



Decision to return an abducted child to his father in the USA did not contravene the mother's rights under the European Convention

In today's **Chamber** judgment¹ in the case of [G.K. v. Cyprus](#) (application no. 16205/21) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the proceedings and a subsequent order by the Cypriot courts to return the applicant's son to the United States of America under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

The Court found, in particular, that the domestic courts had not automatically ordered the return of the child. They had considered all the arguments of the parties and rendered detailed decisions which, in their view, safeguarded the best interests of the child and ruled out any serious risk to him. As a whole, the decision-making process had not run contrary to the procedural requirements inherent in Article 8 of the Convention, and the applicant had not suffered a disproportionate interference with her right to respect for her family life. The Court underlined that the aim of the Hague Convention was to prevent the abducting parent from being allowed to benefit from his or her own wrongdoing.

Principal facts

The applicant, G.K., is a Cypriot national who was born in 1986 and lives in Limassol (Cyprus).

After moving to New York in 2011 to study, G.K. married a US citizen in April 2016 and they had a son together, born on 15 October 2016. A year later, in October 2017, G.K. lodged a domestic violence complaint against the father. Subsequently, she sought an order of protection and moved to a safe house with their child. That same month, she and her son left the USA for Cyprus with the assistance of the Cypriot authorities, who granted the one-year-old Cypriot nationality and a passport. The father hired private detectives to find them. In September 2018, he, seeking the child's return, asked the US authorities to apply to the Cypriot authorities responsible for implementing the Hague Convention.

On 7 February 2019, the Cypriot authorities lodged an application, accompanied by an affidavit, with the Family Court of Paphos requesting the child's return to the USA. G.K. lodged an objection, arguing that the child would be in danger from his father who had been violent and aggressive, and who had a "heavy" criminal record in Ohio, where he had grown up. She also indicated that the child had fully settled into life in Cyprus, spoke Greek, attended preschool and took part in other activities like riding and art classes.

On 24 September 2019 the father lodged a supplementary affidavit. He affirmed that he had not been violent towards G.K. and that he had taken care of her and the child as the sole provider for the family, and that he could take care of the child in the USA given that he had a stable job and

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

apartment, that the child had health cover and a paediatrician there and that the National Center for Missing and Exploited Children had confirmed they could assist in the child's successful transition.

On 11 November 2019, when the case was set for a hearing, G.K. requested an adjournment, informing the court that she wished to lodge a supplementary affidavit and further evidence in support of her original application, including a report from a child psychologist that separating the child from his mother would be psychologically damaging for him. The court dismissed G.K.'s request on 10 January 2020, considering that no new circumstances had been brought forward.

After the parties had submitted their written arguments to the court, the case was set for clarifications on 17 March 2020. However, it was postponed due to the Covid-19 pandemic, and the court delivered its judgment on 21 January 2021.

Overall, it considered that the father had been a credible witness whose testimony had been consistent, persuasive and supported by relevant evidence. Most of the evidence provided by him remained unchallenged. However, it found that G.K.'s version of events had been general, vague, confusing and contradictory. She had failed to provide the level of proof necessary for the child not to be returned to the USA. These findings were affirmed on appeal by the Family Court of Second instance.

The child was handed over to the Cypriot authorities on 29 May 2021 and was returned to the USA.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to private and family life) of the European Convention on Human Rights, the applicant complained that her rights had been breached by the unreasonable length of the Hague Convention proceedings and by the domestic courts' decision to order the child's return to the USA without adequately assessing the situation and risks involved.

The application was lodged with the European Court of Human Rights on 26 March 2021.

Judgment was given by a Chamber of seven judges, composed as follows:

Pere Pastor Vilanova (Andorra), *President*,
Yonko Grozev (Bulgaria),
Darian Pavli (Albania),
Peeter Roosma (Estonia),
Ioannis Ktistakis (Greece),
Andreas Zünd (Switzerland) and,
Tasia Psara-Miltiadou (Cyprus), *ad hoc Judge*,

and also Milan Blaško, *Section Registrar*.

Decision of the Court

After assessing whether G.K.'s objections to the child's immediate return had been genuinely considered by the domestic courts, whether the decisions had been reasoned and sufficiently detailed in the light of the exceptions set out in the Hague Convention and whether the courts had satisfied themselves that adequate safeguards were available in the country of return, the Court considered that the domestic courts' findings had been well-reasoned and justified.

The Family Court of Paphos had noticed certain contradictions in G.K.'s allegations compared to her claims before the US court. She had also concealed the fact that the temporary order of protection in the USA had been dismissed owing to her failure to appear in court. Her allegations that the father was violent had remained unsubstantiated. Even though she had been given the opportunity to cross-examine the father before the domestic courts in Cyprus, the allegation of his being violent

had not been raised and her questions had been limited to whether he had been convicted of any offences in the past, to which he had replied that 25 years earlier he had been convicted of minor violations, which did not affect his criminal record, his employment status or his fitness to exercise his parental rights. Moreover, the court noted that no submission had been made to him of his having committed specific offences which could make his criminal record “heavy”, as alleged by G.K.

As regards her argument that the return would be too hard for her son and would be psychologically damaging, the Court noted that Article 13 (b) of the Hague Convention stipulated that harm arising solely from separation from the parent who was responsible for the wrongful removal or retention was not a valid reason for non-return of the child.

The Court noted that, in reaching their decision, the domestic courts had taken into account the child’s adaptability due to his young age, the father’s assurances as to being able to care for his son, the assistance of the Centre for Missing and Exploited Children and the US authorities, as well as the fact that G.K.’s claim that she was unable to return to the USA remained entirely unsubstantiated.

In response to G.K.’s criticism that the domestic courts had failed to request the child’s view on the matter, the Court found that the Family Court of Paphos had given reasons for its decision not to interview the child on account of his young age – three years old at the time – and G.K.’s wish for him not to take part in the proceedings.

Regarding her complaint about the length of time it had taken for the domestic courts to come to a decision, the Court noted that the lapse of time had, to a large extent, been caused by the delay of the authorities in instigating the Hague Convention proceedings and the first-instance court’s handling of the case. It also recognised that G.K. had contributed to the delay to some extent because of her filing a supplementary affidavit at a very late stage when the case had already been set for a hearing. That application had ultimately been dismissed because the court felt that it had arrived late, was unjustified, and would simply drag the proceedings out further. The Court emphasised that proceedings relating to the return of an abducted child required urgent handling as the passage of time could have irremediable consequences on the relationship between the child and the parent from whom he/she had been distanced. In this case, G.K., unlike the father, had benefitted from the delay. In that respect, the Court underlined that the aim of the Hague Convention was to prevent the abducting parent from succeeding in obtaining legal recognition simply by a situation that he or she had unilaterally created, and the abducting parent should not be allowed to benefit from his or her own wrongdoing.

The Court held that the domestic courts had not automatically ordered the return of the child. G.K. had had the opportunity to cross-examine the father, and the domestic courts had considered all the arguments of the parties and rendered detailed decisions which, in their view, had safeguarded the best interests of the child and ruled out any serious risk to him. As a whole, the decision-making process before the domestic authorities had not run contrary to the procedural requirements inherent in Article 8 of the Convention, and the applicant had not suffered a disproportionate interference with her right to respect for her family life.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.