



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

FIRST SECTION

CASE OF M.V. v. POLAND

(Application no. 16202/14)

JUDGMENT

Art 8 • Family life • Failure to ensure expeditious proceedings in respect of international parental child abduction • Domestic courts' reasoning incompatible with the requirements of the Hague Convention

STRASBOURG

1 April 2021

FINAL

01/07/2021

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of M.V. v. Poland,

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

Ksenija Turković, *President*,

Krzysztof Wojtyczek,

Alena Poláčeková,

Péter Paczolay,

Gilberto Felici,

Erik Wennerström,

Lorraine Schembri Orland, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the application (no. 16202/14) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Italian national, Mr M.V. (“the applicant”), on 3 August 2014;

the decision to give notice to the Polish Government (“the Government”) of the application;

the decision not to have the applicant’s name disclosed;

the decision that the Government of Italy be notified of the application under Article 36 (2) of the Convention and Rule 44² (1) of the Rules of the Court; and

the parties’ observations;

Having deliberated in private on 9 March 2021,

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

INTRODUCTION

1. Failure to ensure expeditious proceedings in respect of international parental child abduction.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

2. The applicant M.V. is an Italian national. He was born in 1976. The applicant was represented by Mr A. Mancani, a lawyer practising in Warsaw.

3. The Polish Government (“the Government”) were represented by their Agent, Ms J. Chrzanowska and subsequently, Mr J. Sobczak of the Ministry of Foreign Affairs.

A. Background

4. In April 2011 the applicant met a Polish national, K.P., and on an unspecified date soon afterwards, started living with her on and off in Poland, ultimately renting long-term accommodation in a hotel. In September 2011 K.P. became pregnant. The couple were planning to continue living in Poland. They started renovating a building adjacent to the home of K.P.'s parents. They made wedding arrangements. K.P. registered at a local unemployment office and her application to start a small business was granted. She was receiving gynaecological care in Kluczbork, and was scheduled to give birth there on 21 May 2012.

5. Before giving birth K.P. made several short trips to Italy with the applicant.

6. On 28 March 2012 she travelled with him to Italy to give a deposition to the applicant's lawyer in relation to a criminal case pending at that time against him in Piacenza. The couple returned to Poland a week later.

7. On an unspecified date after 8 April 2012 K.P. went again to Italy. This time she was asked to give testimony in support of the applicant before a criminal court.

8. The couple remained in Italy.

9. On 20 May 2012 their son, M., was born there. He was registered as an Italian national at the applicant's home address. He was also registered under the Italian health-insurance scheme. K.P. was not registered as living at the applicant's home address and she did not have Italian health insurance.

10. The family started living in the applicant's house. K.P.'s parents also moved in with them to help out with the baby.

11. Several instances of the applicant using physical violence towards the child and K.P. were recounted by witnesses in the course of the Hague Convention proceedings, which are described below.

12. In early June 2012 K.P. contacted the Polish Consulate in Milan, asking to be taken to a centre for single mothers.

13. On 11 June 2012 the Polish Consulate and the local police intervened after K.P. reported that the applicant had assaulted her and her parents and had tried to strangle her and to throw her family out of his house.

14. On 12 June 2012 the applicant drove K.P.'s parents to Poland. He did not agree to let K.P. and the child leave Italy too.

15. In the applicant's absence that day, K.P. ran away with the child. She took a bus to Austria; from there she was driven to Poland by her brothers.

16. K.P. refused to return her son to Italy or to move there with him.

B. Proceedings for child custody

1. Proceedings instituted by K.P. in Poland

17. On 18 June 2012 K.P. lodged with the Kluczbork District Court (*Sąd Rejonowy*) an application for an interim residence order and for an order granting her the temporary right to enforce her custody over the child (III RNsm 222/12).

18. On 6 July 2012 the Kluczbork District Court delivered an interim decision, assigning the child's official residence with K.P. and granting her custody of the child.

19. On 31 July 2012 the Kluczbork District Court stayed the main proceedings in respect of the residence and custody of M. in view of the applicant's request for the child's return. That decision was served on the applicant's lawyer on 7 September 2012.

20. On 18 February 2014 the proceedings were resumed.

21. Several community interview reports were produced, and a number of hearings were held. The applicant, who did not attend the hearings, was represented by a lawyer of his choosing.

22. On 9 October 2014 the Kluczbork District Court deprived the applicant of parental authority over M. on the grounds that the applicant had gravely neglected his parenting duties. In particular, the applicant had not maintained contact with his child. He had met with M. only once in August 2013, he had not sought to visit his son on the dates set out under the court order of 23 May 2013 (see paragraph 34 below), and had not called his child other than on the boy's first birthday. Moreover, since June 2012, the applicant had not been paid any child support.

23. On 17 February 2015 the Opole Regional Court dismissed the applicant's appeal, fully upholding the findings of fact and law of the first-instance court.

2. Proceedings instituted by the applicant in Italy

24. It appears that on 31 July 2012 the applicant lodged an application for sole child custody with the Bologna Juvenile Court.

25. On 7 August 2014 the Italian court declined jurisdiction, holding that the place of the child's habitual residence was Poland. The court reasoned that M. had lived in Italy only for a very short time immediately after his birth; he was not a permanent resident; and he had not developed emotional ties with the country. It appears that that decision was final and binding.

3. Proceedings for the child's return and contact arrangements under the Hague Convention

26. On 16 July 2012 the applicant applied to the Italian Central Authority for the child's return under the Hague Convention.

27. On 6 August 2012 the case was registered with the Kluczbork District Court.

28. As submitted by the Government, on 10 September 2012 the public prosecutor (*prokurator*) joined the proceedings. At the later stages of the proceedings, he lodged applications to dismiss the applicant's Hague Convention request and his subsequent appeal against the first-instance ruling. These documents have not been submitted to the case file.

29. The first court hearing was held on 13 September 2012. It was followed by hearings on 8 November 2012 (lasting six hours with breaks), 11 January (lasting nearly five hours with breaks), 21 March, 23 May (lasting six hours with breaks) and 31 July 2013 (lasting six hours with breaks). The applicant and the lawyer of his choosing attended all but the first hearing. An interpreter was also present at all but the first and the sixth hearings.

30. On 20 December 2012 evidence was taken from a witness by the Polish Consulate General in Milan.

31. On 22 May 2013 the applicant applied for interim contact arrangements under the Hague Convention. In particular, he wished to be authorised to visit his son on three consecutive days a month, for five hours on each of those days. He also asked that the visits take place at the child's home with no third parties present, or at his hotel.

32. At the hearing of 23 May 2013 the applicant's lawyer informed the domestic court that the parties had agreed that the applicant would visit M. on the first weekend of every month at K.P.'s house, in the presence of a court-appointed guardian.

33. On 23 May 2013 the Kluczbork District Court issued an interim decision granting the applicant the right to visit his child, in line with the parties' agreement, every month, on three consecutive days (from Friday through Sunday) from 2 p.m. to 5 p.m. at K.P.'s house, in the presence of a court-appointed guardian.

34. On 13 August 2013 the Kluczbork District Court refused the applicant's Hague Convention application under Article 13 (a) and (b) of the Hague Convention.

35. The domestic court made the following observations in the reasoning for its decision. (i) At the time of the child's removal from Italy, the applicant had indeed had custody rights in respect of the child by virtue of the fact that he had acknowledged his paternity at the child's birth and that the child had lived with him. (ii) On the other hand, despite the fact that he had carried out some of his parenting duties, his right of custody had not been effectively enforced. The effective enforcement of a custody right consisted of caring for the child (*troszczenie się o dziecko*). According to the evidence obtained by the domestic court (in particular the testimony of K.P., her relatives and other witnesses), the applicant had not taken care of his son after his birth. He had often left the house, annoyed by the baby's crying, or

he had stayed at home sleeping. After a number of failed attempts at bathing or changing the baby or helping K.P. when she was breast-feeding, he had given up on doing anything around the child. The applicant's argument that he had been busy working was considered by the domestic court as unsupported by evidence. The applicant's violence towards K.P. – such as pushing and pulling her violently, and suffocating her, throwing her out of the house, instigating rows, and calling her names such as *merda* ("shit") – and his violence towards the child – in particular snatching the baby from the mother and waking him up – were signs of sheer wickedness and undermined the argument that the applicant cared about the child. (iii) Italy was not the child's habitual residence within the meaning of Article 3 of the Hague Convention because the boy had stayed there for only twenty-two days after his birth and, according to witnesses, the parties had always planned to settle in Poland. The applicant's argument that the family had wished to live in Italy was not credible. The applicant had lured K.P. into going to Italy. His actions had been aimed at having his child born in Italy where "he would have unlimited control over [the child] and direct influence over K.P.'s behaviour ... [His actions] reflected the family model which was typical to southern Italy [in that] he had told K.P. that he would "teach her obedience and respect towards him and towards Italian law; he is the father, he is allowed everything, he is in the right". K.P. had never wished to settle in Italy. (iv) Ordering the child's return would also be contrary to Article 13 (b) of the Hague Convention. Given the circumstances of the case, K.P.'s return to Italy with the child was objectively impossible and the child's separation from the mother would have severely negative consequences. K.P. did not have any employment opportunities in Italy and had no place to live there with her child. The applicant's offer to give her lodging in the transitional period could not be viewed as a realistic option in view of the growing conflict between him and K.P. K.P. was the boy's sole carer and she took good care of him; the child was sixteen months old at the time of the ruling and had a close bond with the mother. Severing that bond and returning the child to Italy without the mother would result in exceptional suffering and hence psychological and physical harm, and an intolerable situation. K.P. had been running a small business in Poland and could count on the financial and practical help of her family. The applicant could not care for the baby alone because he worked seven hours per day and he could not count on help from his elderly mother or sister, who had two jobs. The domestic court concluded by noting that the applicant was impulsive, aggressive, probably under psychiatric treatment, and had been violent towards K.P. and his son.

36. The court based the reasoning above on the testimony of fourteen witnesses (including, P.K.'s relatives and friends; the applicant's sister and his friend; and an employee of the Polish Consulate) and the submissions of both parties. On 11 January 2013 the court dismissed an application by K.P.

to have a report obtained from the experts of the Family Consultation Centre (*Rodzinny Ośrodek Diagnostyczno Konsultacyjny* – hereinafter “the RODK”). The reasons for that procedural decision have not been reproduced in the transcript from the hearing in question.

37. On 30 September 2013 the applicant appealed on, *inter alia*, the following points of fact and law: (i) the first-instance court had ruled in breach of Article 13 (a) and (b) of the Hague Convention, firstly in that it had concluded that the applicant had not had effective custody of the child prior to his removal from Italy and secondly, in that it had concluded that given the circumstances of the case there had been a grave risk that the child’s return to Italy would expose him to psychological harm and would place him in an intolerable situation, and (ii) the first-instance court had conducted an incorrect and selective assessment of the evidence.

38. On 22 October 2013 P.K. filed her observations on the applicant’s appeal.

39. On 30 December 2013 the Opole Regional Court (*Sąd Okręgowy*) partly upheld the first-instance judgment.

40. The appellate court held that the first-instance court had erred in its ruling under Article 3 of the Hague Convention because Italy had been the child’s habitual residence, irrespective of whether or not K.P. had intended to settle there and irrespective of the quality of the care afforded by the applicant at the time when the child had been living with him.

41. Furthermore, the appellate court observed that international and domestic practice required that Article 13 (b) of the Hague Convention be interpreted in a restrictive manner to the effect that, in principle, any unfavourable consequences of a child’s separation stemming from an order for the abducting parent to surrender the child did not give rise to a grave risk of physical or psychological harm within the meaning of that provision. The aim of the Hague Convention would be achieved if the abducting parent returned with the child.

42. The appellate court acknowledged the principle that separating a child from the abducting parent would only fall within the Article 13 (b) exceptions if objective obstacles to the parent’s return were shown to be present. However, it reasoned that the application of that principle was more complex in cases concerning the abduction of an infant by a parent who had a dominant role in the child’s life. Consequently, the regional court was satisfied that, although K.P. had not demonstrated sufficiently justified objective obstacles to her return to Italy, separating the child from her would inevitably be contrary to M.’s best interests, in view of the special relationship between the mother and her infant son.

43. Lastly, the appellate court ruled that the first-instance court’s assessment of the evidence had been thorough and compliant with the applicable procedure.

44. The applicant waived his right to visit his son in June, July, September, October and December 2013. It is unknown if he visited his child in November 2013. A three-day visit took place in August 2013. It also appears that the applicant wished to see his child after the appellate hearing of 18 December 2013 but ultimately, he did not accept K.P.’s condition for the visit to take place, which was the presence of a court-appointed guardian.

II. RELEVANT INTERNATIONAL AND COMPARATIVE LAW

A. The Hague Convention

45. The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction which has been ratified by Poland (Dz.U.1995 r. Nr 108, poz. 528, date of entry into force 1 November 1992) and the United Kingdom provides, in so far as relevant, as follows:

Article 3

“The removal or the retention of a child is to be considered wrongful where -

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

...”

Article 4

“The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights.

...”

Article 11

“The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

...”

Article 13

“Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child’s habitual residence.

...”

Article 16

“After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

...”

Article 19

“A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

...”

B. The Pérez-Vera Explanatory Report on the 1980 Hague Child Abduction Convention

46. The Explanatory Report on the 1980 Hague Child Abduction Convention, prepared by Elisa Pérez-Vera and published by The Hague Conference on Private International Law (HCCH) in 1982 (“the Pérez-Vera Report”), provides the following comments on the notion of the “wrongful abduction” and the applicability of the Hague Convention.

“... 64. Article 3 as a whole constitutes one of the key provisions of the Convention, since the setting in motion of the Convention’s machinery for the return of the child depends upon its application. In fact, the duty to return a child arises only if its removal or retention is considered wrongful in terms of the Convention. Now, in laying down the conditions which have to be met for any unilateral change in the

status quo to be regarded as wrongful, this article indirectly brings into clear focus those relationships which the Convention seeks to protect. Those relationships are based upon the existence of two facts, firstly, the existence of rights of custody attributed by the State of the child's habitual residence and, secondly, the actual exercise of such custody prior to the child's removal. Let us examine more closely the import of these conditions.

47. The Hague Convention does not provide any definition of the notion of a child's "habitual residence" in order to leave it free from technical rules which can produce rigidity and inconsistencies as between different legal systems.

C. European Union law

48. In the European Union (EU) law, the issues of parental child abduction are regulated in the 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 (known as "Brussels II bis Regulation").

49. The notion of the child's habitual residence is undefined in this or other sources of the EU law.

50. The Explanatory report on the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters drafted by Alegria Borrás (Official Journal C221, 16/07/1998 P. 0027 - 0064) gives the following guidelines as to the general understanding of the notion. Habitual residence is "the place where the person had established, on a fixed basis, his permanent or habitual center of interests, with all the relevant facts being taken into account for the purpose of determining such residence" (see paragraph 32 of the above-mentioned report).

51. The determination of habitual residence is therefore a matter of facts, rather than legal definitions. The concept refers to a person's abode in a particular place or country which he or she has adopted voluntarily and intentionally as part of the regular order of his or her life, whether for a short or a long time. In the specific context of children, the factor of the intent of the person to stay in a territory is determined in reference to the time period that a child resides in the territory. The duration of the residence is the factor that distinguishes presence from habitual residence. The longer the child resides in a territory, the greater the significance of ties he or she creates with that state and with its legal system.

52. Issuing its preliminary rulings in respect of children in the context of the Brussels II bis Regulation, the Court of Justice of the European Union (CJEU) has given the following meaning to the notion of habitual residence.

53. Habitual residence corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, in particular, the duration, regularity, conditions and reasons for the stay on the territory of a Member State and the family's move to that

State, the child's nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that State must be taken into consideration (Case C-523/07, 2 April 2009, ECLI:EU:C:2009:225 and Case C-497/10 PPU, 22 December 2010, ECLI:EU:C:2010:829).

54. A mere physical presence in a Member State is not sufficient to establish the habitual residence of a child (Case C-497/10 PPU, cited above).

55. Lastly, importance may be attached to the factor of the child's family and social situation. In its opinion the Advocate General stated that "It is for the referring court to obtain an overall picture of this, taking account of all factors, whose relevance may vary according to the children's age." (Case C-523/07 and Case C-497/10 PPU, both cited above). The concrete manifestation of family situation are the persons with whom a child lives at the place of residence or is in regular contact, in other words parents, siblings, grandparents or other close relatives. Consequently, where, an infant is looked after by the mother, it is necessary to assess the mother's integration in her social and family environment. For that reason, the move by the child's mother to another Member State, the languages known to the mother or her geographic and family origins may become relevant (Case C-497/10 PPU, cited above).

THE LAW

56. The applicant complained under Article 6 of the Convention of the unreasonable length of the Hague Convention proceedings. He also complained of a breach of his right to respect for his family life under Articles 8 and 14 of the Convention because of the dismissal of his Hague Convention request. In particular, he argued that the unfavourable outcome of the impugned proceedings had resulted from the domestic courts' bias against him and their prejudice against him on the grounds that he came from Italy.

57. As the master of the characterisation to be given in law to the facts of the case (see *Ferrari v. Romania*, no. 1714/10, § 31, 28 April 2015, and *Vilenchik v. Ukraine*, no. 21267/14, § 39, 3 October 2017 with further references), the Court considers that the applicant's complaint should be examined under Article 8 of the Convention taken alone and in conjunction with Article 14 of the Convention, which read as follows, in so far as relevant:

Article 8

"1. Everyone has the right to respect for his private and family life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society

in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... national or social origin, ... or other status.”

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION TAKEN ALONE ON ACCOUNT OF THE OUTCOME OF THE PROCEEDINGS FOR THE CHILD’S RETURN UNDER THE HAGUE CONVENTION AND THE DECISION-MAKING PROCESS

A. Admissibility

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

B. Merits

1. The parties’ submissions

59. The applicant complained that the domestic courts had erred in refusing to order the child’s return to Italy and had been biased against the applicant. He also argued that the proceedings had not been prompt and expeditious.

60. The Government argued that the domestic courts had examined the impugned case with utmost diligence in view of its sensitive nature in the best interests of the child. They had acted without undue delays, having examined a number of applications and ensuring that the applicant’s procedural rights had been respected and that his contact with the child had been secured for the duration of the proceedings.

2. The Court’s assessment

(a) General principles

61. The general principles regarding the relationship between the Convention and the Hague Convention, the scope of the Court’s examination of international child abduction applications, the best interests of the child and the procedural obligations of the States, are laid down in the Court’s Grand Chamber judgment in the case of *X v. Latvia* (see *X v. Latvia* [GC], no. 27853/09, §§ 93-108, 107 ECHR 2013) as well as in a number of other judgments concerning proceedings for the return of children under the

Hague Convention (see *Maumousseau and Washington v. France*, no. 39388/05, § 68, 6 December 2007; *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 102, ECHR 2000-I; *Iosub Caras v. Romania*, no. 7198/04, § 38, 27 July 2006; *Shaw v. Hungary*, no. 6457/09, § 70, 26 July 2011; *Adžić v. Croatia*, no. 22643/14, §§ 93-95, 12 March 2015; and *R.S. v. Poland*, no. 63777/09, 54 and 55, 21 July 2015).

62. The general principles regarding discriminatory treatment within the meaning of Article 14 of the Convention and in the context of childcare cases are set out in the Court’s inadmissibility decision in the case of *Gaël Coste* (see *Gaël Coste v. Poland* (dec.), no. 14179/15, 13 October 2015, §§ 25 and 28).

(b) Application of the general principles to the present case

63. In the instant case, the primary interference with the applicant’s right to respect for his family life may not be attributed to an action or omission by the respondent State, but rather to the action of the applicant’s partner and his child’s mother, a private individual, who had taken their son to Poland. That action nevertheless placed the respondent State under a positive obligation to secure for the applicant his right to respect for his family life, which included examining his request under the Hague Convention with a view to ensuring his prompt reunification with his child (see *G.N. v. Poland*, no. 2171/14, §§ 47 and 48, 19 July 2016).

64. In the present case, while ultimately holding that the abduction of the child from his habitual residence in Italy was wrongful within the meaning of Article 3 of the Hague Convention (see paragraph 40 above), the domestic courts took one year and five months to examine the applicant’s request for the return of his son, and at the end dismissed it (see paragraph 39 above).

65. The Court finds that the events under consideration, in so far as they give rise to the responsibility of the respondent State, amounted to an interference with the applicant’s right to respect for his family life (see *G.N. v. Poland*, cited above, § 50, with further references).

66. The domestic courts invoked, as the legal basis of their decisions, the Hague Convention, which entered into force in Poland in 1992 and which forms part of its domestic law. Moreover, the domestic courts acted in what they considered to be pursuit of the legitimate aim of protecting the rights of the child (see *G.N. v. Poland* cited above, § 51, with further references).

67. The Court must therefore firstly examine the reasoning of the impugned judicial decisions and determine whether the interference in question was “necessary in a democratic society” within the meaning of Article 8 § 2 of the Convention, interpreted in the light of the relevant international instruments, and whether when striking the balance between the competing interests at stake appropriate weight was given to the child’s

best interests, within the margin of appreciation afforded to the State in such matters (see *G.N. v. Poland* cited above, § 52).

68. The appellate court reversed, without elaborating further on the issue, the first-instance judgement in so far it had stated that Italy had not been the child's habitual residence.

69. The Court cannot lose from the sight the two rulings (of the Italian court and the Polish first-instance court, see paragraphs 25 and 35 above) that the child had not had his habitual residence in Italy within the meaning of Article 3 of the Hague Convention. This holding was based on the arguments that the child had stayed in Italy only 22 days after his birth, and that, according to witnesses, the parties had never planned to settle in that country. It was also considered certain that the child's mother had always intended to live in Poland (see paragraph 35 above). The Court finds that the Polish appellate court dismissed the above line of reasoning, in particular, the element of the intent, and conclusion without producing sufficient or convincing counter arguments (see paragraph 40 above).

70. Instead, the grounds for the refusal to grant the applicant's Hague Convention application were that, although K.P. had not demonstrated sufficiently justified objective obstacles to her return to Italy, separating the child from her would inevitably be contrary to M.'s best interests, and would thus place the boy in an intolerable situation within the meaning of Article 13 (b) of the Hague Convention (see paragraphs 41 and 42 above).

71. All things considered, the Court finds that the reasoning of the domestic courts fell short of the relevant requirements of Article 13 (b) of the Hague Convention.

72. Moving on to the analysis of the decision-making process, the Court observes that despite the recognised urgent nature of the Hague Convention proceedings, a period of seventeen months elapsed from the date on which the applicant's application for the return of the child was registered with the Kluczbork District Court to the date of the final decision (see paragraphs 27 and 39 above). Consequently, even though the six-week time-limit set forth in Article 11 of the Hague Convention and Article 11 of the EC Regulation on Recognition of Judgments, which applies to first-instance and appellate proceedings, was non-obligatory, exceeding it by approximately sixty-two weeks, in the absence of any circumstances capable of exempting the domestic courts from the duty to strictly observe it, did not meet the urgency required in that situation and was not in compliance with the positive obligation to act expeditiously in proceedings for the return of children.

73. In a number of its judgments, the Court has found a violation of Article 8 of the Convention, *inter alia*, in view of a similar or much shorter length of the Hague Convention proceedings (see *G.N. v. Poland* cited above, § 66-68 – seventeen months and two weeks; *Blaga v. Romania*, no. 54443/10, § 83, 1 July 2014 – fourteen months; *Ferrari*, cited above,

§ 54 and 56 – thirteen months; *Monory v. Romania and Hungary*, no. 71099/01, § 82, 5 April 2005 – over twelve months; *K.J. v. Poland*, cited above, §§ 71 and 72, 1 March 2016 – twelve months; *Karrer v. Romania*, no. 16965/10, § 54, 21 February 2012 – eleven months; and *R.S. v. Poland*, no. 63777/09, § 70, 21 July 2015 – over six months; and, conversely, *Strömblad v. Sweden*, no. 3684/07, § 93, 5 April 2012 – less than twelve months).

74. The delays in the procedure alone may also enable the Court to conclude that the authorities did not comply with their positive obligations under the Convention given the requirement of expedition which lies at the core of the Hague Convention procedure (see *Shaw*, cited above, § 71 - proceedings lasting over eight months). To that end, in the recent judgment in the case of *Vilenchik* (cited above), the Court found that Article 8 had been violated on the sole grounds that the Ukrainian authorities had taken a total of two years and three months to examine the applicant's Hague Convention request, with eight months elapsing between the submission of the request to the Central Authority and the registration of the request with a domestic court. That reasoning stood even though the Court took account of three otherwise mitigating elements: (i) the applicant's contribution, to some degree, to the overall duration of the impugned proceedings; (ii) the examination of the impugned case by three jurisdictions of ordinary courts and one extraordinary jurisdiction; and (iii) the domestic courts' acting without evident delays while ensuring procedural rights of the parties in dispute (see *Vilenchik*, cited above, §§ 53-56).

75. In the present case, the Government essentially argued that the nature of the proceedings had required the domestic courts to act, as they had, with diligence and caution, carrying out an in-depth analysis of the case with a view to protecting the best interests of the child and duly examining the applications made by the parties. The Government also implied that the length of the impugned proceedings had not had major repercussions on the applicant since his right to exercise contact with his child had been secured pursuant to a court order.

76. The Court observes that, because the lapse of time risks compromising the position of the non-resident parent irretrievably, the specific nature of the Hague Convention proceedings requires domestic courts to rely on a presumption that an immediate return of the child to his or her habitual residence is in the child's best interest (see, *mutatis mutandis*, *McIlwrath v. Russia*, no. 60393/13, § 126, 18 July 2017 with further references). Such a presumption is rebuttable, and the courts thus must indeed examine the circumstances of each case so as to ensure that the elements required for the application of, *inter alia*, Articles 3 and 13 of the Hague Convention are in place. They must nevertheless act expeditiously.

77. In the present case, the first court hearing was held five weeks after the registration of the applicant's Hague Convention request. To close the

case, the first-instance court needed another five hearings, each scheduled at the interval of approximately two months (see paragraph 29 above). The Court takes into account the fact that the family court had to plan its proceedings in view of the availability of an Italian interpreter and, to a lesser extent, the services of the Polish Consulate in Milan (see paragraphs 28 and 29 above). Such factors, however, are typically present in the context of the civil aspects of international child abductions and cannot be viewed as a justifiable obstacle to the expeditious examination of a Hague Convention case by a domestic court. Moreover, the Court observes that in the context of the questionable habitual residence of the child in Italy, the applicant's Hague Convention claim on the merits appeared ill-founded. The Polish authorities should have thus been able to process it more rapidly.

78. Lastly, the material in the case file shows that the first-instance court was not faced with a particularly burdensome procedural activity on the part of the applicant or any the other party. It appears that in this phase of the proceedings, the prosecutor introduced two applications; that the court had to rule on the applicant's contact rights once, in fact, merely validating the parents' agreement in this connection; and to examine an application concerning a RODK report (see paragraphs 28, 33 and 36 above).

79. In the light of the above considerations, the Court does not discern any circumstances capable of exempting the domestic courts from the duty to observe the Hague Convention time-limit and finds that the overall length of the proceedings was not justified. The State therefore failed to deal with the case in the most expeditious manner as required by the Convention in this type of disputes.

80. In conclusion, in the circumstances of the case seen as a whole and notwithstanding the respondent States' margin of appreciation in the matter, the Court considers that the State failed to comply with its positive obligations under Article 8 of the Convention.

81. There has accordingly been a violation of Article 8 of the Convention.

82. Lastly, the Court observes that, as the child lost contact with his father in his infancy and has ever since lived with his mother in Poland, the present judgment should in no way be interpreted as suggesting that the respondent State should order the child's return to Italy.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

83. The applicant also complained that the domestic court's ruling rejecting his Hague Convention request was discriminatory, essentially,

because it relied on the stereotype of the applicant's Mediterranean mentality.

84. The Court notes that the final and binding decision in respect of the applicant's Hague Convention application was given, after an appeal, by the Opole Regional Court on 30 December 2013 (see paragraph 39 above). The appellate court did not base itself on the reasoning which had been employed by the first-instance court in so far as the latter had concluded, (with regard to the issue of the child's habitual residence), that the applicant had tricked K.P. into travelling to Italy and that such an attitude had been the reflection of the family model typical in Italy, where the applicant was from (see paragraphs 35, 41 and 42 above).

85. It follows that the complaint that the domestic court's ruling rejecting the applicant's Hague Convention request was discriminatory, is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF THE DOMESTIC COURTS' FAILURE TO ISSUE AN INTERIM CONTACT ORDER

86. Lastly, the applicant complained under Article 8 of the Convention that the authorities had rendered his contact with his child difficult in that they had required the presence of a court-appointed guardian during the applicant's visits.

87. The Government submitted that the applicant had not shown much interest in developing and maintaining emotional ties with his son. He had met with his child only on three consecutive days in August 2013 and he had not attempted to communicate with his son.

88. The Court observes that on 23 May 2013, that is to say one day after the applicant had lodged his application for interim contact arrangements, the Kluczbork District Court granted him the right to visit his child, in line with the parties' agreement, every month, on three consecutive weekend afternoons at K.P.'s house, in the presence of a court-appointed guardian (see paragraphs 31-33 above).

89. Despite that, it is evident that the applicant did not maintain contact with his child. He met with M. only once in August 2013 and he did not seek to visit his son on the dates set out under the court order (see paragraphs 22 and 44 above).

90. Moreover, the supervision of the visits by the court-appointed guardian appears to have been a part of the agreement concluded between the applicant and K.P. (see paragraph 32 above). In any event, the applicant did not make any procedural attempts to change the impugned contact arrangements, in particular, to be allowed to exercise his right without the supervision of the court-appointed guardian.

91. In view of these considerations, the Court concludes that the State has complied with its positive obligations to make it possible for the applicant to exercise his right to have contact with his child and that it was rather the applicant who had, at the material time, effectively waived that right.

92. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

93. Article 41 of the Convention provides:

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

94. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* admissible the complaint under Article 8, taken alone, as regards the manner in which the applicant’s claim under the Hague Convention was examined on the merits and as regards the requirement of promptness of the Hague Convention proceedings.
2. *Declares* the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 8 of the Convention as regards the manner in which the applicant’s claim under the Hague Convention was examined on the merits and as regards the requirement of promptness of the Hague Convention proceedings.

Done in English, and notified in writing on 1 April 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Ksenija Turković
President