

The complaint to the UN Human Rights Committee in Geneva was lodged under the International Covenant on Civil and Political Rights by the author (father of a child) on his own behalf and on behalf of his son, on the 29 January 2013.

Attorney General's Department, Office of International Law in Canberra was the party to this matter on behalf of the Australian Government, and as such it was presenting the submissions to the UN Committee in the matter No. CCPR 2279/2013.

Article 6.3 of UN Decision

"The Committee notes that the author (father), who was residing in Poland made a significant effort, in the form of administrative and judicial actions undertaken both in Poland and in Australia, to gain access and custody of his son. The judicial actions undertaken in Poland led to a court decision granting him custody of a child in August 2010. As to author's (father's) actions undertaken in State party (Australia), the Committee notes that these were aimed at both obtaining the return of a child and obtaining access to him, and that both of these avenues were duly exhausted, as acknowledged by the State party (Australia).

Article 7.2 and 7.4 of UN HRC Decision

REMOVAL of a child from under father's parental care in Poland by secretly granting a child with an Australian Emergency Passport by the Australian Government, was an:

ARBITRARY INTERFERENCE IN THE FATHER'S AND SON'S "FAMILY" and "Home"– violation of art 17 (1) and 23(1) of the Covenant.

By arbitrarily removing the child (secretly granting a child an Emergency Passport) , the Australian Government failed to take necessary steps to :

GUARANTEE THE FAMILY'S RIGHT TO PROTECTION - violation of art. 23(1) of the Covenant.

For the reasons of :

- a) Arbitrary/unlawful removal of the child from his family and home in the lack of any court order nor investigation, which would present a proof for it was based on the best interest of a child.
- b) Australian Embassy and DFAT ignorance of the Polish District Court hearings being in progress while granting the Emergency Child Passport to remove of a child from under father's parental care. The ignorance of the Polish Court's final Order made in a divorce & custody proceeding in Poland, thus violating the International Law and the Sovereign Law of Poland in the matter before the court.

Article 7.3 and 7.5 of UN HRC Decision

Australian Government had arbitrarily INTERFERED IN A FATHERS' AND HIS SON'S "FAMILY LIFE",
and State party had failed to take such : **MEASURES OF PROTECTION, AS REQUIRED BY THE CHILD – violation of article 24(1) of the Covenant.**

For the reasons of:

- a) Failure to provide access between father and his son, due to it being administered arbitrarily by the government officials, and (art.7.3) by not securing the “effective right of the parent and the child to maintain personal relations and regular contacts with each other , and on other hand, in the light of the best interest of the child”..
- b) Arbitrarily/unlawfully separating the child from a father by issuing an emergency passport and secretly removing a child from under father’s parental care in Poland.

Article 7.6 of UN Decision

The right to equality before courts and tribunals and to a fair trial, in the sense that “ an important aspect of fairness (of trial) is its:

EXPEDITIOUSNESS - violation of article 14(1) of the Covenant.

For the reasons of:

The father has filed his custody and access application with Australian Central Authority on 6 December 2011. The WA Central Authority filed it with WA Family Court 19 months later on 2 July 2013 – only to withdraw it from court 5 months later, and the court permanently staying the matter on 29 January 2014, which is over 2 years and 2 months since the Hague Convention application was lodged by the father.

During this time the Australian Government “ did not present any justification for the delay in dealing with father’s custody application or his access application , or in ensuring some provisional access scheme for the father, especially considering the matter at stake” (child).

Article 9 of the UN Decision

“In accordance with article 2(3)(a) of the Covenant, the State party (Australia) is under an obligation to provide the author (father) with an effective remedy. This requires it (Australia) to make full reparations to individuals whose Covenant rights have been violated,and to prevent similar violations in the future” .

Article 10 of the UN Decision

“By becoming a party to the Optional Protocol, the State party (Australia) has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party (Australia) has undertaken to ensure to all individuals to its jurisdiction the rights recognized in the Covenant and to provide effective and enforceable remedy when the violation has been established” .