



Proceedings for return of a boy from Georgia to Ukraine failed to take his best interests into account and took too long

In today's **Chamber** judgment¹ in the case of [G.S. v. Georgia](#) (application no. 2361/13) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights

The case concerned the complaint by G.S., the applicant, about proceedings in Georgia for the return of her son, born in 2004, to Ukraine. Her former partner decided to keep their son in Georgia with family at the end of the summer holidays in 2010, while himself living in Russia and occasionally visiting his son in Georgia.

The Court considered that there had been shortcomings in the Georgian courts' examination of the expert and other evidence in the return proceedings on the case. In particular, when identifying what would be in the boy's best interests, the courts gave no consideration to reports by social workers and a psychologist, which had concluded that the boy was suffering from lack of contact with both parents and a situation which was barely understandable. Indeed, it was questionable whether keeping the boy, who had spent the first six years of his life in Ukraine, in Georgia in the care of his paternal family – who had no custody rights – and without either of his parents, was in itself in his best interests.

Principal facts

The applicant, G.S., is a Ukrainian national who was born in 1981 and lives in Kharkiv (Ukraine).

She had a son, L., in 2004 with G. Ch., a dual Georgian-Ukrainian national, who moved to Russia in 2005. L. continued to live with his mother. The couple had another child together in 2006, who died in a tragic accident in 2010 when she fell out of an open window of an apartment. L., who witnessed his sister's death, was subsequently diagnosed with an adjustment disorder.

In July 2010 G.S. allowed her former partner to take L. to Georgia for the summer holidays. According to her submissions, L. was expected to return to Kharkiv by the end of August to start primary school there. However, G. Ch. decided to keep L. in Georgia with his family, while himself living in Russia and occasionally visiting his son in Georgia.

After having failed to persuade her former partner to let their son return to Ukraine, G.S. brought child return proceedings in October 2010 under the Hague Convention via the Ministries of Justice of Ukraine and Georgia. In the proceedings under the Hague Convention, two reports were drawn up: the first in April 2011 by two social workers who concluded that L. was suffering from the lack of contact with his parents; and the second in May 2011 by a psychologist who corroborated that conclusion and added that the boy was suffering from a complicated situation which must have been barely understandable for him.

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.

On the basis of those reports, in May 2011, the Tbilisi City Court rejected G.S.'s request, concluding that L.'s return to Ukraine would expose him to a psychological risk on account of the separation it would entail from his father and the trauma he had suffered in the country as a result of the death of his sister. The mother's argument that her son was suffering from an adjustment disorder and from a lack of contact with his parents was dismissed.

Ultimately, in August 2012, the Supreme Court – also relying on the social workers' and psychologist's reports – concluded that L.'s interests would be better protected if he remained in Georgia on account of the risk of psychological harm if he were returned to Ukraine, which he had left primarily on account of the trauma he had suffered following the death of his sister.

L. thus continued to live with his uncle and grandfather in Tbilisi.

In the meantime – in March 2011 – in parallel proceedings in Ukraine, a district court ordered that G.S.'s son be returned to Ukraine.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), G.S. complained about the refusal of the Georgian courts to order the return of her son to Ukraine and about the length of the return proceedings.

The application was lodged with the European Court of Human Rights on 28 December 2012.

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

Guido **Raimondi** (Italy), *President*,
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Ledi **Bianku** (Albania),
Nona **Tsotsoria** (Georgia),
Paul **Mahoney** (the United Kingdom),
Faris **Vehabović** (Bosnia and Herzegovina),

and also Françoise **Elens-Passos**, *Section Registrar*.

Decision of the Court

The Court accepted the Government's argument that the interference with G.S.'s right to family life had had a legal basis, namely Article 13 § b of the Hague Convention, which provides that a State does not have to return a child if it is at a grave risk of psychological harm. Furthermore, that interference pursued the legitimate aim of protecting the child's best interests.

However, the Court found that there had been no direct and convincing evidence in the case file to support the first and cassation instances' main line of reasoning in the return proceedings, namely the allegation that there was a grave risk for L. if he were returned to Ukraine, on account of the psychological trauma he had suffered following the death of his sister.

First, no expert examinations were carried out concerning the risks, on the one hand, of a return to Ukraine or, on the other hand, of L.'s separation from the paternal family.

The examinations which were carried out, by the psychologist and social workers, essentially stated that the boy had experienced psychological trauma and was in need of help. The Supreme Court, relying on those reports, concluded that the boy was at risk of harm if returned to Ukraine, but completely omitted to examine the risks the boy faced if retained in Georgia. Thus, the Supreme Court, when identifying what would be in the boy's best interests, had given no consideration to the

social workers' and psychologist's conclusions with regard to the lack of contact between the boy and his parents and the complicated, "barely understandable" situation.

Moreover, there was no allegation that G.S. herself had posed a threat to the boy.

Lastly, the fact that L.'s father lived in Russia and that the boy was primarily being looked after by the paternal family, who had no custody rights, had quite simply been ignored in the return proceedings. Indeed, it was questionable whether keeping L. – who had spent the first six years of his life in Ukraine – in Georgia without either of his parents, was in itself in his best interests.

In sum, the Court considered that the shortcomings in the examination of the expert and other evidence in the current case meant that the Supreme Court's decision not to return L. to Ukraine had not been based on relevant and sufficient reasoning. Furthermore, it had failed to properly determine L.'s best interests in the specific circumstances of the case or to strike a fair balance between the parties' conflicting interests.

The Court further held that the domestic courts had failed to address the case in an expeditious manner: of particular concern was the delay of almost nine months at the cassation stage, despite the six-week time-limit for taking decisions on requests in proceedings for the return of children provided for under the Georgian Civil Code of Procedure.

The decision-making process before the domestic courts under the Hague Convention had therefore amounted to a disproportionate interference with G.S.'s right to respect for her family life, in violation of Article 8.

[Just satisfaction \(Article 41\)](#)

The Court held that Georgia was to pay G.S. 300 euros (EUR) in respect of pecuniary damage, EUR 8,000 in respect of non-pecuniary damage and EUR 800 for costs and expenses.

The judgment is available only in English.

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Press contacts

echrpres@echr.coe.int | tel.: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

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.