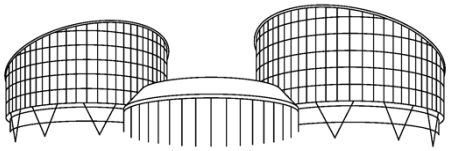

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF G.K. v. CYPRUS

(Application no. 16205/21)

JUDGMENT

Art 8 • Family life • Domestic courts' order for return of child from Cyprus to the USA under the Hague Convention following removal by its mother, the applicant • Custody exercised jointly by both parents prior to removal • Thorough examination of applicant's objections to child's return under the Hague Convention, including allegations of violence perpetrated by the father • No interview of child by first instance court on account of young age • Delay in proceedings, albeit regrettable, not a disproportionate interference with applicant's Art 8 rights in the circumstances • Adversarial and fair proceedings • Due consideration to child's best interests ruling out any serious risk

STRASBOURG

21 February 2023

FINAL

21/05/2023

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of G.K. v. Cyprus,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Pere Pastor Vilanova*, President*,
Yonko Grozev,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd*, judges*,
Tasia Psara-Miltiadou*, ad hoc judge*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 16205/21) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Cypriot national, Ms G.K. ("the applicant"), on 26 March 2021;

the decision to give notice to the Cypriot Government ("the Government") of the complaints concerning Article 8 of the Convention and to declare inadmissible the remainder of the application;

the decision not to have the applicant's name disclosed;

the withdrawal of Judge Georgios A. Serghides, the judge elected in respect of Cyprus, from sitting in the case (Rule 28 § 3 of the Rules of Court) and the decision of the President of the Chamber to appoint Mrs Tasia Psara-Miltiadou to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 (a) of the Rules of Court);

the parties' observations;

Having deliberated in private on 31 January 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the alleged violation of the applicant's right to family life under Article 8 of the Convention following an order by the Cypriot courts to return her son to the United States of America under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ("the Hague Convention").

THE FACTS

2. The applicant was born in 1986 and indicated Limassol, Cyprus as her place of residence. She was represented by Mr A.C. Emilianides, a lawyer practising in Nicosia.

3. The Government were represented by their Agent, Mr G. Savvides, Attorney General of the Republic of Cyprus.

4. The facts of the case may be summarised as follows.

5. In 2011 the applicant moved to New York to study. On 25 April 2016 she married a US national, C.T.G. Their son, a US citizen, was born there on 15 October 2016. The family lived together in an apartment in New York. Both parents jointly exercised, *inter alia*, custody rights, as well as other related rights, powers and duties over the child in accordance with US law.

6. On 6 October 2017 the applicant filed a complaint of domestic violence against C.T.G. ("the father") with the competent US authorities. She alleged, in essence, that he had become possessive and controlling, had outbursts of anger, and belittled and humiliated her. Subsequently, she filed a family offence petition with the Family Court of the State of New York, seeking an order of protection.

7. On the same day the applicant and the child left the apartment in which they had been living and moved to a safe house.

8. On 11 October 2017 the Family Court of the State of New York issued a temporary order prohibiting the father from approaching and contacting the applicant and the child.

9. On 25 October 2017 the applicant and the child, with the assistance of the Cypriot authorities, who had in the meantime granted the latter Cypriot nationality and a passport, left the USA for Cyprus. The child was one year old at the time.

10. On 31 October 2017 the Family Court of the State of New York dismissed the family offence petition as the applicant had failed to appear in court because of alleged illness.

11. In August 2018 the father became aware of the child's whereabouts following an investigation conducted by private detectives he had hired.

12. On 18 September 2018 the father authorised the US Central Authority to apply to the Central Authority of Cyprus responsible for implementing the Hague Convention to seek the child's return. The request reached the Central Authority of Cyprus on 1 October 2018.

I. RETURN PROCEEDINGS

A. First-instance proceedings no. 24/2019 before the Family Court of Paphos

13. On 7 February 2019 the Central Authority of Cyprus lodged an application (no. 24/2019) with the Family Court of Paphos requesting the child's return to his habitual place of residence, namely the USA ("the main application"). The main application was accompanied by an affidavit from an officer of the Central Authority of Cyprus. The father, who was represented by a lawyer, participated in the proceedings as an "interested party".

14. On 29 March 2019 the applicant filed an objection to the main application. She argued, *inter alia*, that the US courts had issued an order of

protection prohibiting the father from contacting her and the child on account of his violent behaviour. The father also had a criminal record in Ohio, where he had grown up. There was a grave risk that the child's return would expose him to physical or psychological harm and place him in an intolerable situation. She supported this claim with a document indicating that the child had been attending preschool since 4 December 2017. She claimed that he had developed friendships at school and become fully accustomed to the environment. She also provided evidence that the child had undertaken pre-school activities like riding and art classes. She also argued that the child had developed social and emotional ties with Cyprus, which was his habitual residence, and that his mother tongue was Greek. The child would be in danger from his father who had been, *inter alia*, violent and aggressive.

15. On 31 July 2019 the court granted leave to the father to swear and file a supplementary affidavit, considering that he had first-hand knowledge of the facts and should be given the opportunity to set out his position and provide evidence not in the Central Authority's possession and sphere of knowledge (see paragraph 13 above).

16. On 24 September 2019 the father filed his supplementary affidavit. He argued, *inter alia*, that he had not been violent towards the applicant. On the contrary, he had taken care of her and the child as the sole provider for the family. He argued that he could take care of the child in the USA given that he had a stable job there and the apartment where they had been living prior to his removal. The child also had health cover and a paediatrician in the USA. He supported these claims with, *inter alia*, photographs, copies of text messages between him and the applicant, and sworn affidavits from his friends, clients and others. He further provided the court with a letter from the National Center for Missing and Exploited Children confirming that they could assist in the child's successful transition to the USA.

17. On 11 November 2019, when the case was set for a hearing, the applicant requested an adjournment and informed the court that she had applied for leave to file a supplementary affidavit to reply to the father's affidavit and submit further evidence in support of her original objection. Specifically, she wished to submit, *inter alia*, a record indicating that the father had prior convictions for disorderly conduct and possession of drug paraphernalia, and a report by a child psychologist dated 20 May 2019. The psychologist had examined the child on 16 May 2019 and reported that he was fully integrated into his family environment in Cyprus and had a close relationship with his grandparents and aunts. The report concluded that separation of the child from his mother and environment at that stage of his development would be likely to cause him psychological harm. It was recommended that the child have contact with the father, but that it take place in the child's environment. Owing to the father's violent behaviour and the orders against him for the protection of the applicant and child, the psychologist's opinion had been that such visits be supervised.

18. On 13 November 2019, following a request by the representatives of both parties, the proceedings began with the father's cross-examination. Following this, counsel for the father stated that she did not wish to cross-examine the applicant. The court decided not to hear the child on account of his young age – three years old at the time – and the applicant's wish for him not to take part in the proceedings.

19. On 10 January 2020, after a hearing which took place on 26 November 2019, the court dismissed the applicant's interim application to file a supplementary affidavit. It considered that it did not disclose any good reason – as required by domestic case-law – to allow the filing of a supplementary affidavit, and that no new circumstances needing to be established had been put forward. Allowing the applicant's request would lead to unacceptably protracted proceedings where both parties would seek to file supplementary affidavits to respond to the other person's claims, derailing the entire proceedings, contrary to the Hague Convention. As regards the child psychologist's report and the father's criminal record, the court considered that these essentially constituted a repeat of the claims contained in the applicant's objection (see paragraph 14 above). It further noted that the applicant had never explained why she had not submitted this information with her objection at an earlier date, given that she had already expressed her intention to do so twice, on 31 July and 24 September 2019. In any event, the court noted that the applicant had had the chance to cross-examine the father extensively and present her position to him.

20. On 19 February 2020 the parties submitted their written arguments to the court. The case was set for clarifications (*διευκρινήσεις*) on 17 March 2020, but this was later postponed in view of the Covid-19 pandemic as the court did not consider the case urgent. Eventually, on 27 May 2020, in the absence of the parties, the court held that after reviewing their written arguments, their presence in court was unnecessary. It therefore reserved judgment.

21. On 21 January 2021 the court delivered its judgment on the main application. Overall, it considered that the father had been a credible witness whose testimony had been consistent, persuasive and supported by relevant evidence. Most of the evidence provided by him remained unchallenged. However, it found that the applicant had not been a credible witness. Her version of events had been general, vague and confusing. In an attempt to convince the court of her position and actions, she had fallen into contradictions. As a result, the court considered that she had failed to discharge the high burden of proof resting on the person opposing the return, and that she had not proven any of the defences provided for in the Hague Convention.

22. The court refused to apply Article 13 (b) of that Convention, giving the following reasoning:

"In this case, the mother states that there is a grave risk that the return of [the child] to the USA would expose him to physical or mental hardship and/or an intolerable situation.

From the lawyers' arguments, it appears that the mother is basing this claim on her alleged inability to return to the USA with [the child], the father's allegedly violent character and his allegedly heavy criminal record.

After reviewing all of the testimony, I find that no testimony was adduced to establish the mother's current legal status in the USA or whether she has the opportunity to return to the country, either permanently or temporarily. What has been established as an admissible fact are the visits by her and the father to a competent lawyer to secure a green card. However, even if such an inability of the mother to visit the country were to be proven, no clear and convincing evidence has been presented of the existence of a serious risk of exposing [the child] to a physical or mental hardship or an intolerable situation greater than usual or expected when a child is forced to leave one parent and go to the other ... I note that her references to a connection with the child and his supplementary nutrition through breastfeeding have remained vague.

Similarly vague were the mother's claims that the father had shown violent behaviour or that he had a *heavy* criminal record.

In support of her position that the father was violent, the mother cited, as the culmination of his violent behaviour, his physical violence towards her and her need to be protected with a restraining order. But she did not state exactly what her claims were when she requested that remedy from the Family Court of New York, or how the case was concluded. From the content of her affidavit to the Family Court of New York, which was filed in these proceedings as evidence by the father ... it appears that the reasons she requested the remedy have nothing to do with what she subsequently claims in the affidavit accompanying her objection to the present application, and primarily with her allegations of physical violence by the father. Also, from the minutes of the [Family Court of New York] dated [31 October 2017] ... when the court examined the merits of her complaint, it appears that her request [for an order of protection] was dismissed on account of her absence, which her lawyer justified by claiming that the mother was ill and not because of the mother and child's move to Cyprus, where they had been since [26 October 2017].

...

The mother's claim that the father has a heavy criminal record has also remained completely unsubstantiated. It is a fact that when the father was asked during his cross-examination about it, he admitted that [twenty-five] years earlier he had been convicted of minor violations, but nonetheless explained that these did not affect his criminal record, his employment status or his fitness to exercise his parental rights – a position which is in line with his affidavit. It is highlighted that no submission was made to him of his having committed specific offences which would make his criminal record heavy, so that he could respond.

There is therefore no clear and definitive testimony before the court of a grave risk of harm or an otherwise intolerable situation in which the child would be placed if he returned to the USA. The mother, who bears the burden of proof, failed to prove the defence of Article 13 (b) of the [Hague] Convention, meaning the high burden of proving a grave risk."

23. Lastly, the court considered whether the child had settled in his new environment under Article 12 of the Hague Convention. It held as follows:

"In the present case, it is the mother's position that [the child] has developed strong, social and emotional ties with Cyprus.

> In support of her position, she claimed that [the child] had been attending preschool since [4 December 2017] (Exhibit 3), where he has created his own friendships and become fully integrated. For some months now, he has been taking riding (Exhibit 4) and art classes. He has strong ties with his parents and extended family members, as well as with their place of residence in Paphos, while his mother tongue is Greek. By comparing the time the child has been in Cyprus with [the time he has been in] the USA, she concludes that for most of his life he has lived in Cyprus.
>
> The father, on the other hand, dismisses the mother's claims. Specifically, he dismisses her claim that [the child] has ties either with Cyprus or with the grandparents, who are separated and live in different districts, as well as the claim that his mother tongue is Greek.
>
> As can be seen from the above, the defence of Article 12 has been presented vaguely and is completely unsubstantiated. The mother's claims, considering the particular circumstances of the present case, as set out above, do not constitute reasons on the basis of which she could raise the above defence. It is held that no substantial evidence has been brought before the court that [the child] has adjusted to such an extent that a possible return to the country of his habitual residence would be detrimental to him. On the contrary, his young age leaves no doubt that he will swiftly readjust without any real problems. In any event, it has not been disputed that the appropriate US authorities, including the National Center for Missing and Exploited Children, will assist in the [child's] successful transition to the USA."

24. The court ordered, *inter alia*, the child's immediate return to the place of his habitual residence, namely the USA, and that he be handed over to the Central Authority of Cyprus, its representatives, a person acting on its behalf or the father by 12 noon on 10 February 2021, to arrange his transfer there.

B. Appeal proceedings no. 1/2021 before the Family Court of Second Instance

25. On 4 February 2021 the applicant filed an appeal with the Family Court of Second Instance.

26. On 10 February 2021, following a request by the applicant, the Family Court of Second Instance ordered a stay of execution of the first-instance court's judgment until the end of the appeal proceedings.

27. On 19 March 2021 the Family Court of Second Instance upheld the first-instance court's judgment in its entirety and dismissed the appeal.

28. Specifically, in examining whether the child was already settled in Cyprus within the meaning of Article 12 (2) of the Hague Convention, the Family Court of Second Instance reiterated the findings of the first-instance court. It further noted that the date from which the time-limit had begun to run was that of the wrongful removal of the child, 25 October 2017, whereas the expiry of the time-limit was the date on which the proceedings had commenced, 7 February 2019, not the date of the judgment as the applicant had suggested. The court explained that, if it were otherwise, abducting parents would be able to benefit from delays they might have created in the proceedings.

29. In this regard, the court noted that the delay in the first-instance proceedings had been lengthy and unjustified, in breach of the State's obligations under the Hague Convention, owing to the court's inefficient manner of handling the proceedings and the applicant's actions. In relation to the latter, the court noted that on 11 November 2019, when the case had been set for a hearing, the applicant had applied to the court, requesting to be allowed to file a supplementary affidavit even though she had had every opportunity to do so on an earlier date. The court also noted that her lawyer had stated on 14 May 2019 that she would not submit such a request. As a result, the court considered that both the way the application had been filed and its timing indicated an abuse of process from which the applicant should not benefit.

30. As regards the dismissal of the applicant's interim application to file a supplementary affidavit, the court held that it saw no reason to interfere with the first-instance court's findings. It further noted that in an attempt to convince the court that the applicant had a strong bond with the child – which the court did not doubt – her lawyer had submitted that such a relationship was not in need of proof, and that a child psychologist's report would be "proving the obvious".

31. The Family Court of Second Instance subsequently upheld the orders issued by the first-instance court, changing only the date the child would be handed over to 29 March 2021.

II. SUBSEQUENT DEVELOPMENTS

32. On 26 March 2021 the applicant requested the Court to indicate interim measures to the Government under Rule 39 of the Rules of Court. On 29 May 2021 the Court (the duty judge) decided not to apply Rule 39.

33. The child was handed over to the Cypriot authorities on the latter date and was eventually returned to the USA.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

34. The Republic of Cyprus ratified the Hague Convention *via* (Ratifying) Law No. 11(III)/1994 on 1 July 1994. It came into force on 1 February 1995.

II. RELEVANT INTERNATIONAL LAW

35. The relevant international law is set out in *X v. Latvia* ([GC], no. 27853/09, §§ 34-40, ECHR 2013).

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

36. The applicant complained that the unreasonable length of the Hague Convention proceedings and the domestic courts' decision to order the child's return to the USA without adequately applying the Hague Convention standards and assessing the situation and risks involved had breached her rights under Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

37. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

38. The applicant argued that the decision to return the child to the USA had not been based on a proper assessment of all the circumstances of the case and the risks involved for the child as required by the Hague Convention and had not taken into account the child's best interests under Article 8 of the Convention. Her arguments centred mainly around the domestic courts' examination of the exceptions provided for in Articles 12 and 13 of the Hague Convention. In this regard, she stressed that by dismissing her interim application to file a supplementary affidavit, the courts had refused to consider, let alone assess or balance, evidence relating to Articles 12 and 13 of that Convention, while failing to request the child's views on the matter. The applicant also argued that the proceedings had not been prompt and expeditious. She denied responsibility for any delay on her part.

39. The Government accepted that the judgment ordering the child's return to the USA had constituted an interference with the applicant's right under Article 8. Nonetheless, that interference had been in accordance with the law, namely the Hague Convention, had pursued a legitimate aim, namely the protection of the rights of the child, and had been necessary under the circumstances. The domestic courts had interpreted and applied the

provisions of the Hague Convention and the Convention adequately based on the evidence they had had before them, while providing detailed reasoning concerning the risks involved. The applicant had been heard, had had adequate time to bring evidence to the courts in support of her allegations and had also been given the opportunity to cross-examine the father to raise issues concerning his allegedly violent behaviour and challenge his submissions in general. As regards the length of the proceedings, the Government argued that the applicant had significantly contributed to the delay as she had decided very late in the proceedings to attempt to produce further evidence, complicating them. In addition, they justified the first-instance court's delay in issuing its judgment by reference to the exceptional and unforeseeable consequences of the Covid-19 pandemic.

2. The Court's assessment

(a) General principles

40. The Court reiterates the general principles regarding the relationship between the Convention and the Hague Convention, the scope of the Court's examination of international child abduction applications and the best interests of the child as laid down in the Grand Chamber judgment in the case of *X v. Latvia* (cited above, §§ 93-108) and, more recently, *Adžić v. Croatia*, no. 22643/14, §§ 96-99, 12 March 2015. In particular, the Court, in *X v. Latvia,* held as follows:

> "93. As regards, more specifically, the question of the relationship between the Convention and the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980, the Court reiterates that in the area of international child abduction the obligations imposed by Article 8 on the Contracting States must be interpreted in the light of the requirements of the Hague Convention (see *Ignaccolo-Zenide*, [no. 31679/96, § 95, ECHR 2000-I]; *Iglesias Gil and A.U.I. v. Spain*, no. 56673/00, § 51, ECHR 2003-V; and *Maumousseau and Washington* [*v. France,* no. 39388/05], § 60, [6 December 2007]) and those of the Convention on the Rights of the Child of 20 November 1989 (see *Maire v. Portugal*, no. 48206/99, § 72, ECHR 2003-VII; *Maumousseau and Washington*, cited above; and *Neulinger and Shuruk* [*v. Switzerland* [GC], no. 41615/07], § 132, [ECHR 2010]), and of the relevant rules and principles of international law applicable in relations between the Contracting Parties (see *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 67, ECHR 2008).
>
> ...
>
> 106. The Court considers that a harmonious interpretation of the European Convention and the Hague Convention ... can be achieved provided that the following two conditions are observed. Firstly, the factors capable of constituting an exception to the child's immediate return in application of Articles 12, 13 and 20 of the Hague Convention, particularly where they are raised by one of the parties to the proceedings, must genuinely be taken into account by the requested court. That court must then make a decision that is sufficiently reasoned on this point, in order to enable the Court to verify that those questions have been effectively examined. Secondly, these factors

must be evaluated in the light of Article 8 of the Convention (see *Neulinger and Shuruk*, cited above, § 133).

107. In consequence, the Court considers that Article 8 of the Convention imposes on the domestic authorities a particular procedural obligation in this respect: when assessing an application for a child's return, the courts must not only consider arguable allegations of a "grave risk" for the child in the event of return but must also make a ruling giving specific reasons in the light of the circumstances of the case. Both a refusal to take account of objections to the return capable of falling within the scope of Articles 12, 13 and 20 of the Hague Convention and insufficient reasoning in the ruling dismissing such objections would be contrary to the requirements of Article 8 of the Convention and also to the aim and purpose of the Hague Convention. Due consideration of such allegations, demonstrated by reasoning of the domestic courts that is not automatic and stereotyped, but sufficiently detailed in the light of the exceptions set out in the Hague Convention, which must be interpreted strictly (see *Maumousseau and Washington*, cited above, § 73), is necessary. This will also enable the Court, whose task is not to take the place of the national courts, to carry out the European supervision entrusted to it.

108. Furthermore, as the Preamble to the Hague Convention provides for children's return "to the State of their habitual residence", the courts must satisfy themselves that adequate safeguards are convincingly provided in that country, and, in the event of a known risk, that tangible protection measures are put in place."

(b) Application to the present case

41. It is not in dispute between the parties that the decision ordering the child's return to the USA constituted an interference with the applicant's right to respect for her family life.

42. The Court notes that the applicant's submissions before the Court focused mainly on the way the domestic courts had assessed her claims concerning Articles 12 (2) and 13 (b) of the Hague Convention, having refused her request to file a supplementary affidavit containing evidence in support of her claim that the child would be at risk if returned to the USA.

43. The applicant did not dispute before the Court the applicability of the Hague Convention, which was ratified by Cyprus *via* Ratifying Law No. 11(III)/1994 on 1 July 1994. Nor did she challenge the fact that, prior to the child's removal, both parents jointly exercised, *inter alia*, custody rights, as well as other related rights, powers and duties over the child in accordance with US law (see paragraph 5 above). The Court considers that the impugned interference was therefore in accordance with the law within the meaning of Article 8 of the Convention.

44. The Court further accepts that the decision ordering the child's return had the legitimate aim of protecting his rights and freedoms.

45. It remains to be determined whether the interference was "necessary in a democratic society". Accordingly, in the light of the criteria laid down in *X v. Latvia* (cited above, §§ 106-08), the Court must establish whether the applicant's objections to the child's immediate return were genuinely considered by the domestic courts, whether the decisions were reasoned and

sufficiently detailed in the light of the exceptions set out in the Hague Convention and whether the courts satisfied themselves that adequate safeguards were available in the country of return.

46. The Court notes that it was the applicant who opposed the child's return and, as such, had the burden of substantiating any allegation of specific risks under the Hague Convention (see, *mutatis mutandis*, *K.J. v. Poland*, no. 30813/14, § 64, 1 March 2016). Nonetheless, the domestic courts found that she had failed to fulfil her obligation as the opposing party – by not adducing sufficient evidence – to substantiate her allegations of a "grave risk" for the child in the event of his return to the USA (compare *X v. Latvia*, cited above, § 116).

47. As regards the applicant's allegations about the father's violence, which were at the very core of her objection to the child's return, the Court considers that the domestic court's findings were well-reasoned and justified. The Family Court of Paphos drew attention to certain contradictions in the applicant's allegations compared to her claims before the Family Court of New York. It further considered her behaviour in concealing the fact that the temporary order of protection had been dismissed owing to her failure to appear in court and gave reasons to consider that her allegations of violence remained unsubstantiated. Additionally, the court noted that even though the applicant had been given the opportunity to cross-examine the father, she had not raised any questions concerning his alleged violence towards her. The questions put to him had been limited to whether he had been convicted of any offences in the past, to which he had replied that twenty-five years earlier he had been convicted of minor violations, which did not affect his criminal record, his employment status or his fitness to exercise his parental rights. In addition, the court noted that no submission had been made to him of his having committed specific offences which could make his criminal record "heavy", contrary to the applicant's allegations (see paragraph 22 above).

48. As regards the applicant's argument that the return would cause the child psychological harm or place him in an intolerable situation, the Court notes that the exceptions to return under the Hague Convention must be interpreted strictly (see *Maumousseau and Washington v. France*, no. 39388/05, § 73, 6 December 2007). Thus, the harm referred to in Article 13 (b) of that Convention cannot arise solely from separation from the parent who was responsible for the wrongful removal or retention. This separation, however difficult for the child, would not automatically satisfy the grave risk test. Indeed, as the Court concluded in the case of *X v. Latvia*, the notion of "grave risk" cannot be read, in the light of Article 8 of the Convention, as including all the inconveniences linked to the experience of return: the exception provided for in Article 13 (b) concerns only the situations which go beyond what a child might reasonably bear (see *X v. Latvia*, § 116, and *Maumousseau and Washington*, § 69, both cited above).

49. The domestic courts did not deny that the applicant had a strong bond with the child and that if returned to the USA, he would be separated from his mother. In assessing the risks entailed by a potential separation of the child from his mother and his current environment, the domestic courts gave specific consideration to the above-mentioned principles, and in reaching their decision took into account the child's young age, the fact that as a result he could quickly readapt to a return to the USA, the father's assurances as to his readiness to provide the child with the required support with the assistance of the National Center for Missing and Exploited Children and US authorities – which remained unchallenged by the applicant – as well as the fact that the mother's claim that she had been unable to return to the USA remained entirely unsubstantiated (see paragraphs 16, 22, 23 and 30 above).

50. As regards the applicant's allegation that by dismissing her application to file a supplementary affidavit, the Family Court of Paphos refused to balance evidence relating to Articles 12 and 13 of the Hague Convention (see paragraph 38 above), the Court notes that the domestic decision in question was fully reasoned. The Family Court of Paphos took into account, *inter alia*, the fact that she had not provided a convincing justification for failing to submit that new evidence, or her request, earlier, that she had had the chance to cross-examine the father extensively, as well as the fact that allowing her request would lead to protracted proceedings (see paragraph 19 above). The Family Court of Second Instance further noted the submission of the applicant's representative that the mother's relationship with the child was not in need of proof, and that a child psychologist's report would be proving the obvious (see paragraph 30 above). Accordingly, the domestic courts' dismissal of the applicant's request to file a supplementary affidavit cannot be taken to imply that the best interests of the child were disregarded (see, *mutatis mutandis*, *Andersena v. Latvia*, no. 79441/17, § 119, 19 September 2019).

51. As regards the applicant's criticism that the domestic courts failed to request the child's views on the matter, the Court observes that Article 13 (2) of the Hague Convention only requires a judge to take into account a child's views if that judge finds that the child has attained a sufficient degree of maturity (see *Voica v. Romania*, no. 9256/19, § 69, 7 July 2020). The Family Court of Paphos gave reasons for its decision not to interview the child on account of his young age – three years old at the time – and the applicant's wish for him not to take part in the proceedings (see paragraph 18 above). The Court accepts the arguments put forward by the domestic court in this regard.

52. Lastly, concerning the applicant's allegation that the child had adapted to his new environment also on account of the extensive delay in the proceedings, the Court notes that the review of the Family Court of Paphos was limited (see paragraph 23 above) although not entirely without reasoning. Nonetheless, the Court considers that this is not conclusive of a procedural

breach on the part of the respondent State, for the following reasons (see, *mutatis mutandis*, *S.N. and M.B.N. v. Switzerland*, no. 12937/20, §§ 117-119, 23 November 2021). The Family Court of Second Instance had regard to the length of the proceedings and criticised the Family Court of Paphos for its failings in this regard (see paragraph 29 above). It is evident that the lapse of time was to a large extent caused by the delay of the authorities in instigating the Hague Convention proceedings (see paragraphs 12 and 13 above) and the first-instance court's handling of the case. The applicant also contributed to the delay to some extent because she did not apply to file a supplementary affidavit until a very late stage in the proceedings, when the case had already been set for a hearing (see paragraph 17 above). The Family Court of Second Instance noted that abducting parents should not be able to benefit from delays they might have created in Hague Convention proceedings (see paragraph 28 above).

53. The Court reiterates that the aim of the Hague Convention is to prevent the abducting parent from succeeding in obtaining legal recognition, by the passage of time, of a *de facto* situation that he or she unilaterally created. Hence, the abducting parent cannot benefit from his or her own wrongdoing (see *Maumousseau and Washington*, cited above, § 73, and *Lipkowsky and McCormack* (dec.), no. 26755/10, 18 January 2011). The Court further reiterates in this regard that proceedings relating to the return of an abducted child, including the enforcement of the final decisions, require urgent handling as the passage of time can have irremediable consequences for relations between the child and the parent with whom the child does not live (see, among many authorities, *Carlson v. Switzerland*, no. 49492/06, § 69, 6 November 2008). The applicant does not dispute the fact that ever since she left the USA and throughout the proceedings, the child had been living with her; unlike the father, she therefore benefited from this delay. The Court further notes that in *Sylvester v. Austria* (nos. 36812/97 and 40104/98, 24 April 2003), *Monory v. Romania and Hungary* (no. 71099/01, 5 April 2005) and *Blaga v. Romania* (no. 54443/10, 1 July 2014), where the domestic courts decided not to return the children to the left-behind parent on account of, *inter alia*, the time that had lapsed, which had changed the children's circumstances, the Court found a violation of the rights of the left-behind parent under Article 8 of the Convention. The Court considered that effective respect for family life required that future relations between parent and child not be determined by the mere effluxion of time and that where the change in the relevant facts might exceptionally justify a decision not to return, it had to be satisfied that the change had not been brought by the State's actions or inaction (see *Sylvester*, § 59; *Monory*, §§ 82-83; and *Blaga*, § 88, all cited above). In this regard, the Court notes that in the circumstances of the present case, while the delay in the proceedings is regrettable, this was owing to the State and to a lesser extent the applicant, who has not shown that she suffered

a disproportionate interference with her right to respect for her family life on account of it.

54. Based on the above, it cannot be said that the domestic courts automatically or mechanically ordered the return of the child. On the contrary, in adversarial and fair proceedings, where the applicant had the opportunity to cross-examine the father and based on the evidence in their possession and the relevant facts of the case, the domestic courts duly considered all the arguments of the parties and rendered detailed decisions which, in their view, safeguarded the best interests of the child and ruled out any serious risk to him. The decision-making process before the domestic authorities as a whole did not run contrary to the procedural requirements inherent in Article 8 of the Convention, and the applicant did not suffer a disproportionate interference with her right to respect for her family life.

55. There has accordingly been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 8 of the Convention admissible;

2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 21 February 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Pere Pastor Vilanova President