

Criminalization of „parental kidnappings” in some European countries and human right to respect private and family life

Thank You Mr. Chairman.

My name is Michael Specjalski, I am the vicepresident of the Pantarey Foundation, a Polish organization helping Poles abroad and defending human rights in Europe. I will speak on behalf of the board, president of the foundation Maja Ruben and the parents and children from Poland and other countries whose human right to private and family life from the art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and art. 10, 12, 13 of the Convention on the Rights of the Child are being violated in the judicial process of the Hague Convention on the Civil Aspects of International Child Abduction.

This process is followed by a criminal punishment of a parent who has full parental rights for so-called „parental child abduction” that is in countries: Andora, Croatia, Denmark, Cyprus, Finland, France, Germany, Greece, Island, Irland, Italy, Netherlands and Great Britain so the countries that are in the minority group in the OSCE members states (23%) and also are parties of the Convention for the Protection of Human Rights and Fundamental Freedoms where they are also a minority (28%) that violate the treaty by criminal punishment of the parent with full parental authority to the child.

Excellencies, dear guests in Poland, the problem I want to present is the subject so called „parental child abduction” so a situation when one parent with full parental authority is taking a child from another parent who also has full parental authority and the state punish with criminal sentences the first parent with imprisonment and horrendous fines which actually separate the parent from the child, thus breaking art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Contrarily we are not talking about a situation when one of the parent has limited by the court parental rights and actually is abducting the child illegally.

The problem that is interconnected with this is the practice of the courts also in Poland which not interviewing a child during the cases under the Hague Convention on the Civil Aspects of International Child Abduction, thus also breaking the obligations of States Parties to the Convention on the Rights of the Child that is art. 10, 12, 13 when the process are run under a narrative of the best interests of the child and in reality the child's will is marginalized and replaced by an arbitrary judge decision that the child can not say with whom parent would like to stay that is in contrary with not only the Convention but also with scientific research of the child development psychology that a child in young aged 4 years and over can express their feelings and has already developed vocabulary to do so.

We recommend Andora, Croatia, Denmark, Cyprus, Finland, France, Germany, Greece, Island, Irland, Italy, Netherlands and Great Britain to adjust their national criminal law regarding so-called „parental child abudctions” to the their obligation of the art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms by decriminalisation of the so-called „parental child abduction” changing their criminal law according to majority of the OSCE and parties of the Convention for the Protection of Human Rights and Fundamental Freedom that not punish the parent that has full parental rights in the countries like: Armenia, Bulgaria, Czechia, Estonia, Georgia, Latvia, Malta, Montenegro, Romania, Russia, Slovakia and Ukraine or that punish only parents who have limited parental rights and are abudcting in this case children illegally in the countries like: Austria, Belgium, Hungary, Lithuania, Norway, Poland, Portugal, Slovenia, Spain, Sweden, Switzerland and Turkey.

The second recommendation to all OSCE states that are parties of the Hague Convention on the Civil Aspects of International Child Abduction regarding the practice of the courts not using the Convention on the Rights of the Child that is art. 10, 12, 13 by not interviewing a child during the cases we recommend to implement these articles directly in their acts on the central authority regarding the implementation of the Hague Convention on the Civil Aspects of International Child Abduction for obligatory hearing of the child by courts in cases that concern them and which the court should take into account when assessing the best interests of the child.

Recommendations:

- 1. We recommend Andorra, Croatia, Denmark, Cyprus, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Netherlands and Great Britain to adjust their national criminal law regarding so-called „parental child abductions” to their obligation of the art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms by decriminalisation of the so-called „parental child abduction” changing their criminal law according to majority of the OSCE and parties of the Convention for the Protection of Human Rights and Fundamental Freedoms that not punish the parent that has full parental rights or that punish only parents who have limited parental rights and are abducting in this case children illegally.**
- 2. To all OSCE states that are parties of the Hague Convention on the Civil Aspects of International Child Abduction regarding the practice of the courts not using the Convention on the Rights of the Child that is art. 10, 12, 13 by not interviewing a child during the cases we recommend to implement these articles directly in their acts on the central authority regarding the implementation of the Hague Convention on the Civil Aspects of International Child Abduction for obligatory hearing of the child by courts in cases that concern them and which the court should take into account when assessing the best interests of the child.**

Thank you very much for your kind attention

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