Delay in international child abduction matters: Lessons from A Father v A Mother [2024] EWHC 1149 (Fam)

The International Family Law Group have acted for the respondent mother in successfully defending Hague Convention child abduction proceedings in a most unusual case of extensive delay brought about by proceedings in the home state.

The case concerned a (then) 10-year-old child who had been removed to the UK by the mother from her native Lithuania in September 2021 – yet despite proceedings in England being issued some 9 months later, they were only concluded in May 2024 due to ongoing parallel proceedings in Lithuania.

Following a final hearing in England, with oral evidence from the Cafcass officer, the High Court refused to order the child's return to Lithuania, based primarily on the child's objections. The case also provides an insight into how the issue of delay can, of itself, possibly be a defence under Article 13(b) of the 1980 Hague Convention.

Background

The case concerned a Lithuanian family. The mother had arranged, without the father's consent, for the child to travel to the UK in September 2021 to stay with her maternal grandmother who was already resident here. The mother later joined them in December of that year.

In July 2022 the mother made an application in the Lithuanian courts for retrospective permissionto relocate with the child to England, which the father defended. The father also simultaneously commenced proceedings under the *1980 Hague Convention* in England a few days later.

The Lithuanian court, both at first instance and then in the appellate court, allowed the mother's retrospective relocation application and permitted the child to remain in England. The mother as such argued that the child's presence in the UK was no longer wrongful.

The father however then appealed the matter to the Lithuanian Supreme Court, and in the meantime, the proceedings in England were stayed by agreement.

In November 2023 the Lithuanian Supreme Court partly overturned the decision of the lower courts, determining they had no power to make orders they made. It left the mother's request as 'unexamined', and thus the mother's request was neither granted nor refused. It ruled that it was unable to decide the matter of the child's relocation until the conclusion of the Hague proceedings in England.

The father consequently sought to restore the matter for determination in the English courts in February 2024. The final hearing took place in May 2024 at which point the child had been living in the UK for 2½ years. The mother argued that the child had evidently become integrated in England. It was argued that the objective of the 1980 Convention, which is to secure '*the prompt return of children*', was no longer being met on the facts of this case. It had furthermore become far from clear that the child would still regard Lithuania as her *'home'.*

Defences

The mother raised 2 defences to the father's application, namely:

1. That the child objected: this went on to be of key importance to the decision. The child had clearly and consistently expressed her objections to a return to Lithuania both times she spoke to the Cafcass officer – firstly in July 2022, and then in April 2024. At the time of the preparation of the second report, the child was approaching 13, and, in the view of the Cafcass Officer, had attained sufficient maturity for the court to have extensive regard of her views.

The court held that its discretion in determining this defence inevitably required consideration of

the delay which has occurred in this case, and the child's established life in England, alongside what it had found to be its strong objections now to being removed from it.

2. Grave risk of harm / intolerability. The issue raised here by the mother was primarily that, by reason of the delay in determining this application itself, a return to Lithuania would place the child in an intolerable situation. The mother alleged that removing this child from her home where she had resided for 2 ½ years, to Lithuania, would in itself be intolerable. Whilst there is a stream of case law in support of that assertion, the court held that '*it would be something of a stretch*' to find so in this case. In any event, the court held there was no need to consider the question further, given the child's very clear objections to return which justified the operation of the discretion against a return.

The decision

Ultimately, the Court held that the child's strong objections to returning were sufficient to refuse a return. A question perhaps remains: if proceedings had progressed more swiftly, and if the child had been in the UK for a shorter period of time, would her objections be as strong? Would the court be more inclined to order a return? We of course will never know, but the fact remains that in any international case, speed can make or break a case. Whilst the delay was not sufficient to find a defence of Article 13 (b) in this case, it was most certainly a central tenet of the judge's discretion in refusing a return. It is vital to take specialist advice across jurisdictions in cases of this nature.

Link to the full case: https://www.bailii.org/ew/cases/EWHC/Fam/2024/1149.html

James Netto, Partner, and Jana Derska, Paralegal of The International Family Law Group LLP acted for the respondent mother together with Prof Rob George of Harcourt Chambers, leading Henry Pritchard of 1 Hare Court.

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