Custody Case-Legal Analysis conducted by Attorney Ms. Martha Poni

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Analysis of the Custody Case – Claim of Ms. Trafimovich

Introduction:

Nicolaos Cheropoulos, a resident of Sweden, a Swedish and a Greek national, was living with LA Trafimovich, a Belarusian national, in Stockholm, Sweden. From their relationship, two children were born, Anthoula, who was born in Sweden on 8-6-2012, and Alexandra, who was born in Sweden on 01-04-2015. The children were jointly cared for by both parents. On 18-04-2017, L.A. Trafimovich suddenly and without informing Nikolaos Cheropoulos, illegally moved the children from Sweden to Belarus, where the father's Golgotha began, as we are now facing an international case of abduction of children from their mother.

Involved States:

Sweden and Belarus – Both States are parties to both the 1980 Hague Convention on the Civil Issues of International Child Abduction and the Convention of 15/11/1965 on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

A brief history of the attached decision:

Nicolaos Cheropoulos, the father of the children, filed an application to the competent Central Authority of Sweden for the return of the children immediately (on 25-04-2017), following the provisions of Article 8,1980 Hague Convention and within the deadline of Article 12. The Belarusian Courts, in breach of the 1980 Hague Convention, did not return the children to Sweden, as they had to. They refused to do so, even though Belarus is a Contracting State of the Convention, thus violating the International Law, the paternal and parental rights of Mr. Nikolaos Cheropoulos, and the human rights of both the children and the father.

The father exhausted all legal remedies and even reached the Supreme Court of Belarus, without being finally vindicated (Maybe justice in Belarus is blind or, better, nonexistent for any non-Belarusian citizen).

The Belarusian Judiciary also ruled, illegally, and in the absence of the father, even for the children's custody. Without ever legally notifying the latter of the hearing date (in violation of Article 15 of the Convention of 15/11/1965 on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters). And, of course, in violation of Article 16 of the Convention, since they were not entitled to judgment on the matter before it was established that the return of the children was applicable or not, and without considering, that a final, irrevocable decision already had been issued by the Swedish Courts, which were the sole competent ones, who had assigned custody of the children to the father.

Decision text attached hereto:

2018-12-27 EN Illegally Ruled Custody Decision

2018-12-27 RU Illegally Ruled Custody Decision

The facts of the case:

 # L.A. Trafimovich sued the father before the Belarusian Courts regarding custody of the children, determination of their place of residence, payment of alimony by the father, and determination of a different procedure for the transfer of minor children outside the Republic of Belarus.

 # The Court upheld the claims of L.A. Trafimovich, with the decision dated December 27, 2018, in the absence of the father, who then appealed the decision for a second time, requesting its annulment.

It is illegal for the following reasons:

***1.** The father, a resident of Sweden, was not legal and duly notified of the hearing on December 27, 2018, as he was not informed of the discussion of the case, in accordance with Article 15 of the Convention on 15/11/1965, on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. Therefore, he was not present or represented by a lawyer.*

***2.** The decision was issued illegally as it did not fall within the jurisdiction of the Court of Justice of the Republic of Belarus, and custody of the minors had been previously considered and finally judged by the Swedish Courts (as early as September 2018), which had ruled that custody of the minors was entrusted to the father and this decision had become effective.*

3. *This decision was illegal, as the Courts of the Republic of Belarus were not entitled to consider the case of determining the place of residence of the minors, as the possible return of the minors to Sweden was still pending, according to those foreseen in the 1980 Hague Convention.*

4. *The decision was based on facts that were not supported by reliable information.*

The father's appeal was once again rejected, with a decision wholly illegal and irrational for the legal data, which does not even have valid and substantial legal reasoning.

Decision text attached hereto:

2020.03.02 EN Custody Case REJECTION of Submitted 2020.01.17 Supervisory Appeal to the Chairman of Minsk City Court

2020.03.02 RU Custody Case REJECTION of Submitted 2020.01.17 Supervisory Appeal to the Chairman of Minsk City Court

Legal Commentary:

1.

As it appears from the text of the above decision, the Belarusian Judiciary rejected the first ground of appeal of Mr. Cheropoulos, regarding his illegal notification of the date of the case hearing on custody of his minor children, without invoking any legal reasoning, stating that this is not a reason for annulment of court decisions. Given that Mr. Cheropoulos was in the territory of the Republic of Belarus during the examination of the case, and that the plaintiff (L.A. Trafimovich) had informed the defendant of the need to appear in Court.

What rule of law allows the plaintiff to notify the defendant in a case being heard in Court, and since when is such action a legal notification? How is it shown that the plaintiff actually informed the defendant and that simply the plaintiff did not claim such a thing just to trap and harm her opponent? In the unreasonable scenario where the plaintiff was legally allowed to inform the defendant, how many days before did she have to inform him, and how the defendant could, in fact, appear or be represented in a Court in which he had been unofficially informed by his opponent at the last minute. By coincidence, he happened to be visiting his children, in a country with a language unknown to him, so that he could be represented by a lawyer, to defend himself. But also, to have gathered the necessary information to fight against a suit?

There is only one answer!

There is NO legal rule that allows any of the above, just because this would lead to illegal decisions and to the violation of the rights of defense, hearing, and fair trial, to which all the parties are entitled to.

The rule of law in force, in this case, was gravelly violated by the Belarusian Judiciary, which issued the above illegal and legally unreasoned, and unjustified decision. It is about the provision of Article 15 of the Convention of 15/11/1965 on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, to which the Republic of Belarus has been a party since the country ratified it as early as 1998, and which reads:

Article 15:

Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of Service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that

1) *the document was served by a method prescribed by the internal law of the State addressed to the Service of documents in domestic actions upon persons who are within its territory, or*

2) *the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,*

-and that in either of these cases, the Service or the delivery was effected in sufficient time to enable the defendant to defend. Each Contracting State shall be free to declare that the Judge, notwithstanding the provisions of the first paragraph of this Article, may give judgment, even if no certificate of Service or delivery has been received, if all the following conditions are fulfilled:

a) *the document was transmitted by one of the methods provided for in this Convention,*

b) *a period of time of not less than six months, considered adequate by the Judge in the particular case, has elapsed since the date of the transmission of the document,*

c) *no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.*

Notwithstanding the provisions of the preceding paragraphs, the Judge may order, in case of urgency, any provisional or protective measures.

From the above, it becomes clear and indisputable that the Belarusian Judicial Authorities proceeded to issue a decision, even in violation of the International Conventions ratified by the Republic of Belarus and without invoking the existence of any rule of law, to put emphasis on the existence of justice, and thus violate the human rights of Mr. Cheropoulos and his children, his paternal and parental rights, his right to be treated with justice as equal to a Belarusian citizen and offend the sense of justice, morality and logic

of every respectable and prudent person, but also of any law–respecting society that cares for its people and their rights.

Proper and lawful Service moves the thread of civil litigation. In contrast, incomplete Service impedes its progress, leads to nullities, and often has irreparable legal consequences, not to mention that it is the first step following the filing of a lawsuit. Moreover, legal Service, characterized by particular formalities, is the most representative form of the practical application of the fundamental right, for the political proceedings of any organized state, of both parties to be heard, the observance of which the Judge is called upon to examine before proceeding with examining the substantive validity of the case brought before a Court.

The International Convention on 15/11/1965 does not repeal the provisions of the domestic law of the signatory countries on Service of legal documents, but it ensures that the document has been received by its recipient, in order to avoid fictitious Service and the absence of a party from the proceedings. In particular, in accordance with the provisions of Article 15 of the above International Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, which came into force in Belarus in 1998. The proof of Service of the documents, for the purpose of Service or notification, abroad, must be obtained either from the dated and duly certified proof of receipt, by the person to whom the documents are addressed, or with a certificate from the State to which the application was filed.

Which shall highlight the fact, place, and date of Service so that it is confirmed, as already mentioned, that the person to whom the Service or notification is made has been informed of the document to be served!

Consequently, a hearing of a lawsuit must be considered inadmissible by the Judge, unless there is evidence that the case file has been properly served to the defendant, and if no significant period of time has elapsed so that the defendant has been summoned in time to defend themselves. Instead, the Belarusian judicial authorities proceeded with hearing L.A. Trafimovich's case in the absence of Mr. Cheropoulos.

2-3.

The attached ruling states that the Belarusian judiciary rejected Mr. Cheropoulos' second ground also, according to which the decision of December 27, 2018, was issued illegally as the matter of custody of the minors did not fall within the jurisdiction of the Court of Justice of the Republic of Belarus, having previously been considered and finally judged by the Swedish Courts, which on 19/9/2018 had ruled that custody of minors is assigned to the father and the decision had become effective.

In fact, the Judicial Authorities rejected the above, reasonable and true, the ground of appeal, claiming that the plaintiff L.A. Trafimovich had filed their lawsuit for the custody of minors on 27–04-2017,i.e. before Mr. Cheropoulos, who filed the respective lawsuit in Sweden on 30-05-2017 (while the truth is that the related lawsuit was filed by Mr. Cheropoulos in Sweden on 04–05-2017, and already on 30-5-2017, a decision was issued (interim decision) ruling that the father was temporarily assigned with custody of the children), and therefore the Belarusian Courts did have jurisdiction. At the same time, in order to strengthen their judgment, they mention that the minors are Belarusian nationals and have been living in Belarus with their mother for more than one year.

The Judicial Authorities of Belarus come to the above erroneous conclusions and judgments without taking into account the current rules of law, misinterpreting the same and also the facts, in order to reject the well-founded and lawful appeal of Mr. Cheropoulos. Specifically, the decision states that:

 # the children are also Belarusian nationals: This is irrelevant and had no legal grounds since the children are also Belarusian nationals, their mother being Belarusian, but they were born in Sweden, were permanent residents of Sweden, and grew up in Sweden, until they were abducted by their mother to be illegally transferred to Belarus. Therefore, the Swedish Courts are competent to rule on the custody of the minors, i.e. the Courts of the minors' usual residence (Articles 3 and 14 of the 1980 Hague Convention).

 # the children have been living in Belarus for more than one year: Who is really responsible for the fact that the children have been living in Belarus for more than one year? Not Mr. Cheropoulos, as he proceeded without any delay to file an application to the Central Authorities of Sweden, a few days after the abduction of his children. The Belarusian judiciary itself openly violated the 1980 Hague Convention and refused to allow children to return to their country of residence and is now invoking the conditions they themselves set out to give feeble reasoning to their decision, which is unreasonably and illegally rejecting the father's appeal. Misjudgment is overt on the part of the Belarusian Judiciary, which is now using their own mistakes and illegal actions, in violation of international conventions and international law, violating human rights, as arguments against the father.

All the above when the Minister of Justice of Belarus, in his statement dated 30-05-2019, regarding the Hague Convention, said that children should be returned to their country "of origin" as soon as possible and that any dispute should be further resolved by the competent Court of their original permanent residence, which Court, according to The Hague Convention, is the only one that has jurisdiction over matters of custody and alimony.

Source:

2019.05.30 EN Interview with the Minister of Justice Oleg Slizhevsky about national and international mechanisms for protecting the interests of children

L.A. Trafimovich filed her lawsuit regarding custody of the children in Belarus on 27-04–2017, while Mr. Cheropoulos filed his lawsuit in Sweden later, on 30-5-2017. – First of all, the truth is that the related lawsuit was filed by Mr. Cheropoulos in Sweden on 04-05–2017, and already on 30-5-2017, a decision was issued (interim decision) ruling that the father was temporarily assigned with custody of the children. In addition, this argument once again deliberately attempts to create false impressions, as there is a clear violation of the 1980 Hague Convention.

Specifically, the provision of Article 16 stipulates that once being notified of an illegal transfer of a minor, or of detention, according to Article 3, the judicial or administrative authorities of the Contracting State, in which the child has been transferred or detained, cannot judge on the main issue of the right of custody until it is established that there is no case of children's return, under this Convention, or until a reasonable period of time has elapsed without an application for the implementation of the Convention". In this case, they claim that L.A. Trafimovich's lawsuit has a priority, while this was filed just 10 days after the abduction and illegal movement of the children, without having the right to do so, while the father's application for return was pending.

How can an inadmissible and illegal suit have a priority before a Court without jurisdiction (since the Swedish Courts have jurisdiction, being those in the original place of residence) and which cannot be judged on the basis of the above provision? How can time priority be recognized in an illegal lawsuit, when the father was still searching for his children, with the help of the Swedish Police and authorities? Nevertheless, the Belarusian Judiciary is arguing with this reasoning, only in order to reject the father's appeal, without any legal justification and grounds.

In addition, the final and irrevocable decision of the competent Swedish Courts was issued on September 19, 2018, according to which the father is entrusted with the custody of minors, while the respective decision of the Belarusian Courts, who had no jurisdiction, was issued on December 27, 2018.

The above decision is only a limited part of a father's "Golgotha" to have his own, and his children's right recognized, as a number of decisions have been issued by the Belarusian Justice against him, in violation of the 1980 Hague Convention and the International Law, violating the paternal, parental and human rights of the father and children, even depriving him of the right to be heard and be present or represented in Court. One could wonder if, after all, this is "normal" for a country that has not even signed the European Convention on Human Rights or if that is why this country is continuously accused of not respecting human rights.

Recent Evolution of the Case:

At the time of completion of this analysis, the Supreme Court of Belarus ruled a decision on the Appeal regarding the above case. Unfortunately, this father's struggle ended, as expected, with the issuance of another illegal decision by Judge A.A. Zabara, which refuses to consider the father's objections and position, for which we could comment further and briefly in the following:

1. *The decision is initially limited to a general report that the study of the case file did not reveal the validity of the father's objections to the unlawful performance and lack of jurisdiction of the Belarusian courts.*

2. *The decision then repeats what the previous ones repeated and is consumed in the report of a short history to conclude that the Court correctly set as the place of residence of the children, that of their mother because it took into account the age of the children and their need for maternal affection, as well as the creation of appropriate living conditions, but also the consent of the Executive Committee of Education of Minsk (guardianship authorities) (!!!).*

Obviously, we can say that the Court does not deem it necessary to take into account the position of the father, nor does it bother to evaluate how the mother managed to remove the children from the father and the country of their birth and residence.

In fact, the Supreme Court of Belarus considers that it has been proven with certainty that the mother has created all the necessary conditions for the development of the children.

3. *Impressive is the reference to the decision that no evidence proves that the mother speaks negatively about the father or prevents him from communicating with his daughters.*

The above provocatively unfounded finding of the Court demonstrates its bias and its refusal to deliver justice. Really, how could there be evidence for that, since the only one who appeared in the Court of the first instance was the mother, and they took into account her allegations only?

Is it possible for the mother herself to present evidence that she speaks negatively to the children about their father and that she does not allow him to communicate with them? Only the father could provide this information, but he did not appear in Court, because he had not been legally summoned and had not been notified.

These findings of the Court are funny and ridicule the intelligence of any reasonable person, and here we remind you that this is the Supreme Court of the country of Belarus, which should take care to inspire respect and trust with its decisions, even if seemingly.

4. *Thus, the decision concludes that the father's objections are unfounded and that the facts of the case show that the father was properly informed about the time and place of the discussion of the case. As proof of this, the Court, alleges that a copy of the mother's action and the letter, translated into English and Swedish, were sent to the father's place of residence and via email. If these were sent, why doesn't the Court invoke the receipt confirming that the father received such notification and that he has been lawfully notified to justify its decision?*

Of course, it is not enough to send any notifications if there is no confirmation of their receipt available, as we analyzed in detail above. Based on this logic, the Court might have sent notifications the day before, and, of course, the interested party does not receive timely knowledge, since it would take weeks or even months before they reach his hands.

Decision text attached hereto:

2020.05.22 EN REJECTION of APPEAL from AA Zabara Supreme Court regarding Custody Decision 2018.12.27

2020.05.22 RU REJECTION of APPEAL from AA Zabara Supreme Court regarding Custody Decision 2018.12.27

In addition, the Court reiterated that the father was in Belarus on the day of the trial. A detailed commentary on this ridiculous allegation is also cited above. Finally, unproven and arbitrarily, the Court considers that the father decided to ignore the Belarusian courts.

It is unthinkable how a Supreme Court of a country manages to violate international law on legal notification of documents since there has never been a legal notification to the father and, at the same time, to accuse the father himself of showing indifference to the Belarusian courts.

It is clear that we could devote hundreds or even thousands of lines to commenting on such decisions, which is a shame to the notion of justice and a blatant violation of human rights. What is essential, however, is to demonstrate the attitude of this country, to inform and protect anyone who may fall victim to it, and to hope that in the future, there will be no other father who suffers such emotional and psychological rape.

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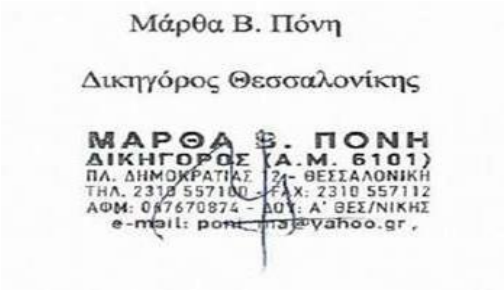

****In case there are some divergences in the interpretation of the above text, the original text in the Greek language shall prevail.***

Nicolaos AA Cheropoulos
Father of Anthie' and Alexandra
Stockholm, June 2020
Reviewed Oct. 2023