

**Chairman of the Supreme Court
of the Republic of Belarus**

V.O. Sukalo

76, Orlovskaya Str.,
220020, Minsk

Appellant (Defender):

citizen of the Kingdom of Sweden

NIKOLAS CHEROPOULOS,

Sweden, Stockholm, Dansbanevägen 28,

126 31 Hägersten

nicolas.cheropoulos@gmail.com

postal address in Belarus: P.O.B. 60 Minsk 220114

Person participating to the case (Plaintiff):

Citizen of the Republic of Belarus

Liudmila Arkadeyevna Trafimovich,

64-24 Kizhevatova Str.,

Interested parties:

Department of Education of Administration of the

Oktyabrsky District of the City of Minsk

State duty: 183 rubles 53 kopecks

paid to the account¹, indicated on the official website of the Supreme Court of the Republic of Belarus, for payment by payers who are not tax residents of the Republic of Belarus and located outside the Republic of Belarus.

Payment details: 1200328778084 of March 28, 2020

**Supervisory
APPEAL**

against the Decision of the Oktyabrsky District Court of the City of Minsk Dated December 27, 2018 and the Ruling of the Judicial Panel for Civil Cases of the Minsk City Court of April 29, 2019 Based on the Statement of Claim of Liudmila Arkadeyevna Trafimovich against the Citizen of the Kingdom of Sweden Nikolas Cheropoulos on Determining the Place of Residence of the Minor Children, the Recovery of Alimony for the Maintenance of the Minor Children, on the Establishment of a Different Procedure for the Travel of the Minor Children Outside the Republic of Belarus

On December 27, 2018 the Oktyabrsky District Court of the City of Minsk considered the civil case based on the statement of claims filed by the citizen of the Republic of Belarus Liudmila Arkadeyevna Trafimovich against the citizen of the

¹<http://court.gov.by/online-help/duty/detales/>

Confirmation of the actual transfer of the state duty paid by payers who are not tax residents of the Republic of Belarus and located outside the Republic of Belarus to the republican budget is a certificate from the Inspectorate of the Tax and Duties Ministry of the Republic of Belarus for the city of Minsk, which is sent to a specially authorized state body, another authorized organization, to the official collecting the state duty, within five business days after the state duty is transferred to the budget (Part 2 of Paragraph 5 of Art. 251 of the Tax Code of the Republic of Belarus).

Kingdom of Sweden Nikolas Cheropoulos (Defendant in this case) on determining the place of residence of the minor children, on recovering alimony for the maintenance of the minor children, on establishing a different procedure for the travel of the minor children outside the Republic of Belarus. The claims have been fully satisfied. The Defendant was not duly notified of the court hearings and claims submitted after referral of the case for a new consideration, he was not able to represent himself and his interests.

The Defendant filed an appeal requesting to revoke the decision made in violation of the requirements of the procedural legislation, and on April 29, 2019, the Judicial Panel for Civil Cases of the Minsk City Court upheld the decision of the Oktyabrsky District Court of the City of Minsk. The Defendant was deprived of the opportunity to take part in the hearing of the case in the appellate court, had no opportunity to represent himself and his interests.

On June 28, 2019, a supervisory appeal was sent to the Prosecutor's Office of the City of Minsk with a request to issue a procurator's appeal against the above decisions and a ruling to revoke them. According to the response dated August 08, 2019, the Prosecutor's Office of the City of Minsk does not find grounds for protesting the appealed decisions.

Based on the results of the response received from the Prosecutor's Office of the City of Minsk dated October 25, 2019, a second supervisory appeal was filed with the Prosecutor General of the Republic of Belarus. According to the response dated December 19, 2019 signed by the Deputy Prosecutor General of the Republic of Belarus, the Prosecutor's Office of the City of Minsk does not find grounds for protesting the appealed decisions.

The next supervisory appeal was sent to the Chairman of the Minsk City Court on January 30, 2020. As follows from the response of the Chairman of the Minsk City Court P.I. Korshunovich dated March 02, 2020, there are no grounds for protesting the court decisions.

In all of the above cases, when considering supervisory complaints, an appropriate legal assessment was not given to the arguments mentioned in the appeals regarding the violation of the procedure for notifying the party to the case in accordance with the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of November 15, 1965, the earlier consideration of the case in the Kingdom of Sweden (May 30, 2017) and the issuance of an interim resolution granting me full custody of the children and release of L.A. Trafimovich from the right to custody of the children, the inadmissibility of the proceedings during the consideration of the issue of the return of the children in accordance with the Convention on the Civil Aspects of International Child Abduction concluded in the Hague on October 25, 1980.

All the responses to the submitted supervisory appeals that we have received do not even contain references to the legal provisions, according to which our arguments regarding significant violations of the rule of law are rejected (in particular there is no legal justification with regard to improper notification).

We believe that the decision of the Oktyabrsky District Court of the City of Minsk dated December 27, 2018 and the ruling of the Judicial Panel of the Minsk City Court dated April 29, 2019 are illegal, unreasonable and subject to cancellation on the following grounds.

1. The Defendant, a citizen of the Kingdom of Sweden, was not duly notified.

I am a citizen of the Kingdom of Sweden, permanently residing in the Kingdom of Sweden. Until 2017, my minor children and their mother also lived in Sweden. In April

2017, the mother of my children illegally took children who were permanently residing in Sweden abroad without my consent.

For over two and a half years, I have been tirelessly trying to get my children back through the official bodies, including the courts, but I cannot even get me officially notified of the court hearings.

The case file does not contain evidence confirming that I was duly notified of the court hearings and claims submitted after referring the case for a new consideration.

In the minutes of the preliminary court hearing (case sheet 95 of volume 1 of the case file), the court of the first instance established:

“The defendant N. Cheropoulos failed to appear at the hearing, he was duly notified of the date, time and place of the hearing, indicated in a written document that he did not understand the text of the document sent to him on behalf of the court.”

The document, which according to the court was sent to me, was made in Russian and sent by e-mail. Given the requirements for proper notification of a foreign citizen who does not speak Russian, as well as the content of the letter of the Defendant, who writes in English that he does not understand the text written in a foreign language (Russian), the court had no grounds to recognize this email as appropriate notification. Moreover, the requirements for the service of judicial documents abroad established by the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of November 15, 1965 (hereinafter referred to as the Convention of November 15, 1965) were violated, which was repeatedly indicated, including by state and diplomatic bodies:

- The Ministry of Justice of the Republic of Belarus (case sheet 167, volume 2 of the case file) stating that the District Administrative Chamber of Stockholm, which acts as the authorized body of the Kingdom of Sweden, in accordance with Article 2 of the Convention of November 15, 1965, asks to remind of the proper order of the service of judicial documents abroad. In this regard, the Ministry of Justice of the Republic of Belarus also reminded the court of the need to comply with the international obligations undertaken by the Republic of Belarus regarding the service of documents abroad;

- the Embassy of the Republic of Belarus in the Kingdom of Sweden (case sheet 178, volume 2 of the case file), in which the Ambassador of the Republic of Belarus to the Kingdom of Sweden notes that, according to a letter from the Main Office for the International Service of Documents of the Regional Council of the Stockholm Administration, *“any attempt to summon a Swedish citizen residing in the Kingdom of Sweden to appear before a court without submitting such a subpoena through the Office will not have legal force.”*

These letters are aimed at preventing violations by the Oktyabrsky District Court of the City of Minsk concerning the improper notification of the foreign citizen and non-compliance with international law.

In addition to these letters, I repeatedly appealed to the courts and state bodies of the Republic of Belarus over the course of more than two years with a request to observe the international notification procedure, which is part of the national law of the Republic of Belarus.

As you probably know, the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of November 15, 1965 has the legal force of the Decree of the President of the Republic of Belarus and entered into force for the Republic of Belarus on February 1, 1998 (Decree of the President of the Republic

of Belarus No. 229 of April 7, 1997 “On the Accession of the Republic of Belarus to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters”). Article 15 of the Convention states that:

“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 -

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

b) 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.”

Despite this, the above violations continued to occur throughout the consideration of the case by the courts of the first and second instances. In particular, I was not duly notified of the first-instance court hearing on March 12, 2018 (case sheets 5-6 of volume 2), court hearing on June 5, 2018 (case sheets 59-61 of volume 2), preliminary court hearings on September 27, 2018, October 19, 2018 and November 12, 2018 (case sheets 93-98, 122-124 of volume 2), the court hearing on December 27, 2018 (case sheets 155-163 of volume 2).

In addition, the case file contains the document “Receipt”, which L.A. Trafimovich received on October 19, 2018, as well as a similar document named “Receipt”, according to which on October 19, 2018 the court issued a summons **of the Defendant to the unauthorized person - the Plaintiff**. The conclusion that the summons to the Defendant was handed to the Plaintiff is based on a superficial analysis of these documents - both receipts are completed and signed in one hand, by L.A. Trafimovich, the Plaintiff. This is at least evidenced by the same signature in these two documents - receipts. I did not sign and did not receive this document, and also never and in no way authorized L.A. Trafimovich to receive court documents intended for me. L.A. Trafimovich received notification to the Defendant illegally.

Thus, in the case of the establishment of the fact that L.A. Trafimovich single-handedly signed and accepted the receipt that she had been given the court document intended for me as the Defendant, the first-instance court, in addition to violating the procedure for international notification of a foreign citizen, violated the legal proceedings, as the court did not verify the powers of L.A. Trafimovich to accept court documents for me as the Defendant.

The receipts in the case file for sending registered and unregistered mail to my address of residence in Sweden also do not constitute evidence of proper notification. Firstly, such mails have never been delivered to me, and in the case file there are no notes on their delivery to me. Secondly, only notification in accordance with the Convention of November 15, 1965 can be an appropriate method of notification, all other methods are unacceptable, illegal, and constitute a substantial violation of procedural law.

A note by the secretary that she spoke with the Defendant over the phone cannot serve as evidence of proper notification. Firstly, the secretary did not have the opportunity to verify who was calling her, who she was talking to, especially since she allegedly spoke not with the Defendant, but with another person - the translator. Secondly, such “calls”

cannot replace the proper notification under the Convention of November 15, 1965.

Emails were sent by the court without evidence of delivery of these messages to the addressee. Moreover, often letters were sent to persons after the termination of their authority to represent the Defendant, as there is information about this in the case. In any case, such emails cannot replace the proper notification under the Convention of November 15, 1965.

According to the case materials available, the notifications according to the form provided for by the Convention of November 15, 1965 were sent to me only twice for the entire period of the case consideration.

Thus, a copy of the court ruling of the Oktyabrsky District Court of the City of Minsk on initiating a civil case, preparing it for trial and holding a preliminary court hearing of May 02, 2017 together with a copy of the statement of claim by L.A. Trafimovich (case sheets 51-75 of volume 1) has a note on receipt in Sweden on June 22, 2017. At the same time, a notification certifying that the document was serviced, as well as if it had not been serviced to me, in accordance with Art. 6 of the Convention of November 15, 1965, is absent in the case file.

At the same time, to be objective, it should be noted that a copy of the ruling of the Minsk City Court of March 7, 2019 on the preparation and listing of the case for appeal (case sheets 131-156 of volume 3) was handed to me in accordance with the Convention of November 15, 1965.

The documents on international assignments in accordance with the Convention of November 15, 1965, contained in the case materials, relate only to the initial delivery of the claim documents (dated June 2017) and notifications regarding the appeal review of the case (dated March 2019). Moreover, in both cases, there is no evidence in the case file that the notification under the Convention of November 15, 1965 was carried out as provided for in Article 6 of the Convention of November 15, 1965: *“The Central Authority of the State addressed or any authority which it may have designated for that purpose, shall complete a certificate in the form of the model annexed to the present Convention. The certificate shall state that the document has been served and shall include the method, the place and the date of service and the person to whom the document was delivered. If the document has not been served, the certificate shall set out the reasons which have prevented service.”*

Thus, the Oktyabrsky District Court of the City of Minsk examined the case without proper notification of me as the Defendant, which is a violation of the right to access to justice, a violation of legal proceedings and indicates a significant violation of procedural law.

Proper and legal notification initiates civil proceedings; on the contrary, improper notification impedes its progress, leads to numerous violations and often has irreparable legal consequences. In addition, the legal notification procedure protects the fundamental right of each party to participate in the proceedings and be heard, the observance of which the judge must verify before the initiation of the civil proceedings. It is also necessary that a reasonable time passes after notification, so that the defendant can arrive on time and be able to defend himself.

“Justifying” the procedural violations regarding notification, the court indicates in the reasoning part (Art. 7 of the statement of reasons of February 20, 2019 for court decision of December 27, 2018) that *“when considering the Plaintiff’s claims, the Defendant was previously present, a copy of the statement of claims translated into Swedish was handed to him in the courtroom.”* However, we note that, firstly, the participation of the Defendant

in the court hearings during the initial consideration of the case was reduced to indicating by the Defendant that the court is not competent to consider the case until the issue of the return of children is resolved on the basis of the Convention on the Civil Aspects of International Child Abduction, and, secondly, after the annulment of court decisions and referral of the case for a new trial, the trial begins anew; thirdly, the statement of claims during the initial consideration of the case at the hearing in Belarus was never presented to the Defendant, there is no evidence of this in the case file.

In addition, when L.A. Trafimovich filed a lawsuit (April 27, 2017), the courts of the Republic of Belarus did not have the right to accept the case for consideration, since the case of the return of children on the basis of the Convention on the Civil Aspects of International Child Abduction, signed in the Hague on October 25, 1980, has not yet been considered (provision contained in Article 14 of the Convention). Thus, any actions committed as part of an illegal process have no legal consequences.

2. This decision is unlawful, since it is not within the jurisdiction of the court of the Republic of Belarus - the identical case was previously considered by a foreign court, which ruled that the Defendant was recognized as the sole guardian of the minor children Anthoula Anthie Cheropoulou, born on June 08, 2012, Alexandra Cheropoulou, born on April 01, 2015, and this decision entered into force.

Prior to the decision of the court of the Republic of Belarus, the court of the Kingdom of Sweden established that the minor children reside permanently in the Kingdom of Sweden, the custody case is under the jurisdiction of the Swedish court.

On May 30, 2017, the court of the Kingdom of Sweden examined the case and issued an interim resolution granting me full custody of the children and releasing L.A. Trafimovich from the right to custody of the children. In addition, the Court of the Kingdom of Sweden dismissed the appeal of L.A. Trafimovich against the said court decision, the decision itself is upheld.

As a result, on September 19, 2018, the Södertern District Court (Kingdom of Sweden) made a final decision on the establishment of guardianship over my daughters Anthoula Anthie Cheropoulou and Alexandra Cheropoulou, according to which Defendant - the girls' father - was appointed as their sole guardian.

Thus, prior to the decision of the Oktyabrsky District Court of the City of Minsk dated December 27, 2018, and prior to the decision of the Judicial Panel for Civil Cases of the Minsk City Court dated April 29, 2019, the Swedish court issued the decision in the identical case, and the issue of the custody over the children was decided in my favor.

In accordance with Part 2 of Article 548 of the Civil Procedure Code, in case of double jurisdiction of a dispute, a case in a court of the Republic of Belarus is subject to termination if an identical case in a court of a foreign state was initiated earlier.

3. This decision is unlawful, since the courts of the Republic of Belarus were not entitled to consider the case on determining the place of residence of the minor children in connection with the consideration of the return of the children Anthoula Anthie Cheropoulou and Alexandra Cheropoulou in accordance with the Convention on the Civil Aspects of International Child Abduction, concluded in the Hague on October 25, 1980 (hereinafter - the Convention).

In accordance with Article 16 of the Convention: *“After receiving notice of a wrongful*

removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.”

Illegal removal of the children by L.A. Trafimovich took place on April 18, 2017. On April 19, 2017, I filed a statement with the Swedish police for the search and return of the children. I filed my statement for the return of children based on the Convention to the authorized body of Sweden on April 25, 2017. On April 26, 2017, my statement was sent in electronic form to the central authority of the Republic of Belarus, responsible for the implementation of the Convention. All these actions under the Convention were performed by me before the appeal of L.A. Trafimovich with a lawsuit in a court of Belarus.

The fact of the illegal removal of the children from their place of permanent residence on May 30, 2017 was established by the court of Sweden. And on June 28, 2017, I filed a lawsuit with the Oktyabrsky District Court of the City of Minsk on the return of children to their place of permanent residence in Sweden.

Despite this, the courts of Belarus accepted the claims of L.A. Trafimovich on the determination of the place of residence of the minor children, which is contrary to the Convention.

4. The decision is based on facts that are not supported by reliable evidence.

According to Article 241 of the Civil Procedure Code, each evidence is evaluated in terms of relevance, admissibility, reliability, and all evidence in the aggregate - also in terms of sufficiency to resolve the case. None of the evidence has a predetermined force for the court.

In the case under consideration, the court decision was based on the opinion of the Education Department of the Administration of the Oktyabrsky District Court of the City of Minsk dated December 27, 2018, which is based on the inspection report of December 26, 2018. This opinion does not accurately reflect the facts identified by the report, namely:

- the opinion has no indication that a stranger lives in the apartment with the children;
- the opinion contains inaccurate information stating that “a separate room is allocated in the apartment for the minors, which is equipped with beds.” However, the inspection report, drawn up during a direct visit to the apartment, revealed that “the children have a separate room in which there is a bed for the eldest daughter ... the youngest is sleeping with her mother in the living-room.” There is no indication of a separate sleeping place for the youngest daughter in a separate room.

Moreover, the Education Department of the Administration of the Oktyabrsky District of the City of Minsk indicated in the first paragraph of this opinion (p. 142 of the case materials) that it had studied the case materials on the statement of claims of L.A. Trafimovich against Nikolas Cheropoulos on determining the place of residence, on recovering alimony for the maintenance of the minor children, on determining a different procedure for the travel of the minor children outside the Republic of Belarus.

However, in the materials of this case there is no petition from this Department or its employees for familiarization with the materials of the case, as well as any other evidence that familiarization with the materials by this Department took place.

In such circumstances, the opinion given by the Department of Education of the Administration of the Oktyabrsky District of the City of Minsk and used by the court as

the basis for its decision is not based on the case file, since the authority that issued the opinion did not familiarize themselves with it.

At the same time, the opinion of December 27, 2018 is not based on the actual circumstances set forth in the inspection report of December 26, 2018, to which this opinion refers.

Consequently, the court did not actually establish the correctness of the information set out in the opinion of the Education Department of the Administration of the Oktyabrsky District of the City of Minsk, which formed the basis of the decision.

In fact, throughout the entire period of stay of the children in Belarus L.A. Trafimovich does everything possible to prevent the father's communication with the children, including the refusal to coordinate the time and place of meetings with the children, communication by phone and e-mail, the transfer of presents from the father to the children for birthdays and other holidays. The children, instead of attending general education institutions, are constantly in a church school with a dubious reputation, the father's opinion on raising the children is completely ignored. All this is a consequence of violations committed during the trial, when only one party to the case was heard.

Since the violations of the civil procedural legislation referred to above are significant, indicate that the court has not investigated the circumstances and documents of decisive importance, this court decision and the ruling of the Judicial Panel of the Minsk City Court should be considered unreasonable.

Thus, during the trial the court violated the norms of civil procedural law, the obligations and laws of the Republic of Belarus regarding the proper notification of foreign citizens permanently residing abroad.

Moreover, a case examined by a foreign court does not fall within the exclusive competence of the courts of the Republic of Belarus,

In such circumstances, guided by Articles 435, 439, 442, 547-548 of the Civil Procedure Code, the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of November 15, 1965,

I ask:

- to bring the procurator's appeal against the decision of the Oktyabrsky District Court of the City of Minsk of December 27, 2018 and the ruling of the Judicial Panel for Civil Cases of the Minsk City Court of April 29, 2019 in a civil case based on the statement of claims filed by Liudmila Arkadeyevna Trafimovich against Nikolas Cheropoulos to determine the place residence of the minor children, to recover alimony for the maintenance of the minor children, to determine a different procedure for the travel of the minor children outside the Republic of Belarus with a view to their cancellation.

Annex:

1. A copy of the payment document dated March 28, 2020.
2. Copies of the court decision of the Oktyabrsky District Court of the City of Minsk dated December 27, 2018, the ruling of the Judicial Panel for Civil Cases of the Minsk City Court dated April 29, 2019 certified by the court;
3. A copy of the statement of reasons dated February 20, 2019 of the decision of the

Oktyabrsky District Court of the City of Minsk dated December 27, 2018 in case No. 2-2842/18 certified by the court;

4. A copy of the response dated August 08, 2019 on the consideration of the supervisory appeal by the Acting Prosecutor of the City of Minsk;
5. A copy of the response dated December 19, 2019 on the consideration of the supervisory appeal by the Deputy Prosecutor General of the Republic of Belarus;
6. A copy of the response dated March 02, 2020 on the review of the supervisory appeal by the Chairman of the Minsk City Court.
7. A copy of the Power of Attorney for the lawyer (a copy is available in the case file, if necessary, the original will be presented).

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March 31, 2020