

DECREE

On 16 May 2018, the presidium of the Minsk City Court consisting of Presiding Judge P. I. Korshunovich, members of the presidium V. V. Grigorovich, T. V. Tupik, S. V. Nikolayev, O. S. Budovskaya, N. G. Zhupikova, I. G. Yablokova, I. V. Lyubovitsky and V. M. Stepurko reviewed the protest of the Minsk City Prosecutor against the ruling of the Oktyabrsky District Court in Minsk of 23 August 2017 and the ruling of the judicial panel for civil cases of the Minsk City Court of 16 October 2017 in the case involving the lawsuit by Nikolas Cheropoulos against Liudmila Arkadeyevna Trafimovich for the return of the minor children to the place of their habitual residence.

Having heard the report by the member of the presidium I. G. Yablokova, explanations provided by the representative of the defendant — lawyer L. I. Asievskaia, who had asked to cancel the court decrees on the case, and the opinion of Minsk City Deputy Prosecutor K. A. Kezhun, who had supported the arguments of the protest and considered it necessary to satisfy the protest, the presidium , -

FOUND :

In his court statement, the claimant indicated that from 2008 until April 2017 he lived together with L. A. Trafimovich in Stockholm. They had two daughters in their conjugal life: Anthie, born on 08 June 2012, and Alexandra, born on 01 April 2015.

On 18 April 2017, the defendant illegally moved the children from Sweden to the Republic of Belarus.

In accordance with the 1980 Convention on the Civil Aspects of International Child Abduction (hereinafter referred to as the Hague Convention), he asked to return his daughters Anthie and Alexandra to the place of their habitual residence in Stockholm, Kingdom of Sweden.

The ruling of the Oktyabrsky District Court in Minsk of 23 August 2017, which was left unchanged by the judicial panel for civil cases of the Minsk City Court, cancelled the case proceedings in accordance with paragraph 1 of Article 164 of the Civil Procedure Code of the Republic of Belarus.

The protest raises the issue of canceling the judicial decrees on the case.

/Official round seal affixed/:

Republic of Belarus, Minsk City Court

The protest is subject to satisfaction, proceeding from the following.

The court of first instance, when cancelling the case proceedings due to their lack of jurisdiction, and the judicial panel, when leaving the court ruling unchanged, indicated that the Hague Convention does not provide for the consideration of disputes over a wrongful removal or retention, as well as the return of minor children to the country of their habitual residence in the course of civil proceedings.

One cannot agree with this conclusion of the judicial authorities.

Indeed, in accordance with Article 452 of the Civil Procedure Code of the Republic of Belarus, civil administration of justice with the participation of foreign citizens and legal entities in the Republic of Belarus is carried out in accordance with the rules of this Code, if special legal acts or an international treaty do not provide otherwise.

At the same time, except for general principles of civil legal proceedings, courts of the Republic of Belarus are also guided by the principle of the priority of international treaties; the procedural equality of rights for both foreign citizens, persons without citizenship, foreign legal entities and citizens and legal entities of the Republic of Belarus; compliance with jurisdiction of foreign courts and other law enforcement authorities; reciprocity.

In accordance with Law of the Republic of Belarus No. 90-3 of 13 November 1997 “On Joining the Convention on the Civil Aspects of International Child Abduction”, the republic joined the Hague Convention, which entered into force for the Republic of Belarus on 01 April 1998 and is now part of the national legislation.

Based on the provisions of Chapter 3 and Articles 29 and 30 of Chapter 5 of the Hague Convention, the issue of returning children to the country of their habitual residence relates to judicial procedures, and such application can be lodged directly with judicial authorities. At the same time, a decision concerning the application shall not be taken to be a determination of the merits of any issue related to the right to live with children.

In addition, the Ministry of Justice of the Republic of Belarus explained to the claimant that in order to resolve the issue of returning the minor children to the state of their habitual residence under the Hague Convention, it was required to file a relevant application with judicial authorities.

Thus, the conclusions of the judicial authorities contradict the above statutory provisions.

/Official round seal affixed/:

Republic of Belarus, Minsk City Court

In view of the foregoing, bearing in mind that, in accordance with Part 1 of Article 448 of the Civil Procedure Code of the Republic of Belarus, the grounds for cancellation in the exercise of supervisory powers of judicial decrees are their inconsistency or material breaches of the substantive and procedural law, and guided by paragraph 2 of Article 447 of the Civil Procedure Code of the Republic of Belarus, the presidium

DECREED:

To cancel the ruling of the Oktyabrsky District Court in Minsk of 23 August 2017 and the ruling of the judicial panel for civil cases of the Minsk City Court of 16 October 2017 in the case involving the lawsuit by Nikolas Cheropoulos against Liudmila Arkadeyevna Trafimovich for the return of the minor children to the place of their habitual residence.

The case shall be sent to a new trial by a court of first instance.

Presiding Judge

signature

P. I. Korshunovich

/Official round seal affixed/:

Republic of Belarus, Minsk City Court

/Stamp/:

TRUE

Judge */signed/ I. G. Yablokova*

21 May 2018