for case management, including for the recoupment from the debtor of the sums advanced by the State;

7.2.3. introduce effective sanctions for child-maintenance avoidance (intentional noncompliance or partial or irregular compliance with payments), including criminal sanctions when it amounts to a form of psychological violence, in line with the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, "Istanbul Convention");

7.2.4. prevent child-maintenance avoidance by working closely with tax and financial investigative departments;

7.2.5. promote a "culture of paying", by conducting information and awareness-raising activities on the harmful consequences of failed, partial or delayed payments on children and parents with day-to-day care responsibilities, also with a view to preventing debt accumulation;

7.2.6. promote mediation between separated parents as a means of overcoming conflicts over child-maintenance payments;

7.5. *strengthen international co-operation in the area of child maintenance with a view to facilitating the recovery of payments and exchanging relevant good practices.*

Council of Europe, Parliamentary Assembly Resolution 2194 (2017) on Cross-border parental responsibility conflicts. [Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=24272&lang=EN&search=YWx0ZXJuYXRpdmUgY2FyZSBjaGlsZHJlbnxiYXRIZ29yeV9zdHJfZW46lkFkb3B0ZWQgdGV4dCI=>]

2. *The international and European legal instruments which govern these situations are based on the concept of a fair balance being struck between competing interests (those of the child, of the two parents and of public order), while guaranteeing the primacy of the child's best interests. The objectives of preventing child abduction and the immediate return of abducted children have been judged by the European Court of Human Rights to correspond to a specific conception of "the best interests of the child" in this context.*

5. *The Parliamentary Assembly thus recommends that Council of Europe member States make the enforcement of a parental responsibility decision abroad simpler, speedier and less costly, by:*

5.1. *helping to widen the geographical scope of the key legal instruments and ensure their proper application in all countries bound by them, including their own (for example, by making information widely available to the general public and professionals concerned);*

5.2. *streamlining the processing of cases of child abduction or retention in the context of crossborder parental responsibility conflicts, including by limiting the number of appeals possible and by doing away with onerous requirements of exequatur for the enforcement of decisions taken;*

5.3. *finding a way to better deal with cases in which the primary or sole carer abducts or does not return the child or children concerned, by giving particular weight to their views in such cases;*

5.4. *seeking to guarantee that the views of the child or children concerned are heard and taken into account in an adequate manner in all cases;*

5.5. *ensuring the proper specialisation of professionals concerned and good co-operation between the central authority and other national authorities;*

5.6. *promoting properly (and internationally) recognised mediation services and agreements in crossborder parental responsibility conflicts.*

Council of Europe, Parliamentary Assembly Resolution 2079 (2015) on Equality and shared parental responsibility: the role of fathers. [Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=22220&lang=EN&search=cGFyZW50YWwgc2VwYXJhdGlvbXxiYXRIZ29yeV9zdHJfZW46lkFkb3B0ZWQgdGV4dCI=>]

2. *Shared parental responsibility implies that parents have rights, duties and responsibilities with regard to their children. The fact is, however, that fathers are sometimes faced with laws, practices and prejudices which can cause them to be deprived of sustained relationships with their children. In its Resolution 1921 (2013) on gender equality, reconciliation of private and working life and co-responsibility, the Assembly called on the authorities of the member States to respect the right of fathers to enjoy shared responsibility by ensuring that family law foresees, in case of separation or divorce, the possibility of joint custody of children, in their best interests, based on mutual agreement between the parents.*

3. *The Assembly wishes to point out that respect for family life is a fundamental right enshrined in Article 8 of the European Convention on Human Rights (ETS No. 5) and numerous international legal instruments. For a parent and child, being together is an essential part of family life. Parent-child separation has irremediable effects on their relationship. Such separation should only be ordered by a court and only in exceptional circumstances entailing grave risks to the interest of the child.*

5. In the light of these considerations, the Assembly calls on the member States to: [...]

5.5. introduce into their laws the principle of shared residence following a separation, limiting any exceptions to cases of child abuse or neglect, or domestic violence, with the amount of time for which the child lives with each parent being adjusted according to the child's needs and interests;

5.6. respect the right of children to be heard in all matters that affect them when they are deemed to have a sufficient understanding of the matters in question;

5.7. take shared residence arrangements into account when awarding social benefits;

5.8. take all necessary steps to ensure that decisions relating to children's residence and to access rights are fully enforced, particularly by following up complaints with respect to failure to hand over a child;

5.9. encourage and, where appropriate, develop mediation within the framework of judicial proceedings in family cases involving children, in particular by instituting a court-ordered mandatory information session, in order to make the parents aware that shared residence may be an appropriate option in the best interests of the child, and to work towards such a solution, by ensuring that mediators receive appropriate training and by encouraging multidisciplinary co-operation based on the "Cochem model";

5.10. ensure that the professionals who come into contact with children during court proceedings in family cases receive the necessary interdisciplinary training on the specific rights and needs of children of different age groups, as well as on proceedings that are adapted to them, in accordance with the Council of Europe Guidelines on child-friendly justice;

Council of Europe, Parliamentary Assembly Resolution 1714 (2010) on Children who witness domestic violence. [Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=17826&lang=EN&search=YWx0ZXJuYXRpdmUgY2FyZSBjaGlsZHJlbnxiYXRlZ29yeV9zdHJfZW46lkFkb3B0ZWQgdGV4dCI=>]

6. The Assembly further invites Council of Europe member states to:

6.4. strengthen the special consideration in legal and administrative procedures for children having witnessed domestic violence, for example by:

6.4.2. providing the children concerned with physical protection during relevant proceedings and through custody and contact rights following situations of domestic violence;

6.4.5. taking into account the best interest of the child who has witnessed domestic violence when ruling on parental authority and contact of the author of domestic violence with the child concerned;

Council of Europe, Parliamentary Assembly Resolution 1291 (2002) on International abduction of children by one of the parents. [Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=17022&lang=EN&search=YWx0ZXJuYXRpdmUgY2FyZSBjaGlsZHJlbnxiYXRlZ29yeV9zdHJfZW46lkFkb3B0ZWQgdGV4dCI=>]

2. It points out that, under the United Nations Convention on the Rights of the Child all children have the right to maintain regular personal relations with both parents; abduction by a parent is a denial of the child's rights; abducted children are deprived of one of their parents and their wider family; they are often cut off from their mother tongue and part of their cultural background; parents are helpless when faced with complex formalities, different procedures and the cost of action on their part, and so forth. Even if children are returned, they are marked by the abduction for the rest of their lives.

5. It urges each Council of Europe member state to:

make abduction by a parent of a child under 16 years of age a crime and punish it as such;

provide appropriate training for all people working in this field (police, lawyers, judges) and in particular for specialists investigating the disappearance of children;

promote family mediation as a means of preventing parental child abduction and helping to resolve family conflicts;

at national level, give only a small number of specialised courts, and perhaps only one, jurisdiction to deal with cases of parental child abduction in order to ensure that such cases are concentrated and dealt with more rapidly by well-informed judges and that decisions are consistent;

7. Within the framework of their bilateral relations and also with the non-Council of Europe countries concerned, member states should set up mediation boards or other similar bodies to deal with all pending cases of conflict involving parental child abduction as rapidly as possible and propose solutions in the objective interests of the children concerned.

5. International and European judgments

Issues relating to the best interests of the child in parental separation fall under or are grounded in Article 8 ECHR.

[Chbihi Loudoudi and Others v. Belgium](#), No. 52265/10, 16 December 2014, para. 131. [Text only available in French]

131. *Il ressort au surplus de la jurisprudence de la Cour que, lorsque des mineurs d'âge sont concernés, l'intérêt « supérieur » de l'enfant doit constituer la principale considération des autorités nationales dans l'évaluation de la proportionnalité aux fins de la Convention (paragraphe 92, ci-dessus ; voir, parmi d'autres, Nunez, précité, § 84, Kanagaratnam c. Belgique, no 15297/09, § 67, 13 décembre 2011, et Popov c. France, nos 39472/07 et 39474/07, § 109, 19 janvier 2012 et Jeunesse, précité, § 109).*

[Hokkanen v. Finland](#), No. 19823/92, 23 September 1994, para. 58.

58. *The Court recalls that the obligation of the national authorities to take measures to facilitate reunion is not absolute, since the reunion of a parent with a child who has lived for some time with other persons may not be able to take place immediately and may require preparatory measures being taken to this effect. The nature and extent of such preparation will depend on the circumstances of each case, but the understanding and co-operation of all concerned will always be an important ingredient. Whilst national authorities must do their utmost to facilitate such co-operation, any obligation to apply coercion in this area must be limited since the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 (art. 8) of the Convention. Where contacts with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them (see the above-mentioned Olsson (no. 2) judgment, pp. 35-36, para. 90).*

[Ignaccolo-Zenide v. Romania](#), No. 31679/96, 25 January 2000, para. 94.

94. *That being so, it must be determined whether there has been a failure to respect the applicant's family life. The Court reiterates that the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities. There are in addition positive obligations inherent in an effective "respect" for family life. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys*

a certain margin of appreciation (see the Keegan v. Ireland judgment of 26 May 1994, Series A no. 290, p. 19, § 49).

As to the State's obligation to take positive measures, the Court has repeatedly held that Article 8 includes a parent's right to the taking of measures with a view to his or her being reunited with his or her child and an obligation on the national authorities to take such action (see, for example, the following judgments: Eriksson v. Sweden, 22 June 1989, Series A no. 156, pp. 26-27, § 71; Margareta and Roger Andersson v. Sweden, 25 February 1992, Series A no. 226-A, p. 30, § 91; Olsson v. Sweden (no. 2), 27 November 1992, Series A no. 250, pp. 35-36, § 90; and Hokkanen v. Finland, 23 September 1994, Series A no. 299-A, p. 20, § 55).

However, the national authorities' obligation to take measures to facilitate reunion is not absolute, since the reunion of a parent with children who have lived for some time with the other parent may not be able to take place immediately and may require preparatory measures to be taken. The nature and extent of such preparation will depend on the circumstances of each case, but the understanding and cooperation of all concerned are always an important ingredient. Whilst national authorities must do their utmost to facilitate such cooperation, any obligation to apply coercion in this area must be limited since the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention. Where contacts with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them (see the Hokkanen judgment cited above, p. 22, § 58).

[Keegan v. Ireland](#), No. 16969/90, 26 May 1994, para. 49.

49. The Court recalls that the essential object of Article 8 (art. 8) is to protect the individual against arbitrary action by the public authorities. There may in addition be positive obligations inherent in an effective "respect" for family life. However, the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are, none the less, similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see, for example, the Powell and Rayner v. the United Kingdom judgment of 21 February 1990, Series A no. 172, p. 18, para. 41, and the above-mentioned Johnston and Others judgment, p. 25, para. 55).

[Babiarz v. Poland](#), No. 1955/10, 10 January 2017, para. 46-47.

46. The Court observes that the applicant's complaint about the alleged breach of his rights guaranteed by Articles 8 and 12 of the Convention is based on the same fact, namely the courts' refusal to grant him a divorce (see Ivanov and Petrova v. Bulgaria, no. 15001/04, §§ 55 et seq., 14 June 2011).

47. In so far as the applicant relies on Article 8 of the Convention, the Court reiterates that while the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in an effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see Mikulić v. Croatia, no. 53176/99, § 57, ECHR 2002-I). However, the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are nonetheless similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests (see S.H. and Others v. Austria [GC], no. 57813/00, § 87, ECHR 2011-V); and in both contexts the State enjoys a certain margin of appreciation (see, among other authorities, Mizzi v. Malta, no. 26111/02, § 106, ECHR 2006-I (extracts) and Jeunesse v. the Netherlands [GC], no. 12738/10, § 106, ECHR 2014). In the area of framing their divorce laws and implementing them in concrete cases, the Contracting Parties enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention and to reconcile the competing personal interests at stake (compare and contrast, Johnston and Others, cited above, § 55).

[Fröhlich v. Germany](#), No. 16112/15, 26 July 2018, para. 41.

41. *The Court also reiterates that the member States' margin of appreciation is wide in respect of the determination of a child's legal status, but is more limited regarding questions of contact and information rights (A.I. v. Poland, no. 28609/08, § 68, 18 February 2014; L.D. and P.K. v. Bulgaria, nos. 7949/11 and 45522/13, 59, 8 December 2016). There will, however, usually be a wide margin of appreciation if the State is required to strike a balance between competing private and public interests or Convention rights (S.H. and Others v. Austria [GC], no. 57813/00, § 94, 3 November 2011; Mandet v. France, no. 30955/12, § 52, 14 January 2016 with further references).*

[Sahin v. Germany](#), No. 30943/96, 8 July 2003, para. 65.

65. *The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. Thus, the Court has recognised that the authorities enjoy a wide margin of appreciation when deciding on custody matters. However, a stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure the effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed (see Elsholz v. Germany [GC], no. 25735/94, § 49, ECHR 2000-VIII, and Kutzner, cited above, § 67).*

[Sommerfeld v. Germany](#), No. 31871/96, 8 July 2003, para. 63.

63. *The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. Thus, the Court has recognised that the authorities enjoy a wide margin of appreciation, in particular when deciding on custody. However, a stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed (see Elsholz v. Germany [GC], no. 25735/94, § 49, ECHR 2000-VIII; and Kutzner, cited above, § 67).*

[Elsholz v. Germany](#), No. 25735/94, 13 July 2000, para. 49-50.

49. *The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. Thus, the Court recognises that the authorities enjoy a wide margin of appreciation, in particular when assessing the necessity of taking a child into care. However, a stricter scrutiny is called for in respect of any further limitations, such as restrictions placed by those authorities on parental rights of access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between the parents and a young child would be effectively curtailed (see the Johansen judgment cited above, pp. 1003-04, § 64).*

50. *The Court further recalls that a fair balance must be struck between the interests of the child and those of the parent (see, for example, the Olsson v. Sweden judgment (no. 2) of 27 November 1992, Series A no. 250, pp. 35-36, § 90) and that in doing so particular importance must be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parent. In particular, the parent cannot be entitled under Article 8 of the Convention to have such measures taken as would harm the child's health and development (see the Johansen judgment cited above, pp. 1008-09, § 78).*

[Strand Lobben and others v. Norway](#), No. 37283/13, 10 September 2019, para. 202-213.

202. *The first paragraph of Article 8 of the Convention guarantees to everyone the right to respect for his or her family life. As is well established in the Court's case-law, the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by this provision. Any such interference constitutes a violation of this Article unless it is "in accordance with the law", pursues an aim or aims that is or are legitimate under its second paragraph and can be regarded as "necessary in a democratic society" (see, among other authorities, K. and T. v. Finland [GC], no. 25702/94, § 151, ECHR 2001-VII; and Johansen, cited above, § 52).*

203. *In determining whether the latter condition was fulfilled, the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify that measure were relevant and sufficient for the purposes of paragraph 2 of Article 8 (see, among many other authorities, Paradiso and Campanelli, cited above, § 179). The notion of necessity further implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued, regard being had to the fair balance which has to be struck between the relevant competing interests (ibid., § 181).*

204. *In so far as the family life of a child is concerned, the Court reiterates that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance (see, among other authorities, Neulinger and Shuruk v. Switzerland [GC], no. 41615/07, § 135, ECHR 2010). Indeed, the Court has emphasised that in cases involving the care of children and contact restrictions, the child's interests must come before all other considerations (see Jovanovic, cited above, § 77, and Gnahoré v. France, no. 40031/98, § 59, ECHR 2000-IX).*

205. *At the same time, it should be noted that regard for family unity and for family reunification in the event of separation are inherent considerations in the right to respect for family life under Article 8. Accordingly, in the case of imposition of public care restricting family life, a positive duty lies on the authorities to take measures to facilitate family reunification as soon as reasonably feasible (K. and T. v. Finland, cited above, § 178).*

206. *In instances where the respective interests of a child and those of the parents come into conflict, Article 8 requires that the domestic authorities should strike a fair balance between those interests and that, in the balancing process, particular importance should be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parents (see, for instance, Sommerfeld v. Germany [GC], no. 31871/96, § 64, ECHR 2003-VIII (extracts)), and the references therein).*

207. *Generally, the best interests of the child dictate, on the one hand, that the child's ties with its family must be maintained, except in cases where the family has proved particularly unfit, since severing those ties means cutting a child off from its roots. It follows that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family (see Gnahoré, cited above, § 59). On the other hand, it is clearly also in the child's interest to ensure its development in a sound environment, and a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see, among many other authorities, Neulinger and Shuruk, cited above, § 136; Elsholz v. Germany [GC], no. 25735/94, § 50, ECHR 2000-VIII; and Maršálek v. the Czech Republic, no. 8153/04, § 71, 4 April 2006). An important international consensus exists to the effect that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child (see Article 9 § 1 of the United Nations Convention on the Rights of the Child, recited in paragraph 134 above). In addition, it is incumbent on the Contracting States to put in place practical and effective procedural safeguards for the protection of the best interests of the child and to ensure their implementation (see the United Nations Committee on the Rights of the Child General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, paragraphs 85 and 87, quoted at paragraph 136 above).*

208. Another guiding principle is that a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child (see, for instance, *Olsson v. Sweden* (no. 1), 24 March 1988, § 81, Series A no. 130). The above-mentioned positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the competent authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child (see, for example, *K. and T. v. Finland*, cited above, § 178). In this type of case the adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences for relations between the child and the parent with whom it does not live (see, *inter alia*, *S.H. v. Italy*, no. 52557/14, § 42, 13 October 2015). Thus, where the authorities are responsible for a situation of family breakdown because they have failed in their above-mentioned obligation, they may not base a decision to authorise adoption on the grounds of the absence of bonds between the parents and the child (see *Pontes v. Portugal*, no. 19554/09, §§ 92 and 99, 10 April 2012). Furthermore, the ties between members of a family and the prospects of their successful reunification will perforce be weakened if impediments are placed in the way of their having easy and regular access to each other (see *Scozzari and Giunta*, cited above, § 174; and *Olsson* (No. 1), cited above, § 81). However, when a considerable period of time has passed since the child was originally taken into public care, the interest of a child not to have his or her *de facto* family situation changed again may override the interests of the parents to have their family reunited (see *K. and T. v. Finland*, cited above, § 155).

209. As regards replacing a foster home arrangement with a more far-reaching measure such as deprivation of parental responsibilities and authorisation of adoption, with the consequence that the applicants' legal ties with the child are definitively severed, it is to be reiterated that "such measures should only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests" (see, for example, *Johansen*, cited above, § 78, and *Aune*, cited above, § 66). It is in the very nature of adoption that no real prospects for rehabilitation or family reunification exist and that it is instead in the child's best interests that he or she be placed permanently in a new family (see *R. and H. v. the United Kingdom*, no. 35348/06, § 88, 31 May 2011).

210. In determining whether the reasons for the impugned measures were relevant and sufficient for the purpose of paragraph 2 of Article 8 of the Convention, the Court will have regard to the fact that perceptions as to the appropriateness of intervention by public authorities in the care of children vary from one Contracting State to another, depending on such factors as traditions relating to the role of the family and to State intervention in family affairs and the availability of resources for public measures in this particular area. However, consideration of what is in the best interests of the child is in every case of crucial importance. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned, often at the very stage when care measures are being envisaged or immediately after their implementation. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities for the regulation of the care of children and the rights of parents whose children have been taken into public care, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see, for example, *K. and T. v. Finland*, cited above, § 154; and *Johansen*, cited above, § 64).

211. The margin of appreciation to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake, such as, on the one hand, the importance of protecting a child in a situation which is assessed as seriously threatening his or her health or development and, on the other hand, the aim to reunite the family as soon as circumstances permit. The Court thus recognises that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care (see, for example, *K. and T. v. Finland*, cited above, § 155; and *Johansen*, cited above, § 64). However, this margin is not unfettered. For example, the Court has in certain instances attached weight to whether the authorities, before taking a child into public care, had first attempted to take less drastic measures, such as supportive or preventive ones, and whether these had proved unsuccessful (see, for example, *Olsson* (no. 1), cited above, §§ 72-74; *R.M.S. v. Spain*, no. 28775/12, § 86, 18 June 2013, § 86; and *Kutzner v. Germany*, no. 46544/99, § 75, ECHR 2002-I). A stricter scrutiny is called for in respect of any further limitations, such as

restrictions placed by the authorities on parental rights of access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between the parents and a young child are effectively curtailed (see *K. and T. v. Finland*, cited above, *ibid.*, and *Johansen*, cited above, *ibid.*).

212. In cases relating to public-care measures, the Court will further have regard to the authorities' decision-making process, to determine whether it has been conducted such as to secure that the views and interests of the natural parents are made known to and duly taken into account by the authorities and that they are able to exercise in due time any remedies available to them (see, for instance, *W. v. the United Kingdom*, 8 July 1987, § 63, Series A no. 121, and *Elsholz*, cited above, § 52). What has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests and have been able fully to present their case (see, for example, *W. v. the United Kingdom*, cited above, § 64; *T.P. and K.M. v. the United Kingdom [GC]*, no. 28945/95, § 72, ECHR 2001-V (extracts); *Neulinger and Shuruk*, cited above, § 139; and *Y.C. v. the United Kingdom*, no. 4547/10, § 138, 13 March 2012). From the foregoing considerations it follows that natural parents' exercise of judicial remedies with a view to obtaining family reunification with their child cannot as such be held against them. In addition, in cases of this kind there is always the danger that any procedural delay will result in the *de facto* determination of the issue submitted to the court before it has held its hearing. Equally, effective respect for family life requires that future relations between parent and child be determined solely in the light of all relevant considerations and not by the mere effluxion of time (see *W. v. the United Kingdom*, cited above, § 65).

213. Whether the decision-making process sufficiently protected a parent's interests depends on the particular circumstances of each case (see, for example, *Sommerfeld*, cited above, § 68). With a view to its examination of the present instance, the Court observes that in the aforementioned case it was called upon to examine the issue of ordering a psychological report on the possibilities of establishing contact between the child and the applicant. It observed that as a general rule it was for the national courts to assess the evidence before them, including the means to ascertain the relevant facts (see *Vidal v. Belgium*, 22 April 1992, § 33, Series A no. 235-B). It would be going too far to say that domestic courts are always required to involve a psychological expert on the issue of awarding contact to a parent not having custody, but this issue depends on the specific circumstances of each case, having due regard to the age and maturity of the child concerned (see *Sommerfeld*, cited above, § 71).

[Neulinger and Shuruk v. Switzerland](#), No. 41615/07, 6 July 2010, para. 134-136.

134. In this area the decisive issue is whether a fair balance between the competing interests at stake – those of the child, of the two parents, and of public order – has been struck, within the margin of appreciation afforded to States in such matters (see *Maumousseau and Washington*, cited above, § 62), bearing in mind, however, that the child's best interests must be the primary consideration (see, to that effect, *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000-IX), as is indeed apparent from the Preamble to the Hague Convention, which provides that "the interests of children are of paramount importance in matters relating to their custody". The child's best interests may, depending on their nature and seriousness, override those of the parents (see *Sahin v. Germany [GC]*, no. 30943/96, § 66, ECHR 2003-VIII). The parents' interests, especially in having regular contact with their child, nevertheless remain a factor when balancing the various interests at stake (*ibid.*; see also *Haase v. Germany*, no. 11057/02, § 89, ECHR 2004-III, and *Kutzner v. Germany*, no. 46544/99, § 58, ECHR 2002-I, and the numerous authorities cited therein).

135. The Court notes that there is currently a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (see the numerous references in paragraphs 49-56 above, and in particular Article 24 § 2 of the European Union's Charter of Fundamental Rights). As indicated, for example, in the Charter, "[e]very child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests".

136. *The child's interest comprises two limbs. On the one hand, it dictates that the child's ties with its family must be maintained, except in cases where the family has proved particularly unfit. It follows that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family (see Gnahoré, cited above, § 59). On the other hand, it is clearly also in the child's interest to ensure its development in a sound environment, and a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see, among many other authorities, Elsholz v. Germany [GC], no. 25735/94, § 50, ECHR 2000-VIII, and Maršálek v. the Czech Republic, no. 8153/04, § 71, 4 April 2006).*

[X. v. Latvia](#), No. 27853/09, 26 November 2013, para. 96-97.

96. *The Court reiterates that there is a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (see paragraphs 37-39 above).*

97. *The same philosophy is inherent in the Hague Convention, which associates this interest with restoration of the status quo by means of a decision ordering the child's immediate return to his or her country of habitual residence in the event of unlawful abduction, while taking account of the fact that non-return may sometimes prove justified for objective reasons that correspond to the child's interests, thus explaining the existence of exceptions, specifically in the event of 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 (Article 13, first paragraph, (b)). The Court further notes that the European Union subscribes to the same philosophy, in the framework of a system involving only European Union member States and based on a principle of mutual trust. The Brussels II bis Regulation, whose rules on child abduction supplement those already laid down in the Hague Convention, likewise refers in its Preamble to the best interests of the child (see paragraph 42 above), while Article 24 § 2 of the Charter of Fundamental Rights emphasises that in all actions relating to children the child's best interests must be a primary consideration (see paragraph 41 above).*

[Jansen v. Norway](#), No. 2822/16, 6 September 2018, para. 88-93, 104.

88. *The Court reiterates that, in determining whether an impugned measure was "necessary in a democratic society", it will consider whether, in the light of the case as a whole, the reasons adduced to justify that measure were relevant and sufficient for the purposes of Article 8 § 2 (see, among many other authorities, Paradiso and Campanelli v. Italy [GC], no. 25358/12, § 179, 24 January 2017). The essential object of Article 8 is to protect the individual against arbitrary action by the public authorities (see, for example, Wagner and J.M.W.L. v. Luxembourg, no. 76240/01, § 118, 28 June 2007).*

89. *In accordance with the Court's established case-law, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, is proportionate to the legitimate aim pursued, regard being had to the fair balance which has to be struck between the relevant competing interests. In determining whether an interference was "necessary in a democratic society", the Court takes into account that a margin of appreciation is left to the national authorities, whose decision remains subject to review by the Court for conformity with the requirements of the Convention (see Paradiso and Campanelli, cited above, § 180).*

90. *The margin of appreciation to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake, such as, on the one hand, the importance of protecting a child in a situation which is assessed as seriously threatening his or her health or development and, on the other hand, the aim to reunite the family as soon as circumstances permit. When a considerable period of time has passed since the child was originally taken into public care, the interest of a child not to have his or her de facto family situation changed again may override the interests of the parents to have their family reunited. The Court thus recognises that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care. However, a stricter scrutiny is called for in respect of any further limitations, such as restrictions placed by the authorities on parental rights of access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their*

family life. Such further limitations entail the danger that the family relations between the parents and a young child are effectively curtailed (see *K. and T. v. Finland* [GC], no. 25702/94, § 155, ECHR 2001-VII).

91. Where children are involved, their best interests must be taken into account. The Court reiterates that there is a broad consensus, including in international law, in support of the idea that in all decisions concerning children, their best interests are of paramount importance (see, among other authorities, *Neulinger and Shuruk*, cited above, § 135). Indeed, the Court has emphasised that in cases involving the care of children and contact restrictions, the child's interests must come before all other considerations (see *Jovanovic v. Sweden*, no. 10592/12, § 77, 22 October 2015, and *Gnahoré*, no. 40031/98, § 59, ECHR 2000 IX).

92. On the one hand, the best interests of the child dictate that the child's ties with his or her family must be maintained, except in cases where the family has proved particularly unfit. On the other hand, it is clearly also in the child's interests to ensure his or her development in a sound environment, and a parent cannot be entitled under Article 8 of the Convention to have such measures taken as would harm the child's health and development (see, among many other authorities, *Neulinger and Shuruk*, cited above, § 136).

93. According to the Court's case-law, measures that totally deprive an applicant of his or her family life with the child and are inconsistent with the aim of reuniting them should "only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests" (see, for instance, *Johansen*, cited above, § 78, and *Aune v. Norway*, no. 52502/07, § 66, 28 October 2010). It should also be reiterated that in *Gnahoré v. France*, cited above, § 59; see also *Görgülü v. Germany*, no. 74969/01, § 48, 26 February 2004), the Court held:

"... it is clear that it is equally in the child's interest for its ties with its family to be maintained, except in cases where the family has proved particularly unfit, since severing those ties means cutting a child off from its roots. It follows that the interest of the child dictates that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate, to 'rebuild' the family."

[...]

104. In conclusion, although the Court accepts that the decisions of the national authorities were made in what they considered to be the best interests of the child and bears in mind that perceptions as to the appropriateness of intervention by public authorities in the care of children vary from one Contracting State to another (see paragraph 95 above), the Court holds that in the instant case, the potential negative long-term consequences of losing contact with her mother for A and the positive duty to take measures to facilitate family reunification as soon as reasonably feasible were not sufficiently weighed in the balancing exercise.

[Petrov and X v. Russia](#), No. 23608/16, 23 October 2018, para. 98-102.

98. In determining whether the refusal of custody or access was justified under Article 8 § 2 of the Convention, the Court has to consider whether, in the light of the case as a whole, the reasons adduced to justify this measure were relevant and sufficient. Undoubtedly, consideration of what lies in the best interests of the child is of crucial importance in every case of this kind. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned. It follows from these considerations that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities regarding child custody and access issues, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their (see *Sahin v. Germany* [GC], no. 30943/96, § 64, ECHR 2003-VIII; *Sommerfeld v. Germany* [GC], no. 31871/96, § 62, ECHR 2003-VIII (extracts); *C. v. Finland*, no. 18249/02, § 52, 9 May 2006; and *Z.J. v. Lithuania*, no. 60092/12, § 96, 29 April 2014). To that end the Court must ascertain whether the domestic courts conducted an in-depth examination of the entire family situation and of a whole series of factors, in particular of a factual, emotional, psychological, material and medical nature, and made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what the best solution would be for the child (see

Neulinger and Shuruk v. Switzerland [GC], no. 41615/07, § 139, ECHR 2010, and *Antonyuk v. Russia*, cited above, § 134).

99. The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. Thus, the Court has recognised that the authorities enjoy a wide margin of appreciation, in particular when deciding on custody. However, stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed (see *Sahin*, cited above, § 65, and *Sommerfeld*, cited above, § 63).

100. Article 8 requires that the domestic authorities should strike a fair balance between the interests of the child and those of the parents and that, in the balancing process, particular importance should be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents. In particular, a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (see *Sahin*, cited above, § 66, and *Sommerfeld*, cited above, § 64).

101. The Court cannot satisfactorily assess whether the reasons advanced by the domestic courts were "sufficient" for the purposes of Article 8 § 2 without at the same time determining whether the decision-making process, seen as a whole, was fair (see *Sahin*, cited above, § 68, and *Sommerfeld*, cited above, § 66). While Article 8 of the Convention contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to ensure due respect for the interests safeguarded by Article 8. The Court must therefore determine whether, having regard to the circumstances of the case and notably the importance of the decisions to be taken, the applicant has been involved in the decision-making process to a degree sufficient to provide him with the requisite protection of his interests (see *Z.J. v. Lithuania*, cited above, § 100, with further references).

102. Lastly, the Court considers that in conducting its review in the context of Article 8 it may also have regard to the length of the local authority's decision-making process and of any related judicial proceedings. In cases of this kind there is always the danger that any procedural delay will result in the *de facto* determination of the issue submitted to the court before it has held its hearing. And an effective respect for family life requires that future relations between parent and child be determined solely in the light of all relevant considerations and not by the mere passage of time (see *W. v. the United Kingdom*, 8 July 1987, § 65, Series A no. 121; *Sylvester v. Austria*, nos. 36812/97 and 40104/98, § 69, 24 April 2003; and *Z.J. v. Lithuania*, cited above, § 100).

[Ribić v. Croatia](#), No. 27148/12, 2 April 2015, para. 92.

92. Given that an effective respect for family life requires that future relations between parent and child be determined solely in the light of all the relevant considerations and not by the mere passage of time (see *Diamante and Pelliccioni v. San Marino*, no. 32250/08, § 177, 27 September 2011), the ineffective, and in particular delayed, conduct of custody and contact proceedings may give rise to a breach of positive obligations under Article 8 of the Convention (see *Eberhard and M. v. Slovenia*, no. 8673/05 and 9733/05, § 127, 1 December 2009, and *S.I. v. Slovenia*, no. 45082/05, § 69, 13 October 2011) as procedural delay may lead to a *de facto* determination of the matter at issue (see *H. v. the United Kingdom*, 8 July 1987, § 89, Series A no. 120). Therefore, in cases concerning a person's relationship with his or her child there is a duty to exercise exceptional diligence in view of the risk that the passage of time may result in a *de facto* determination of the matter. This duty, which is decisive in assessing whether a case has been heard within a reasonable time as required by Article 6 § 1 of the Convention, also forms part of the procedural requirements implicit in Article 8 (see, for example, *Süß v. Germany*, no. 40324/98, § 100, 10 November 2005, and *Strömblad v. Sweden*, no. 3684/07, § 80, 5 April 2012).

[Raw and others v. France](#), No. 10131/11, 7 March 2013, para. 78-83. [Text only available in French].

78. Cela étant, la Cour rappelle que, si l'article 8 de la Convention tend pour l'essentiel à prémunir l'individu contre des ingérences arbitraires des pouvoirs publics, il engendre aussi des obligations positives inhérentes à un « respect » effectif de la vie familiale. Dans un cas comme dans l'autre, il faut avoir égard au juste équilibre à ménager entre les intérêts concurrents de l'individu et de la société dans son ensemble ; de même, dans les deux hypothèses, l'Etat jouit d'une certaine marge d'appréciation (voir, parmi d'autres, Ignaccolo-Zenide c. Roumanie, no 31679/96, § 94, CEDH 2000-I).

79. S'agissant de l'obligation pour l'Etat d'arrêter des mesures positives, l'article 8 implique non seulement le droit d'un parent à des mesures propres à le réunir à son enfant (ibidem) mais aussi le droit de l'enfant à des mesures propres à le réunir à son parent (voir, par exemple, Iglesias Gil et A.U.I. c. Espagne, no 56673/00, § 56, CEDH 2003-V).

80. Cette obligation des autorités nationales n'est toutefois pas absolue, car il arrive que la réunion d'un parent à ses enfants vivant depuis un certain temps avec l'autre parent ne puisse avoir lieu immédiatement et requière des préparatifs. La nature et l'étendue de ceux-ci dépendent des circonstances de chaque espèce, mais la compréhension et la coopération de l'ensemble des personnes concernées en constituent toujours un facteur important. Les autorités nationales doivent s'efforcer de faciliter pareille collaboration. Une obligation pour elles de recourir à la coercition en la matière ne saurait être que limitée : il leur faut tenir compte des intérêts et des droits et libertés de ces mêmes personnes, et notamment des intérêts supérieurs de l'enfant et des droits que lui reconnaît l'article 8 de la Convention. Dans l'hypothèse où des contacts avec les parents risquent de menacer ces intérêts ou de porter atteinte à ces droits, il revient aux autorités nationales de veiller à un juste équilibre (voir, parmi d'autres, Ignaccolo-Zenide, précité, § 94).

Il y a lieu de plus de garder à l'esprit dans ce contexte que l'intérêt supérieur de l'enfant s'oppose en règle générale à ce que des mesures coercitives soient prises à son encontre (voir notamment Ignaccolo-Zenide précité, § 106, et Maire c. Portugal, no 48206/99, § 76, CEDH 2003-VII). Il peut en outre parfois commander que l'enfant ne soit pas séparé du parent avec lequel il se trouve ou qu'il ne soit pas retourné au parent qui le réclame (voir en particulier Neulinger et Shuruk précité).

81. Selon la Cour, ces considérations valent aussi mutatis mutandis lorsqu'est en jeu le lien entre des membres d'une fratrie.

82. La Cour rappelle également que la Convention doit s'appliquer en accord avec les principes du droit international, en particulier ceux relatifs à la protection internationale des droits de l'homme. S'agissant plus précisément des obligations positives que l'article 8 de la Convention fait peser sur les Etats contractants en matière de réunion d'un parent à ses enfants, elles doivent s'interpréter à la lumière de la Convention de La Haye sur les aspects civils de l'enlèvement international d'enfants (voir, parmi d'autres, Ignaccolo-Zenide précité, § 95) et de la Convention relative aux droits de l'enfant du 20 novembre 1989 (voir, par exemple, Maire c. Portugal, no 48206/99, § 72, CEDH 2003-VII), qui mettent notamment l'accent sur le caractère primordial de l'intérêt de l'enfant (voir Neulinger et Shuruk, précité, §§ 49-56 et 137, et Karoussiotis c. Portugal, no 23205/08, § 83, CEDH 2011 (extraits)).

83. Enfin, la Cour réaffirme qu'un respect effectif de la vie familiale commande que les relations futures entre parents et enfants ne se règlent pas par le simple écoulement du temps, mais sur la base de l'ensemble des éléments pertinents ; elle peut donc aussi avoir égard, sur le terrain de l'article 8, au mode et à la durée du processus décisionnel. Ainsi a-t-elle souligné que, dans les affaires de ce type, l'adéquation des mesures prises par les autorités se juge en particulier à la rapidité de leur mise en œuvre, le passage du temps pouvant avoir des conséquences irréversibles pour les relations entre les enfants et celui des parents qui ne vit pas avec eux. La Convention de La Haye prévoit d'ailleurs un ensemble de mesures tendant à assurer le retour immédiat des enfants déplacés ou retenus illicitement dans un Etat contractant, et son article 11 précise que les autorités judiciaires ou administratives saisies doivent procéder d'urgence en vue de ce retour (voir, notamment, précités, Ignaccolo-Zenide, § 102, Maire, § 74, et Karoussiotis, §§ 84-91, et Monory c. Roumanie et Hongrie, no 71099/01, §§ 82-84, 5 avril 2005).

97. La Cour conclut que, nonobstant la marge d'appréciation dont dispose l'État défendeur en la matière, les autorités nationales n'ont pas pris en l'espèce toutes les mesures que l'on pouvait raisonnablement exiger d'elles pour faciliter l'exécution du jugement prononcé par le tribunal du district Khassanskiy le 15 septembre 2009 en faveur de la requérante. Partant, il y a eu violation de l'article 8 de la Convention.

[Malec v. Poland](#), No. 28623/12, 28 June 2016, para. 78.

78. Having regard to the facts of the case, in particular the passage of time, and the criteria laid down in its own case-law, the Court concludes that, notwithstanding the State's margin of appreciation, the Polish authorities failed to make adequate and effective efforts to enforce the applicant's parental rights and his right to contact with his child.

[Hromadka and Hromadkova v. Russia](#), No. 22909/10, 11 December 2014, para. 168.

168. The Court further notes that the first applicant's attempts to involve other competent domestic authorities in assisting him to establish contact with his daughter were thwarted by the impossibility of locating O.H. and the child. In particular, although the conduct of O.H. gave grounds for instituting administrative proceedings under Article 5.35 § 2 of the Code of Administrative Offences (see paragraph 115 above), the failure to establish her whereabouts made it impossible in practice to do so. The first applicant's requests to the regional and Russian ombudsmen for children for assistance in establishing contact with the child yielded no results in the absence of information about O.H.'s whereabouts (see paragraphs 45-57 above). The first applicant's request of June 2012 under Article 21 of the Hague Convention for securing the effective exercise of his rights of access in respect of his daughter remained without response due to the impossibility of locating O.H. and the second applicant (see paragraphs 87-94 above).

169. Having regard to the foregoing and without overlooking the difficulties created by the resistance of the child's mother, the Court concludes that the Russian authorities failed to take all the measures that could reasonably be expected of them to enable the applicants to maintain and develop family life with each other, resulting in the disruption of the emotional ties between the father and the child, and thereby breached the applicants' right to respect for their family life, as guaranteed by Article 8.

[Giorgioni v. Italy](#), No. 43299/12, 15 September 2016, para. 75-77. [Text only available in French].

75. En effet, les autorités n'ont pas fait preuve de la diligence qui s'imposait en l'espèce et sont restées en deçà de ce qu'on pouvait raisonnablement attendre d'elles. En particulier, les juridictions internes n'ont pas pris les mesures appropriées pour créer les conditions nécessaires à la pleine réalisation du droit de visite du père de l'enfant (Bondavalli, précité, § 81, Macready c. République tchèque, nos 4824/06 et 15512/08, § 66, 22 avril 2010, et Piazza, précité, § 61). Elles n'ont pas pris, dès le début de la séparation, des mesures utiles visant à l'instauration de contacts effectifs. Elles ont ensuite toléré pendant environ quatre ans que la mère, par son comportement, empêchât l'établissement d'une véritable relation entre le requérant et l'enfant. La Cour relève que le déroulement de la procédure devant le tribunal fait plutôt apparaître une série de mesures automatiques et stéréotypées, telles que des demandes successives de renseignements et une délégation du suivi de la famille aux services sociaux assortie de l'obligation pour ceux-ci de faire respecter le droit de visite du requérant (Lombardo, précité § 92, et Piazza, précité, § 61). Aussi la Cour estime - t - elle que les autorités ont laissé se consolider une situation de fait installée au mépris des décisions judiciaires (Fourkiotis, précité, §70).

76. Eu égard à ce qui précède et nonobstant la marge d'appréciation de l'État défendeur en la matière, la Cour considère que les autorités nationales n'ont pas déployé les efforts adéquats et suffisants pour faire respecter le droit de visite du requérant entre août 2006 et novembre 2010 et qu'elles ont méconnu le droit de l'intéressé au respect de sa vie familiale.

77. Partant, il y a eu violation de l'article 8 de la Convention.

[Macready v. The Czech Republic](#), No. 4824/06 and 15512/08, 22 April 2010, para. 66. [Text only available in French].

66. *De plus, en vertu de l'article 16 de la Convention de La Haye, les tribunaux tchèques devaient attendre la fin de la procédure sur le retour de l'enfant avant de pouvoir statuer sur l'exercice de l'autorité parentale à l'égard de ce dernier. Pendant toute cette période, le requérant ne pouvait donc réaliser ses droits parentaux qu'en vertu des mesures provisoires lui accordant un droit de visite pendant ses séjours en République tchèque, séjours qui ne pouvaient être qu'occasionnels vu qu'il résidait et travaillait aux Etats-Unis. A cet égard, force est de constater que même s'ils ont été, certes a posteriori, informés des difficultés que le requérant rencontrait lors de ses visites, fait auquel le tribunal municipal s'est d'ailleurs référé dans son jugement du 27 avril 2005 (voir paragraphe 15 in fine ci-dessus) et que le tuteur a mentionné dans ses commentaires adressés au tribunal régional (voir paragraphe 17 ci-dessus), les tribunaux n'ont pris de leur initiative aucune mesure appropriée pour créer pro futuro les conditions nécessaires à la réalisation dudit droit de visite. Dans le contexte de l'affaire, les tribunaux auraient en effet pu envisager de prendre des mesures coercitives à l'encontre de la mère ou de chercher le concours de services sociaux, voire de pédopsychiatres ou de psychologues, pour faciliter le contact entre les intéressés. A cet égard, il convient de souligner qu'il appartient à chaque Etat contractant de se doter d'un arsenal juridique adéquat et suffisant pour assurer le respect des obligations positives qui lui incombent en vertu de l'article 8 de la Convention.*

[Bondavalli v. Italy](#), No. 35532/12, 17 November 2015, para. 81-84. [Text only available in French].

81. *Or la Cour estime qu'il aurait été non seulement dans l'intérêt du requérant mais encore particulièrement dans celui de l'enfant que les juridictions internes répondent favorablement aux demandes du requérant, qu'elles chargent un autre expert – indépendant et impartial – de réaliser une nouvelle expertise, et qu'elles confient le suivi de l'enfant aux services sociaux d'une autre commune. Sur la base de ces nouveaux rapports, le tribunal et la cour d'appel auraient pu mieux évaluer s'il était nécessaire de restreindre ou d'élargir le droit de visite du requérant, et ce en tenant également compte des expertises produites par le requérant selon lesquelles il ne souffrait d'aucun trouble de la personnalité justifiant une telle restriction du droit de visite.*

La Cour relève que les juridictions internes n'ont pris aucune mesure appropriée pour créer les conditions nécessaires à la pleine réalisation du droit de visite du père de l'enfant (Macready c. République tchèque, nos 4824/06 et 15512/08, § 66, 22 avril 2010).

82. *Cela étant, elle reconnaît que les autorités faisaient en l'espèce face à une situation très difficile qui était due notamment aux tensions existant entre les parents de l'enfant. Elle rappelle cependant qu'un manque de coopération entre des parents séparés ne peut dispenser les autorités compétentes de mettre en œuvre tous les moyens susceptibles de permettre le maintien du lien familial (voir Nicolò Santilli, précité, § 74, Lombardo, précité, § 91, et, mutatis mutandis, Reigado Ramos c. Portugal, no 73229/01, § 55, 22 novembre 2005). En l'espèce, les autorités nationales sont restées en deçà de ce qu'on pouvait raisonnablement attendre d'elles dès lors que le tribunal et la cour d'appel se sont limités à restreindre le droit de visite du requérant sur la base des expertises négatives produites par les services sociaux et les psychologues travaillant dans la même structure administrative que la mère de l'enfant.*

83. *La Cour estime que la procédure aurait dû s'entourer des garanties appropriées permettant de protéger les droits du requérant et de prendre en compte ses intérêts. Or la Cour constate que les juridictions internes n'ont pas procédé avec la diligence nécessaire et que, depuis environ sept ans, le requérant dispose d'un droit de visite très limité. En outre, compte tenu de des conséquences irréremédiables que le passage du temps peut avoir sur les relations entre l'enfant et le requérant, la Cour estime à cet égard qu'il incomberait aux autorités internes de réexaminer, dans un bref délai, le droit de visite du requérant en tenant compte de la situation actuelle de l'enfant et de son intérêt supérieur.*

84. Eu égard à ce qui précède et nonobstant la marge d'appréciation de l'État défendeur en la matière, la Cour considère que les autorités nationales n'ont pas déployé les efforts adéquats et suffisants pour faire respecter le droit de visite du requérant et qu'elles ont méconnu le droit de l'intéressé au respect de sa vie familiale.

[Cincimino v. Italy](#), No. 68884/13, 28 April 2016, para. 73-75. [Text only available in French].

73. Il en résulte ainsi que, depuis 2006, il n'y a eu aucune nouvelle expertise psychiatrique indépendante au sujet de la requérante pour évaluer si elle continuait à souffrir d'un trouble de la personnalité et, dans l'affirmative, s'il existait encore, du point de vue des intérêts de l'enfant, des raisons pertinentes et suffisantes pour des mesures ne permettant aucun contact entre la requérante et son enfant âgée désormais de douze ans. Les juridictions se sont limitées à répéter les considérations déjà faites dans les décisions précédentes, alors que des indications avaient été données – certes par des experts nommés par la requérante – que sa situation s'était entre-temps améliorée.

74. Eu égard à ce qui précède, et en particulier à l'absence d'une expertise récente et indépendante sur la requérante, force est de conclure que le processus décisionnel n'a pas satisfait aux exigences procédurales inhérentes à l'article 8 de la Convention (voir paragraphe 64 ci-dessus).

75. La Cour conclut en conséquence que l'État a méconnu à l'égard de la requérante les obligations positives mises à sa charge par l'article 8 de la Convention. Partant, il y a eu violation de cette disposition.

[Strumia v. Italy](#), No. 53377/19, 23 June 2016, para. 122-125. [Text only available in French].

122. En effet, les autorités n'ont pas fait preuve de la diligence qui s'imposait en l'espèce et sont restées en deçà de ce qu'on pouvait raisonnablement attendre d'elles. En particulier, les juridictions internes n'ont pas pris les mesures appropriées pour créer les conditions nécessaires à la pleine réalisation du droit de visite du père de l'enfant (Bondavalli, précité § 81, Macready c. République tchèque, nos 4824/06 et 15512/08, § 66, 22 avril 2010, et Piazza, précité, § 61). Elles n'ont pas pris, dès le début de la séparation quand l'enfant avait seulement trois ans et avait une attitude positive vis-à-vis du requérant, des mesures utiles visant à l'instauration de contacts effectifs et elles ont ensuite toléré pendant environ huit ans que la mère, par son comportement, empêchât l'établissement d'une véritable relation entre le requérant et l'enfant. La Cour relève que le déroulement de la procédure devant le tribunal fait plutôt apparaître une série de mesures automatiques et stéréotypées, telles que des demandes successives de renseignements et une délégation du suivi de la famille aux services sociaux assortie de l'obligation pour ceux-ci de faire respecter le droit de visite du requérant (Lombardo, précité § 92, et Piazza, précité, § 61). Ainsi, la Cour estime-t-elle que les autorités ont laissé se consolider une situation de fait installée au mépris des décisions judiciaires.

123. Au final, si les tribunaux ont été inspirés dans leurs démarches par l'intérêt de la mineure dûment établi (Zavřel, précité, § 53), l'objectif poursuivi par eux n'a pas été atteint : huit ans après la séparation de ses parents, l'enfant n'a aucune relation avec son père et la seule solution envisageable consisterait en son placement en institut.

124. Eu égard à ce qui précède et nonobstant la marge d'appréciation de l'État défendeur en la matière, la Cour considère que les autorités nationales n'ont pas déployé les efforts adéquats et suffisants pour faire respecter le droit de visite du requérant et qu'elles ont méconnu le droit de l'intéressé au respect de sa vie familiale.

125. Partant, il y a eu violation de l'article 8 de la Convention.