



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

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FIRST SECTION

Applications nos. 46748/21 and 46958/21
K.O. and V.O. against Poland
and M.O. and V.O. against Poland
lodged on 11 September 2021 and 2 September 2021 respectively
communicated on 6 February 2023

STATEMENT OF FACTS

A list of the applicants is set out in the appendix.

A. The circumstances of the case

1. The facts of the case, as submitted by the applicants, may be summarised as follows.

2. Each application was lodged by a parent (the mother, K.O. – the first applicant; and father, M.O. – the second applicant) on their own behalf and in the name of their minor child (V.O. - the third applicant, born on 8 November 2009). All the applicants are Ukrainian nationals.

B. Background

3. The first and second applicants divorced on 1 February 2012. The divorce judgment, issued by a Ukrainian family court, did not regulate custody or contact rights in respect of the third applicant.

4. The child was living with the first applicant in Dnipro. As established by the Polish family court (in the Hague Convention proceedings described below, see paragraphs 10-27 below) the second applicant had exercised contact rights with his son. The parents were in conflict. In 2013 the first applicant reported that she had been beaten by the second applicant in the

presence of their child and that the child had also sustained minor injuries at the hands of his father.

5. It appears that in the spring of 2013 the first and second applicants instituted court proceedings in Ukraine to regulate the second applicant's contact with his child.

6. On 25 July 2014 the Uman District Court in Ukraine granted the first applicant's application to be allowed to leave Ukraine with the child without the second applicant's consent. This decision became final on 15 August 2014. This decision was issued by default, as the second applicant did not appear before the court. According to the latter's submission, the court summons had been sent to the wrong address.

7. The first applicant submitted that she had moved with her child to Poland on 22 February 2015. The Polish family court established (in the Hague Convention proceedings described below, see paragraphs 10-27 below) that the first and the third applicants had arrived in Poland on 22 February 2015 and left for Ukraine on 20 April 2015. On 3 May 2015 they returned to Poland and settled in Cracow.

8. On 19 October 2015 the Dnepropetrovsk Court of Appeal in Ukraine authorised the second applicant's contact with his child (twice a week, every other weekend and holidays).

9. On 7 December 2016 the Uman District Court in Ukraine invalidated its 2014 decision authorising the first applicant to leave Ukraine with the child and ordered the re-examination of the case.

C. Hague Convention proceedings in Poland

10. On 23 February 2016 the second applicant filed a request under the Hague Convention on the Civil Aspects of International Child Abduction ("the Hague Convention"; see paragraph 34 below) to have his child returned to Ukraine.

11. On 25 April 2016 this request was registered with the Polish central authority and, on 8 June 2016, with the Warsaw District Court.

12. On 10 January 2017 the request and the case file reached the Cracow District Court, after the Warsaw District Court had declined jurisdiction (decision of 12 September 2016).

13. On 7 March 2017 the first applicant replied to the Hague Convention request, arguing that there was no wrongful abduction within the meaning of Article 3 of that convention because, at the material time, her child's departure from Ukraine without the second applicant's consent was authorised under the Ukrainian court's decision of 25 July 2014 (see paragraph 4 above).

14. On 9 March 2017 the second applicant was allowed to meet his son at the child's school.

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15. On 27 March 2017 the district court obtained a local assessment report (*wywiad środowiskowy*) drawn up by a court-appointed guardian with a view to establishing the child's situation.

16. On 30 March 2017 the court held a hearing during which the second applicant was not accompanied by a court-appointed interpreter.

17. On 30 June 2017 the Cracow District Court refused to order the child's return on the grounds of grave risk of harm. On 18 January 2018 the Cracow Regional Court quashed that decision for failure to ensure interpretation for the second applicant and remitted the case for review.

18. On 2 July 2018 and on 2 April 2019 the district court obtained two new local assessment reports from the same guardian. The guardian concluded, in line with her 2017 report (see paragraph 15 above), that the first applicant provided her child with very good care and that contact between the child and the second applicant should be regulated.

19. It appears that at the court hearing of 19 March 2019, the second applicant stated that, in the event of his son's return to Ukraine, he would not be able to look after him.

20. On 28 January 2020 the Cracow District Court dismissed the second applicant's request for the child's return.

21. The second applicant appealed.

22. On 20 August 2020 the appellate court obtained a report drawn up by a court-appointed expert in psychiatry, who recommended that the child receive psychological therapy and undergo a psychiatric evaluation. The expert did not evaluate the child's relationship with his father because the second applicant did not come to any of the three examinations scheduled.

23. On 16 November 2020 the Cracow Psychological and Pedagogical Counselling Centre, which had provided therapy to the third applicant, issued a report which concluded that the child – although he missed his grandmother in Ukraine – did not wish to move back to his country of origin.

24. On 20 November 2020 the appellate court obtained another report from a court-appointed expert in psychiatry who cautioned against having the child meet with the second applicant on his own, especially away from the child's place of residence. It was recommended that contact between the second and third applicants be reconstructed gradually.

25. On 21 December 2020 the appellate court obtained a supplementary expert report which stated that the first applicant was the child's primary carer, while the second applicant was considered by the child to be almost a stranger and a source of fear. It was also concluded that having the child return to Ukraine to live with his father carried a risk of emotional disorders such as depression or anxiety.

26. On 4 March 2021 the first applicant filed documents that, in her view, proved her argument that her child's departure from Ukraine in the first part of 2015 was legal and not in breach of the second applicant's custody or contact rights.

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27. On 11 March 2021 the Cracow Regional Court quashed the district court's decision of 28 January 2020 and ordered the child's return by 15 July 2021. The appellate court held that the child's relocation to Poland by the first applicant had been "wrongful" as it had deprived the second applicant of his contact and custody rights. It also considered that the claim of a "grave risk" for the child was unsubstantiated, not least because the region was considered relatively safe.

D. Enforcement of the return order

28. The second applicant has written to the Cracow Regional Court and the Ministry of Foreign Affairs of Ukraine, informing them that the impugned return order has not been enforced and asking for action to be taken and for the documents of the court proceedings to be sent to him.

29. It is not known what action has been taken by the Polish authorities to ensure the enforcement of the return order in question.

E. Proceedings to change the return order

30. On 1 June 2021 the first applicant applied to the family court under Article 577 of the Code of Civil Proceedings (see paragraph 39 below), invoking the change of circumstances and asking that the return decision be revoked.

31. On 14 July 2021 the Cracow District Court dismissed that application as manifestly ill-founded. It appears that the case is currently pending at appeal stage.

F. The first applicant's situation in Poland

32. Since her arrival in Poland, the first applicant has taken a Polish language course and completed a scholarship programme in law at a university in Cracow. She has purchased an apartment and obtained an open-ended employment contract as a specialist in tax law, with a monthly salary of approximately 1,000 euros.

COMPLAINTS

Application no. 46748/21

1. The first applicant complains, on her behalf and in the name of the third applicant, that Articles 3, 6 and 8 were violated in that the domestic court ordered the child's return to Ukraine without giving due consideration to: (i) the risk of domestic violence at the hands of the second applicant or (ii) the risks related to the armed conflict and Russian occupation ongoing since 2014

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in the applicants' hometown in the Ukrainian Donbas region; and (iii) the fact that the child had been well settled in the new environment in Poland. Nor did the court hear the child, who was already 12 years old at the material time. Moreover, the court erred in not establishing that the first and the third applicants had settled in Poland on the earlier date, which would have rendered the second applicant's Hague Convention request inadmissible *de iure*, as filed more than one year from the date of the child's alleged wrongful abduction.

2. The first applicant also complains in essence under Articles 3 and 8 that enforcing the child's return as per the impugned court decision would expose the third applicant to a grave risk of harm owing to all three elements mentioned above.

3. The first applicant also complained, relying upon Article 6 of the Convention, of the unreasonable length of the impugned Hague Convention proceedings.

4. The first applicant also complained that, given the second applicant's undisputed inability to take the child under his care in Ukraine, ordering the child's return affected her own right to respect for private life, in that it would in fact force her to move back to Ukraine with the child.

Application no. 46958/21

1. The second applicant complains on his own behalf and in the name of the third applicant that Article 8 was violated owing to the unreasonable length of the Hague Convention proceedings and the non-enforcement of the return order of 11 March 2021.

2. He also complains under Article 34 that the Polish authorities have not communicated the documents of the Hague Convention case to him.

QUESTIONS TO THE PARTIES

I. Questions for application no. 46748/21:

1. In the light of the current situation in the Donbas region, the child's habitual place of residence, would the third applicant face a risk of being subjected to treatment in breach of Articles 2, 3 and/or 8 of the Convention if the judgment of the Cracow Regional Court of 11 March 2021 ordering the third applicant's return to south-eastern Ukraine were enforced (see *Y.S. and O.S. v. Russia*, no. 17665/17, §§ 97-99 15 June 2021)?

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2. Did the Cracow Regional Court's judgment of 11 March 2021 amount to an interference with the first and third applicants' right to respect for their family life within the meaning of Article 8 § 1 of the Convention? If so, was that interference "in accordance with the law" and "necessary" within the meaning of Article 8 § 2 of the Convention?

In particular:

(a) Were the first and third applicants granted a fair decision-making process with due respect to the interests safeguarded by Article 8 of the Convention?

(b) Were the factors capable of rendering the Hague Convention inapplicable or constituting an exception to the third applicant's immediate return in application of its relevant provisions, as raised by the applicants, genuinely taken into account by the Polish courts (see *X v. Latvia* [GC], no. 27853/09, § 106, ECHR 2013)?

(c) Was the length of the impugned Hague Convention compatible with that Convention's procedural requirements (see, for example, *K.J. v. Poland*, no. 30813/14, § 72, 1 March 2016)?

3. Given the second applicant's declared inability to take the child under his care in Ukraine, did the Cracow Regional Court's judgment of 11 March 2021 amount to an interference with the first applicant's right to respect for her private life within the meaning of Article 8 § 2 of the Convention? If so, was that interference "in accordance with the law" and "necessary" within the meaning of Article 8 § 2 of the Convention?

III. Questions for application no. 46958/21:

4. Has there been a violation of the second and third applicants' right to respect for their family life, contrary to Article 8 of the Convention, owing to:

(a) the length of the impugned Hague Convention proceedings (see, for example, *K.J. v. Poland*, no. 30813/14, § 72, 1 March 2016), and/or

(b) the non-enforcement of the Cracow Regional Court's judgment of 11 March 2021?

5. Has there been any hindrance by the State to the effective exercise of the second applicant's right of application, guaranteed by Article 34 of the Convention?

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APPENDIX

No.	Applicant name	Date of birth
1.	K. O.	11/07/1982
2.	M.O.	11/06/1982
3.	V.O.	08/11/2009