

[Translation from the Russian language into the English language]

R U L I N G

11 September 2013
City of Moscow

Moscow City Court, consisting of
the Judge, Ms A. S. Lopatkina,
in the presence of the Secretary, A.N.Orlov,
having considered in the open sitting of the court the civil case No 3М-
244/2-13 filed by Rachael Elizabeth Neustadt in the matter of recognition and
enforcement on the territory of the Russian Federation of the Order of the
Supreme Court¹ of England and Wales dated 04 June 2013,

ESTABLISHED:

The Demandant R.E. Neustadt addressed the Moscow City Court with a plea to recognise and enforce on the territory of the Russian Federation the Order issued by the Supreme Court of England and Wales dated 04 June 2013 in respect of the Obligator I.V. Neustadt to return to her the children who are wrongfully retained in the Russian Federation, Daniel Jakob Neustadt, born 11 March 2006 and Jonathan Neustadt, born 06 May 2008. She states that the Obligator resides at the address: Olimpiisky Prospekt 28, Apartment 457, Moscow, Russian Federation. The Court Order of the Supreme Court of England and Wales dated 04 June 2013 came into force immediately upon the date that it was made and is enforceable, however, the Obligator still fails to obey the said Court Order.

The Demandant R.E. Neustadt together with her representatives lawyers M.M. Zakharina and Ju.A. Larina made their appearance in court and supported the plea filed.

The Obligator I.V. Neustadt together with his representative lawyer R.M. Stepanov made their appearance in court, objected against the plea being satisfied, deeming it unfounded and not subject to satisfaction.

Having heard the Demandant, the Obligator and their representatives, and having examined the evidence produced the Court finds the plea to recognise and enforce the Order by the Supreme Court of England and Wales dated 04 June 2013 subject to partial satisfaction on the following grounds.

Matters of recognition and execution of decisions made by foreign courts are regulated by Chapter 45 of the Civil Procedure Code of the Russian Federation.

By virtue of Article 409 of the Civil Procedure Code of the Russian Federation decisions made by foreign courts are recognised and enforced in the Russian Federation if this is provided for by an international treaty entered into by the Russian Federation.

¹ Translator's Note: The wrong term is used throughout the text, High Court is clearly meant.

Russia and the United Kingdom are both parties to the Hague Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children (signed in Hague on 19 October 1996) (hereinafter referred to as the 1996 Hague Convention). The 1996 Hague Convention came into force for the UK on 01 November 2012, and for Russia – on 01 June 2013.

The object of the 1996 Hague Convention is to ensure recognition and implementation of measures aimed to protect the child's person and property in all the Contracting States (Article 1).

By virtue of paragraphs 1, 2, Article 53 of the 1996 Hague Convention, the Convention shall apply to measures only if they are taken in a State after the Convention has entered into force for that State.

The Convention shall apply to the recognition and enforcement of measures taken after its entry into force as between the State where the measures have been taken and the requested State.

From the case materials it can be seen that the Court Order, for which the Demandant seeks recognition and enforcement on the territory of the Russian Federation was issued by the Supreme Court of England and Wales on 04 June 2013.

Therefore, the 1996 Hague Convention between Russia and the UK is applied in the matter of recognition and enforcement of the said Court Order.

Pursuant to the Court Order of the Supreme Court of England and Wales dated 04 June 2013:

The children, Daniel Jakob Neustadt (DOB: 11 March 2006) and Jonathan Neustadt (DOB: 06 May 2008), shall be and do remain wards of this honourable Court for the remainder of their minority or until further Order;

Daniel Jakob Neustadt (DOB: 11 March 2006) and Jonathan Neustadt (DOB: 06 May 2008) are under the care and control of the Applicant Mother, Rachael Elizabeth Neustadt;

The Respondent, Ilya (a.k.a. Ilya Vadimovich) Neustadt shall forthwith and by no later than 4pm on 20th June 2013 return the children, Daniel Jakob Neustadt (DOB: 11 March 2006) and Jonathan Neustadt (DOB: 06 May 2008) to England and Wales;

The Respondent shall make the children available for Skype contact with the Applicant every Wednesday, Friday and Sunday at 7pm (Moscow time) up until the point that the children are returned to England and Wales.

By virtue of Article 28 of the 1996 Hague Convention, measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child.

Article 410 of the Civil Procedure Code of the Russian Federation provides that a plea made by a demandant to enforce a decision made by a foreign court shall be considered by the Supreme Court of a republic; by a territorial, a regional court; by a city court in a city of federal importance; by an autonomous region or an autonomous district court pertaining to the address of residence or location of the obligator in the Russian Federation; and if the obligator does not have the address of residence or location in the Russian Federation, or if his location is not known, by a court, pertaining to the location of his property.

As it follows from the materials submitted, the Obligator, I.V. Neustadt resides at the addresses: Olimpiisky Prospekt 28, Apartment 457, Moscow, Russian Federation (later – Prospekt Mira 184, building 2, Apartment 363, Moscow and the 1st 8 Marta Street 3, Apartment 147).

Therefore the said plea is within the authority of the Moscow City Court.

As provided by Article 25 of the 1996 Hague Convention, the court, considering a plea to enforce a decision made by a foreign court is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction.

By virtue of paragraph 2, Article 23 of the 1996 Hague Convention, and Part 1, Article 412 of the Civil Procedure Code of the Russian Federation, enforcement of the decision made by a foreign court may be refused:

a) if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II;

b) if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State;

c) on the request of any person claiming that the measure infringes his or her parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard;

d) if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child;

e) if the measure is incompatible with a later measure taken in the non-Contracting State of the habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested State;

f) if the procedure provided in Article 33 has not been complied with.

As it follows from the materials of the case, there are no reasons to refuse the enforcement on the territory of the Russian Federation of the Court Order of the Supreme Court of England and Wales dated 04 June 2013, as provided for by paragraph 2, Article 23 of the 1996 Hague Convention, and Article 412 of the Civil Procedure Code of the Russian Federation.

R.E. Neustadt, who is a citizen of the United States of America, was married to the Obligator, I.V. Neustadt, a citizen of the Russian Federation and Germany, from 15 December 2004. On 06 March 2013 the marriage between them was dissolved.

As the result of this marriage, R.E. Neustadt and I.V. Neustadt have three minor children: Daniel Jakob Neustadt, born 11 March 2006, citizen of the United States of America and the Russian Federation (from 2012); Jonathan Neustadt, born 06 May 2008, citizen of the United States of America, Germany and the Russian Federation (from 2012) and Meir Neustadt, born 27 December 2011.

The Neustadt family resided in Switzerland, and then on 05 January 2011 they moved to London (United Kingdom) for permanent residence.

From April 2011 the husband and wife separated: I.V. Neustadt remained in the flat at 34 Vincent Court, Bell Lane, London NW4 2AN, while R.E. Neustadt, together with the children moved to the property at 84B Victoria Road, London NW4 2RT.

In December 2012 the Obligator removed the children Daniel Jakob and Jonathan from the United Kingdom to the Russian Federation, because the Demandant R.E. Neustadt gave him permission to take the children on a short-term holiday with him to Moscow for the period of 25 December 2012 to 07 January 2013. When the holiday was over, the Obligator did not return the children to their mother.

The said circumstances are supported by the Demandant's explanations and by the materials of the case, including the Court Orders of the Supreme Court of England and Wales dated 04 June, 05 July, 07 August 2013; neither are they in essence disputed by the Obligator, I.V. Neustadt, himself.

By virtue of paragraph 1, Article 5, paragraphs 1, 2, Article 7 of the 1996 Hague Convention, the judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.

In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State, and

a) each person, institution or other body having rights of custody has acquiesced in the removal or retention; or

b) the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment.

The removal or the retention of a child is to be considered wrongful where –

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

Therefore, at the time when the Court Order of 04 June 2013 was made, the Supreme Court of England and Wales was the authority to take measures for the protection of persons of Daniel Jacob Neustadt, born 11 March 2006, and Jonathan Neustadt, born 06 May 2008.

Despite the Obligator's statement, the cases of this category do not fall under the exclusive jurisdiction of the Russian courts and this is not provided for by either the 1996 Hague Convention or any other legal act.

As it follows from the Court Order of the Supreme Court of England and Wales dated 04 June 2013, the said Court decision was deemed urgent as a result of the "wrongful retention of the children, Daniel Jakob Neustadt, born 11 March 2006, and Jonathan Neustadt, born 06 May 2008 by their father I.V. Neustadt, and who have been separated from their primary carer, the Applicant Mother, Rachael Elizabeth Neustadt and from their brother, Meir Neustadt, born 27 December 2011 since 07 January 2013."

The content of the concept 'public order' does not coincide with the content in the national legislation of the Russian Federation. In the Russian Federation 'public order' means the fundamental norms established by the state which determine economic and social structure of the society, the principal foundations of law and order, consolidated by the Constitution of the Russian Federation and federal legislation of the Russian Federation.

During its examinations the court did not find such violations, and there is no proof to the contrary.

From the documents appended to the plea it can be seen that the Obligor I.V. Neustadt was personally and timely notified in the established order of the time and place of the trial by the Supreme Court of England and Wales on 04 June 2013 (see 9-12) and thereby he had an opportunity to take part in the said sitting of the Court and to be heard by the Supreme Court of England and Wales.

Besides, from the materials of the case it can be seen that on 10 June 2013 a copy of the Court Order made by the Supreme Court of England and Wales dated 04 June 2013 was forwarded to his place of residence.

As it follows from the text of the Court Order by the Supreme Court of England and Wales dated 04 June 2013, the said Order came into force and is enforceable immediately upon the date that it was made.

According to the materials submitted together with the plea, the Court Order by the Supreme Court of England and Wales dated 04 June 2013 is not carried out to date.

The Obligor's arguments that the Supreme Court of England and Wales took measures for the protection of persons of Daniel Jacob Neustadt, born 11 March 2006, and Jonathan Neustadt, born 06 May 2008, without sufficient grounds, add up to his disagreement with the Court Order by reason of its illegality; however, these arguments cannot be a reason for refusing satisfaction of the plea, because while examining a plea to permit the enforcement of a decision made by a foreign court, this court is not allowed to discuss questions of verification of legality and validity of the decision made by a foreign court.

As it follows from the provisions of Article 27 of the 1996 Hague Convention, without prejudice to such review as is necessary in the application of the preceding Articles, there shall be no review of the merits of the measure taken.

In consideration of the above, this court comes to a decision that the Court Order by the Supreme Court of England and Wales dated 04 June 2013, and namely the part of it where 'the Respondent, Ilya (a.k.a. Ilya Vadimovich) Neustadt shall forthwith and by no later than 4pm on 20th June 2013 return the children, Daniel Jakob Neustadt (DOB: 11 March 2006) and Jonathan Neustadt (DOB: 06 May 2008) to England and Wales' and 'make the children available for Skype contact with the Applicant every Wednesday, Friday and Sunday at 7pm (Moscow time) up until the point that the children are returned to England and Wales' is to be satisfied due to the above reasons.

The Court Order by the Supreme Court of England and Wales dated 04 June 2013, and namely the parts of it where it is ruled that ‘the children, Daniel Jakob Neustadt (DOB: 11 March 2006) and Jonathan Neustadt (DOB: 06 May 2008) shall be and do remain wards of this honourable Court for the remainder of their minority or until further Order’, and that ‘Daniel Jakob Neustadt (DOB: 11 March 2006) and Jonathan Neustadt (DOB: 06 May 2008) are under the care and control of the Applicant Mother, Rachael Elizabeth Neustadt’ are not enforceable due to their character, because they do not determine the duties of the parties to perform acts or to refrain from performing them.

By virtue of paragraph 1, Article 23, paragraph 1, Article 26, Article 28 of the 1996 Hague Convention, the measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.

If measures taken in one Contracting State are enforceable and they require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State.

Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child.

According to Part 1, Article 413 of the Civil Procedure Code of the Russian Federation decisions made by a foreign court which need no enforcement, are recognised without any further legal proceedings, if there are no objections to them from the interested party.

No objection was received from the interested party (in this case – the Obligor) with regard to enforcement on the territory of the Russian Federation of the Court Order of the Supreme Court of England and Wales dated 04 June 2013, the parts mentioned above, and therefore, there are no grounds for additional judicial confirmation and enforcement of the above-mentioned parts.

According to Article 211 of the Civil Procedure Code of the Russian Federation, the following are subject to immediate execution: a court order or ruling pertaining to recovering alimony; payment of wages within three months; reinstatement in a job; inclusion of a citizen of the Russian Federation into the electoral register or a referendum list.

Part 1, Article 212 of the Civil Procedure Code of the Russian Federation stipulates that the court may, at the request of a claimant, resort to the immediate execution of a ruling, if owing to special circumstances delay in its execution may lead to severe damage for a claimant or if its execution may prove impossible. On the assumption of the immediate execution of the ruling the court may demand that the claimant should reverse the execution of this ruling if the ruling of the court is overturned.

Since the norms of the civil procedural legislation do not provide for the possibility of recourse to immediate execution of the court ruling on enforcement of a decision made by a foreign court, the Demandant's plea to resort to the immediate execution of the Court Order of the Supreme Court of England and Wales dated 04 June 2013 is not subject to immediate execution.

There are also no legal foundations for taking additional measures, which would ensure, from the point of view of the Demandant, enforcement of the Court Order of the Supreme Court of England and Wales dated 04 June 2013. Having heard explanations given by an obligator and considered the evidence submitted, the court returns a ruling either to enforce the decision made by a foreign court or to refuse it (Parts 3, 4, Article 411 of the Civil Procedure Code of the Russian Federation). Therefore, when considering a plea with regard to enforcement of the decision made by a foreign court, the court must return a ruling to satisfy or reject this plea.

On the basis of the above, and by virtue of Articles 411–413 of the Civil Procedure Code of the Russian Federation, the court

R U L E D:

That the plea made by Rachael Elizabeth Neustadt to recognise and enforce on the territory of the Russian Federation of the Court Order of the Supreme Court of England and Wales dated 04 June 2013 shall be partially satisfied.

That the Court Order of the Supreme Court of England and Wales dated 04 June 2013 shall be carried into execution on the territory of the Russian Federation, and that according to this Order:

“The Respondent, Ilya (a.k.a. Ilya Vadimovich) Neustadt shall forthwith and by no later than 4pm on 20th June 2013 return the children, Daniel Jakob Neustadt (DOB: 11 March 2006) and Jonathan Neustadt (DOB: 06 May 2008) to England and Wales;

The Respondent shall make the children available for Skype contact with the Applicant every Wednesday, Friday and Sunday at 7pm (Moscow time) up until the point that the children are returned to England and Wales;”

That the remainder of the plea made by Rachael Elizabeth Neustadt shall be refused.

You may lodge an appeal against this Ruling to the appeals instance of the Moscow City Court within 15 days through the Moscow City Court.

**Judge of the Moscow City Court
A.S. Lopatkina**