

In the District Court of The Hague

9 June 2022

In the matters of international child abduction and parental authority

Decision on the statement of claim received on 10 April 2022 from:

[the father]

David

(claimant)

Attorneys of the claimant: Dirim Su Kanat and Diana Alexia Popescu

Regarded as interested parties:

[the mother]

Eva

(defendant)

Attorneys of the defendant: Tal Assael and Patricia Florea

Judgment

Judicial officer:

Adiel Goldin (2052962),

Procedural history

On 10 April 2022, the father submitted his statement of claim with the District Court of The Hague for the return of Felix, Georges and Honza to the Czech Republic.

The Court has taken cognizance of the documents, including:

- The petition dated 10 April 2022;
- The statement of defense dated 24 April 2022.

On 18 May 2022, the case was heard before this Court. Both the father, accompanied by his attorneys, and the mother, accompanied by her attorneys, were present.

Content of petitioners

The father has requested the immediate return of the children Felix, Georges and Honza to the Czech Republic.

The mother has put forward her defense, which will be discussed below – insofar as necessary. She independently requested the Court to be granted sole parental authority over the children Felix, Georges and Honza.

Position of the parties

The following is assumed on the basis of the documents and the proceedings at the hearing:

- The father (a Czech national) and mother (a Polish national) have been in a relationship since 2010. They decided to get married in 2013. The relationship ended in November 2020 but they have not been divorced.
- The following children were born from their relationship:
 - Felix, born in 2011 in Prague (Czech Republic).
 - Georges, born in 2014 in Prague (Czech Republic).
 - Honza, born in 2016 in Prague (Czech Republic).
- Parties jointly exercise parental authority.
- On 6 April 2021, the mother and the children left the Czech Republic. They arrived in the Netherlands on 7 April 2021.
- The Czech Central Authority has forwarded a request to have the three children returned to the Czech Republic. The mother has refused to engage in any form of mediation.
- The Dutch Child Protection Board has requested the Court for a supervision order to be issued.
- The mother has petitioned the Court to be granted sole parental authority over the children.

Legal framework for the decision

The legal formalities have been met. The father's petition is based on the Hague Convention on Civil Aspects of International Child Abduction of 25 October 1980 (hereinafter: the Hague Convention). Both the Netherlands and the Czech Republic are parties to the Hague Convention.

The Hague Convention aims – in so far as relevant here – to ensure the prompt return of children who have been wrongfully removed to or

retained in a Contracting State. The Hague Convention aims to restore the situation in which the child found itself immediately prior to the removal or retention. Rapid recovery of the situation prior to the removal or retention is deemed to limit the harmful consequences for the child.

Wrongful removal or retention within the meaning of the Hague Convention occurs when the removal or retention is contrary to a right of custody under the law of the State in which the child is habitually resident immediately before the removal or retention and this right was exercised alone or jointly at the time of removal or retention or would have been exercised if such event had not occurred (Article 3 of the Hague Convention).

Wrongful removal or retention within the meaning of Article 3 of the Hague Convention?

In order to assess whether there has been a wrongful removal or retention within the meaning of the Hague Convention, it must be determined what the habitual residence of the children was at the time of the alleged removal or retention. Both parties have stated that the Czech Republic is the habitual residence of the children. In the opinion of the Court, the habitual residence of the children is located in the Czech Republic. To this end, it considers, among other things, that the children were born in the Czech Republic and have lived there until 6 April 2021.

Since the habitual residence of the children is in the Czech Republic, there may be a wrongful removal or retention within the meaning of the Hague Convention. The father claims there was no consent for the transfer of the children from the Czech Republic to the Netherlands. The mother does not deny this. The father states that both parties are the children's legal parents and are therefore vested with parental authority over the children pursuant to Act No 89/2012 of the Civil Code of the Czech Republic. The mother has petitioned the Court to be granted sole parental authority over the children but does not contest that the parental authority is currently exercised by both parties. Based on the aforementioned, the Court concludes that the father had rights of custody and he has not given consent for the removal of the children. Therefore, the removal is to be regarded as wrongful pursuant to Article 3 of the Hague Convention.

Exceptions

When there is a wrongful removal within the meaning of Article 3 of the Hague Convention, the Court of the place where the children are present has an obligation to return the child to their habitual residence pursuant to Article 12 of the Hague Convention, unless one of the exceptions apply.

The mother claims that one year has elapsed from the date of the wrongful removal and the children have now settled in the Netherlands pursuant to Article 12(2) of the Hague Convention. Firstly, Article 12(2) of the Hague Convention provides that the one year period should be assessed from the

date of the wrongful removal and the date of the commencement of the proceedings. The mother left the Czech Republic with the children on 6 April 2021 and arrived in the Netherlands on 7 April 2021. The father submitted his petition for the return of the children with the Court on 10 April 2022. As such, the Court finds that one year has elapsed. Secondly, the children must have been settled in the Netherlands. The mother claims the children have settled but she does not substantiate her claim. Instead, she invokes Article 13(2) of the Hague Convention which allows children to object to their return. The mother argues that the children will prove that they have settled in the Netherlands. However, with regard to Article 13(2) of the Hague Convention, a distinction must be made between the objections of the children and the burden of proof. In the opinion of the court, it is not appropriate to take account of their views because the children have not been subject to abuse themselves or witnessed the abuse. To successfully invoke Article 12(2) of the Hague Convention, the mother must satisfy the burden of proof. She failed to provide evidence indicating that the children have settled in the Netherlands. Therefore, the Court concludes that the exception of Article 12(2) in conjunction with Article 13(2) of the Hague Convention is not applicable.

The mother also claims that there is a grave risk of harm pursuant to Article 13(1)(b) of the Hague Convention. Article 13(b) of the Hague Convention establishes that the children do not have to be returned to their habitual residence when there is a grave risk that the children would be exposed to physical or psychological harm or otherwise place the children in an intolerable situation. When the grave risk of harm concerns domestic violence, the abuse must either be identified as being directed at the child itself or the child must have witnessed the domestic violence against the abducting parent (i.e. the mother). Both parties agree that the children were never present when the domestic violence took place. The mother claims that the father has verbally admitted to hitting her to the mother's family and raises the issue of the father's past addiction, including the possible implications of a relapse. The father claims he went into rehabilitation and is currently sober. Based on the aforementioned, the Court finds that the children themselves have not been exposed to physical or psychological harm nor that they have been witnesses of domestic violence against the mother.

Besides domestic violence, Article 13(1)(b) of the Hague Convention may also be satisfied if the return of the children would lead to separation from the abducting parent. In such instances, it is not considered to be in the best interest of the child if the child were to be sent back and separated from the abducting parent, especially if the abducting parent is the main caregiver.. The father has stated that the mother and their children may return to their prior habitual residence in the Czech Republic. The mother has not explicitly emphasized that she is unwilling to return to the Czech Republic. Consequently, the children would not be separated from the abducting parent if they were to be returned to their habitual residence. It is therefore irrelevant who the main caregiver is.

Taking the personal circumstances into account, the Court cannot establish that the return of the children would expose them to physical or psychological harm or otherwise place them in an intolerable situation. As such, the Court concludes that the exception of Article 13(1)(b) of the Hague Convention is not applicable.

Sole parental authority

The mother has petitioned the Court to be granted sole parental authority over the children. The petition did not have a legal basis.

The matter of parental responsibility is governed by the Brussels II-bis Regulation pursuant to Article 61(a) of the Brussels II-bis Regulation and Article 52 of the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children of 19 October 1996. Both the Netherlands and the Czech Republic are Member States of the European Union.

Pursuant to Article 8(1) of the Brussels II-bis Regulation, the courts of the Member State where the child is habitually resident shall have jurisdiction in matters of parental responsibility. As previously mentioned, the habitual residence of the children is in the Czech Republic. Article 8 is subject to the provisions of Article 9, 10 and 12 of the Brussels II-bis Regulation. Article 10 of the Brussels II-bis Regulation provides that, in case of wrongful removal of the child, the Member State where the child was habitually resident immediately prior to the wrongful removal shall retain their jurisdiction until the child has acquired a habitual residence in another Member State.

Based on the aforementioned, the Court does not have jurisdiction in the matter of parental responsibility pursuant to Article 10 of the Brussels II-bis Regulation because the children were habitually resident in the Czech Republic immediately prior to the wrongful removal and the Court did not find that the children have settled in the Netherlands.

Decision

The mother has wrongfully removed the children from their habitual residence in the Czech Republic within the meaning of the Hague Convention and the father's request for the return of the children must therefore be accepted.

The court:

- Accepts the father's request for the children to return to the Czech Republic;
- Rejects the mother's request to appoint a guardian ad litem;
- Rejects the mother's request to be granted sole parental authority over the children;
- Determines that each party bears its own costs of the proceedings;
- Rejects the more or otherwise requested.

This decision was made by Adiel Goldin and delivered on 9 June 2022.