Author's Response (Part I) to Australia's submission to the UN Human Rights Committee, in Communication No. 2279/2013.

The Australian Party to the UN Human Rights proceedings before The Human Rights Committee in Geneva had not given the UN Views it's due consideration. Australia had not investigated the matter in accordance with what is required and appropriate. Australia did not follow the proper procedure being due to the High Committee. Australia omitted the evidence supplied by the author , thus to confuse the general matter of aiding, concealing and abetting the child's removal by Australian Government from the parental care of the father, which constitutes the violation of art. 17 and 23 of the Human Rights Covenant.

Australia has instead purposely or mistakenly interpreted the violation of art.17 and 23 of the Covenant , as an interference in "family life" (re.contact & access with the child), instead of it being an interference in author's and the child's "family" , thus alleviating the focus from Australia's arbitrary and unlawful decision made by a Department of Foreign Affairs and Trade to remove the child from his birth home in Poland and from his family in Poland. Australia has had secretly and without a consent of the father (author), instructed the mother to abduct a child from father's parental care internationally into Australia and it (DFAT) had issued the mother with a "Child Emergency Passport", thus aiding the mother with an international child abduction whilst the ongoing divorce & custody court proceedings were underway, in a District Court in Poland.

The Australian Government , including the Council of the Australian Embassy in Poland were well aware of the Polish District Court proceedings. The evidence of it was included in a subpoena document retrieved by the Family Court Judge Hon. Judge Crooks, in Perth on 1st of September 2010. The subpoena documents were in fact large files correspondence between the mother, the Embassy and the Department of Foreign Affairs & Trade in Canberra , and were relating to the issue of Child Emergency Passport issue.

Annexure #1 : West Australian Family Court's List of Documents filed into Court .

I base my opinion, for there is no reference in Australia's submission to any evidence, nor cross-examinations of the father , the child or otherwise. The West Australian State Authority did not ask the court for the appointment of an Independent Child's Solicitor at the age when child was six, during the Hague Child Abduction hearings. The Central Authority neither sought to examine the child's point of view of where and with whom he wants to live with, nor if ever he was feeling threatened by a father. These examinations were never sought for by the Australian Central Authority , nor by the Australian Courts - at the child's age of nine and then at the age of ten respectively (Hague access & contact hearing and the Australian domestic proceedings). There was no court testing of mother's false allegations sought by the Government Lawyers, nor the Australian Court. There were any cross- examinations executed by the State Solicitors and the courts, nor by the Legal Aid representing the mother in relation to child's ties to Poland, the mother's false allegations including the ones of which the State Party wrote about in art.15, 23, 25,29 of the Australia's submission to the Human Rights Committee. Not surprisingly, the Australian Party relies and refers

to the "untested" and "unchallenged" allegations made by a mother, as the Government did throughout the entire time since the Australian Government had arbitrarily/unlawfully aided the removal of a child from under the father's parental care in Poland, up until the last Domestic Custody Court hearing in Australia, in 2014.

Reply to art.2 of Australia's submission:

Australia has either misunderstood Committee's Views and Human Rights violations as per art. 17 and 23 of the Covenant, or It had purposely failed to address Australian Government's (Embassy's Consul in Warsaw and Dept. Of Foreign Affairs & Trade in Canberra) direct and decisive involvement in the arbitrary/unlawful removal of my son from my parental care in Poland, thus "interfering in author's "FAMILY" and home (art.17), thus failing to protect the "FAMILY" (art.23). The child's removal from under father's parental care was made possible by the Australian Government, whereby it is the Australian Government, who secretly instructed the mother to abduct the child internationally and without father's consent. The Australian Dept. of Foreign Affairs & Trade had granted the mother a "Child Emergency Australian Passport" , so the child could be abducted to another country out of Poland without any court order in place, and amidst the ongoing District Court divorce & custody proceedings, in Poland. The Australian Government while doing so, could not be certain whether the child would be abducted to Australia or to Belarus (mother's birth country where she lived for most of her life and has a family in), or to any other country, for it was up to the mother at that point, and at mother's pleasure to choose, where the child would be internationally abducted to.

The Australia's misinterpretation of UN Committee's Views is even more bizarre, hence on the webpage of Australia's Attorney General's Department it is well explained of what constitutes of the "interference in the Family " : https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/PublicSectorGuidanceSheets/Pages/Righttorespectforthefamily.aspx

In the above Governmental website it says:

"The right to respect for the family and freedom from interference with the family covers:

- *removal of children*
- *separation of family members under migration laws*
- *consent to marriage*
- *arbitrary or unlawful interference with the family.*

The Human Rights Committee has stated that the term family should be given a broad interpretation to include all those persons comprising the family as understood in the society of each country".

When do I need to consider the right to respect for the family?

The right to respect for the family under article 23 of ICCPR is closely related to the prohibition under article 17 of the ICCPR on unlawful or arbitrary interference with family. The right to respect for the family needs to be considered in a number of policy contexts.

In particular, you will need to consider the right to respect for the family and protection from arbitrary interference with the family when you are working on legislation, a policy or a program that:

- *affects the law relating to marriage, including parenting arrangements for children*
- *affects the law relating to close or enduring personal relationships other than marriage, such as de facto relationships or relationships between persons of the same sex*
- *provides for the removal of children from parents or other persons responsible for their care*
- *provides for the entry into or removal from Australia of persons under migration laws in circumstances that may affect the unity of a family*
- *provides for any social security benefit for families, including family assistance payment, or for welfare controls*
- *relates to taxation benefits for families*
- *relates to Paid Parental Leave, or*
- *relates to family or domestic violence.*

This list should not be regarded as exhaustive.

What is the scope of the right to respect for the family?

Meaning of family

The UN Human Rights Committee has considered the protection of the family to be closely related to the prohibition under article 17 on unlawful or arbitrary interference with family. It has stated that the term family in article 23 should have the same meaning as under article 17, in that it should be given a broad interpretation to include all those persons comprising the family as understood in the society of each country. In relation to Indigenous Australians, it is important that family be understood to include kinship structures, which encompass an extended family system often including distant relatives. There are other groups in Australia for whom family would include extended and other non-conventional family structures" - the end of reciting the Australia's Attorney General's website.

Australia fails to add in it's submission to the UN Committee, that the mother, who also is a Belarusian citizen has had lived permanently in Poland since the year 2000, where she married the author, and she has held the Polish Permanent Resident's Visa. That she had lived with an author in the house he has been owning since before the marriage to her and they continued to live in the same house after the child's birth in Poland in July 2004, and after the whole family returned to Poland in October 2009.

Australia fails to point out, that the mother received an Australian Citizenship after 2,5 years of residing in Australia and upon the sponsored migration by the author. Then, within one month of granting an Australian citizenship to the mother, she returned to live permanently back in Poland in the same matrimonial house, in which the family lived before emigrating to Australia. This was confirmed by Dept. of Foreign Affairs &Trade (Annexure # 1: West Australian Family Court's List of Documents filed into Court, Subpoena correspondence dated 1st Sept. 2010.

The Australian Government had made a decision to secretly grant the child 'Emergency Passport" upon mother's false allegations against the father and consequently the Government had executed and administered the child arbitrary removal knowing, that there is an ongoing divorce & custody court proceeding under way between the mother of the child and the author, in Poland. By doing so, the Australian Government had unlawfully interfered in other country's court proceedings, despite the Government's declaration, that it would never do so. Annexure # 2 : Australia's Prime Minister's declaration:

http://www.smh.com.au/federal-politics/political-news/most-unwise-malcolm-turnbull-warns-channel-nine-may-be-investigated-20160422-goch8p.html?&utm_source=facebook&utm_medium=cpc&utm_campaign=social&eid=socialn%3Afac-14omn0012-optim-nnn%3Apaid-25062014-social_traffic-all-postprom-nnn-smh-o&campaign_code=nocode&promote_channel=social_facebook

The art.3 of Australia's response:

it is misleading on Australia's part, because "the failure to provide the author with the opportunity to have contact and access with his child" was many times spoken to author verbally and in writing. After the child abduction from Poland, Australia in it's current submission to UN Committee should not only relate to article 17 of the Covenant , but to art. 24(1). Australia at first had secretly and unlawfully aided the international child abduction, then it had menacingly obscured and blocked the father/author from contacting his child , and here is the evidence of it:

Annexure # 3: Ms.Furze of Canberra Australian Authority instructions of not to attempt to see my son. Annexure # 3A: Ms.Peterson, Senior Officer of WA Central Authority letter, where she promotes proposed by mother & Government Legal Aid the obscured contacts with my son in second half of the year 2013,ie: one phone call per week at odd-working hour time and a supervised visits/contacts in Australia only, and only under supervision, provided mother agrees to it. Annexure #3B: My affidavit filed into West Australian Family Court on 25 Nov.2010 detailed with specification of my individual calls and conversations with Legal Aid, where Government sponsored Legal Aid lawyer who represented the mother openly says to me , that she told the mother not to agree for me to see, nor

to allow me to speak with my son at times of my fly-ins to Australia to attend the Hague Convention hearings, or ever to allow for any contact.

Annexure #3C: Central Authority Canberra in Hague proceedings for contact & access , # 3D: Page 8 of the WA Central Authority's Application to Court filed on 4th July 2013 - affidavit of Sgt. Terrence Mathew Rakich an Officer –in-Charge of The Missing Persons Unit of The Major Crime Squad, Western Australian Police.

Reply to art.4 of Australia's submission:

State Party merely wrote, that "on 31 of March 2010 the author's wife "flew" with the child to Australia without the author's consent". She didn't just "fly to Australia" – she abducted the child to Australia with aiding and complicity of the Australian Embassy in Warsaw and Australian Department of Foreign Affairs & Trade.

The pivotal focus shall be turned onto the fact of the arbitrary and unlawful removal of the child by Australian Government and that, if not for the Government's harmful and wrongful instructions of how to illegally abduct a child from father's parental care internationally, which was given to the mother by the Australian Embassy's Council in Poland, and because of the fact that the Council had personally recommended in writing to the Australian Government (DFAT) in Canberra to issue the mother with a "Child Emergency Passport" , based purely on mother's false allegations – the child would still enjoy his family and his family life until today.

Annexure # 1: WAFC Court's subpoena document filed into Court on 1st Sept.2010 .

The District Court in Poland, before which there was a divorce & custody proceedings on foot, and before the child got abducted, had all the facts and evidence to rule , if mother's allegations against the father were true or not, because the allegations stipulated by a mother to the Australian Embassy's Council referred to a family life in Poland.

The Polish Court had entrusted the author (father) with the parental authority over the child establishing the place of residence of a child with the author (father) in Poland – because the Court considered it to be in the best interest of the child.

The Polish Court did not disallow for the mother to have ability of access to and to contact the child , hence the Court did not deal with the issue, because the father did not apply for limiting of such contacts to the mother. The Polish District Court in its judgment, had followed the principles of "the best interest of the child" and It had adhered to the principles of guaranteeing the child his rights to "family life" and "protection", under the article 24(1) and 23(1) of the Human Rights Covenant.

The Australian Party wrote: " The Polish Orders were not expressed as interim orders" .

This statement sounds rather quizzical or bizarre, considering - it is unheard of, for any country in the world to ever issue a divorce order as being an "interim" order.

The State Solicitors/Western Australian Central Authority, the West Australian Family Court and The Full Court of Australia were fully aware of: the dates of the Polish District Court hearings in divorce & custody matters and about the fact that the Polish District Court Order was FINAL.

The proof of that is in my affidavit dated as signed in front of Consul Gabrielle Tonkin on 9th September 2010, the same Consul, who in the Warsaw Embassy had collaborated with the mother to secretly issue a "Child Emergency Passport", so to abduct the child internationally, and who had recommended to Australian Immigration Dept. to do so. This affidavit was filed into WA Family Court on 16th November 2010.

Annexure # 1 A – paragraph 25 and 15.

"Australian Child Abduction Regulations 1986

Article 1 (under the heading: Chapter I "Scope of the Hague Convention")
The objects of [the Convention] are ... to ensure that rights of custody and of access under the law of One Contracting State are effectively respected in the other Contracting States.
Article 7 (under the heading: Chapter II "Central Authorities")
Central Authorities shall cooperate with each other and promote cooperation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures –

(f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access; ...

Article 21 (under the heading: Chapter IV "Rights of Access")
An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.
The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.
The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect to the conditions to which the exercise of these rights may be subject."

Mother, as it is similarly provided by the Australian Family Law – could reapply to have her authority over the child restored by Polish court, if she could prove to the court, it would be in the best interest of the child. Mother had preferred to internationally abduct the child and go "jurisdiction shopping" in Australia.

The art.5 of Australia's submission:

Australian Government wrote: *"On 21 April 2010 ex parte interim orders were made providing that the child live with the mother and the author spend time with the child (as agreed between the parties)"* . This statement is untrue and far from facts , for I did not know of the proceedings in Perth beforehand, and most certainly I did not agree to any arrangement, of which the State Party has insinuated about in their submission to the Committee.

Both domestic court proceedings initiated by the Australian Government's sponsored Legal Aid, who represented the mother immediately after the child abduction into Australia were proceeded without the father being notified of, and without the mother notifying the WA Family Court ,that the same court proceedings are already under way in a District Court in child's home/birth town in Poland some two months earlier.

Annexures # 4: Polish lawyer Mr.Przybylski statement filed into Australian Family Court by WA Central Authority on 4th July 2013, page 28 of the Application

.Annexure # 5: My response to mother's Australian custody court application filed into WA Family Court.

Annexure # 5A: Australia's Central Authority advice not to respond to Australian Family Court re. domestic custody court proceeding in Australia and advising me not to seek contact with my son.

The father had received a first WA Family Court document in June 2010, which was after the mother proceeded with the second hearing in Perth in the mater, and where she failed to secure a final court order. The Australian Central Authority should have notified the West Australian Central Authority and the Family Court of Western Australia about the ongoing divorce & custody District Court proceedings in Poland and of the date for next court hearing in Poland , as it was specified by the author in the Hague Convention Application accepted by Australian Central Authority. In August 2010, the Polish District Court had made its final order, which was well before the first hearing date (November 2010), in the Hague Child Abduction matter.

WA Central Authority did not follow Australia's Common Law and the International Law, as Australia had vowed to do so in Its "ICCPR Sixth Report to UN Human Rights Committee April 2016" , art.35, which says:

35. "The common law has also developed rules in relation to the interpretation of legislation to protect human rights. A key rule is that when interpreting legislation the courts will presume that Parliament did not intend to interfere with fundamental rights unless an intention is 'clearly manifested by unmistakeable and unambiguous language'.13 Further, where international human rights law has not been incorporated through legislation, it can still influence domestic law.14 The High Court of Australia has accepted a wider principle that, even if a law was not enacted to give

effect to treaty obligations, an interpretation that is consistent with international law is to be preferred.15 This reflects a presumption that Parliament did not to intend to violate international law. A treaty may also be relevant to administrative decision-making, both in interpreting a law or deciding to use discretionary powers".

Australia, also did not adhere to "Rules of The Supreme Court 1971, Supreme Court Act 1935 of Western Australia" – it's Order 11 and Division 4, nor to Hague Convention and the Principles described by me further in my " Legal Note".

Annexure # 6: The "Legal Note" prepared by myself and submitted to UN Committee as part I of my response.

Reply to article 6 of Australia's submission:

Australian (West Australian) Central Authority have not conducted the Hague Child Abduction proceedings for return and for access & contact in accordance with the Hague Convention, nor with the International Law, nor with the Australian law, a common law , nor having in mind an utmost importance of the best interest of the child, nor in the good faith for the child and the father.

I , the father of abducted son was never cross-examined in Australian Family Court, even though I had asked for it in writing and even though I have attended all of the Hague court hearings for return of a child. I have many time asked the Australian Central Authority and the Family Court to be cross-examined, including the request at the Full Court hearing. Evidence was filed with the Committee. The WA Central Authority's Counsel had failed to press for cross – examination of the father and of my eldest/adult daughter, when I asked the Counsel for it at the Full Court hearing – even though we were in attendance of the Full Court hearing and after I had myself passed a hand written note to the Counsel during the hearing with a request for cross-examination. The Counsel had read my request to the judges and made an offer to the judges for cross-examination but the judges promptly called for a brake. After returning to the courtroom , the Counsel of WA State Solicitors did not press for the cross-examination to which the State Solicitors were obliged to, by the High Court precedence (LK case High Court case), to which the State Solicitors had themselves pointed out to in their written submission to the Full Court.

Annexure # 7: The Senate Legal and Consitutional Affairs Committee Inquiry , Page 11 .

#7A: My submission to UN Committee dated 25Nov.2013,

#7B: My complaint to the Australian Senate re. the above Senate Inquiry and of a misleading information passed to the Senate in regards to my alleged absence at the Full Court hearing, which falsely alleged it being impossible or hard, for the court to cross- examine me.

 # 7C: State Solicitor's written submission to Full Court.

4. Wrongful removal and retention: Regulations 16(1)(c) & 16(1A)

[1] Regulation 16(1A) states that a child's removal to or retention in Australia is wrongful if: 'The child was under the age of 16;[84] the child habitually resided in a convention country immediately before the child's removal to, or retention in, Australia;[85] and the person, institution or other body seeking the child's return had rights of custody in relation to the child under the law of the country in which the child habitually resided immediately before the child's removal to or retention in Australia;[86] and the child's removal to or retention in Australia is in breach of those rights of custody;[87] and at the time of the child's removal or retention, the person, institution or other body:[88] was actually exercising the rights of custody (either jointly or alone);[89] or would have exercised those rights if the child had not been removed or retained.'[90] The aforementioned must all be satisfied in order for an application to be successful for the child's return because if one of the aforementioned requirements is not satisfied, the child's return will not be ordered.[91]

[2] **According to Regulation 2(1B) '[u]nless the contrary intention appears, an expression that is used in these Regulations and in the Convention has the same meaning in these regulations as in the Convention.' There is no indication that the concept of wrongful removal or retention has a contrary meaning in terms of the Regulations and thus the removal or retention is wrongful in terms of Article 3**

81 Regulation 16(1)(a) of the Family Law (Child Abduction Convention) Regulations, 1986.
82 Regulation 16(1)(b) of the Family Law (Child Abduction Convention) Regulations, 1986.
83 Regulation 16(1)(c) of the Family Law (Child Abduction Convention) Regulations, 1986.
84 Regulation 16(1A)(a) of the Family Law (Child Abduction Convention) Regulations, 1986.
85 Regulation 16(1A)(b) of the Family Law (Child Abduction Convention) Regulations, 1986.
86 Regulation 16(1A)(c) of the Family Law (Child Abduction Convention) Regulations, 1986.
87 Regulation 16(1A)(d) of the Family Law (Child Abduction Convention) Regulations, 1986.
88 Regulation 16(1A)(e) of the Family Law (Child Abduction Convention) Regulations, 1986.
89 Regulation 16(1A)(e)(i) of the Family Law (Child Abduction Convention) Regulations, 1986.
90 Regulation 16(1A)(e)(ii) of the Family Law (child Abduction Convention) Regulations, 1986.
91 Australian Central Authority op cit (n23) 2. Regulation 16 continues with how to launch an application however this shall not be discussed further within this study. Neither will its referral to legal expenses and other costs and the checklists of what to do and what not to do if you fear a child has been abducted. These guidelines are however specific to Australia; seeAustralian Central Authority op cit (n23) 2-5.112 of the Hague Convention.[92] The case of *State Central Authority and Ayob* (1997) FLC 92-746 provides that Regulations 3 and 4 are of particular relevance in determining removal in regards to custody rights.[93] Therefore in order for there to be a wrongful removal or retention, the requirements indicated in paragraph [1] above must be satisfied.[94]

[3] The case of *Marriage Of: Hanbury-Brown and Hanbury-Brown and Director General of Community Services (Central Authority)* [1996] FamCA 23 (14 March 1996) held:[95]

'Regulation 2(1) defines "removal" in relation to a child, for the purposes of the Regulations, as meaning the "wrongful removal or retention" of the child "within the meaning of the Convention", and **Regulations 13, 15 and 16** all refer either to a child who has been "removed" to Australia, or to circumstances involving the "removal" of a child to Australia, it is necessary, in applying the Regulations, to construe the Articles of the Convention which define or give meaning to the expression "wrongful removal".'

It was also held that:

'its purpose and effect is to ensure only that the question of the wrongfulness or otherwise of a particular removal or retention of a child is to be determined by the law of the place of the child's habitual residence **immediately before the removal or retention, and not by the law of any other place such as the country to which the removing parent may choose to take the child.'**[96]

Therefore the Hague Convention protects custodians from choosing the forum to determine the disputes as a result of the wrongful act of another person, even though they may possess equal custodial rights.[97]

5.2 Rights of custody

[1] In determining rights of custody in Hague Convention matters in terms of the Regulations, the court must have regard to the law at the relevant time in the country from which the child was removed.[139] If no order regarding custody exists, then the state concerned must have regard to the possible custody statutes existing by operation of law in the child's state of habitual residence.[140] Regulation 4(3) provides that rights of custody 'may arise' by operation of law, judicial or administrative decision or agreement 'having effect under a law in force in Australia or a Convention country' which therefore indicates that custody rights can arise from other sources.

I hereby present further evidence:

The *Annexure # 8-The letter from Australian Government(Family Assistance Offic)* sent to the author five days after I, my son and son's mother had left Australia permanently, to live permanently in Poland. The Government states in it , that: **"based on the information received from the immigration department , the child left Australia permanently to live in another country".**

The answer, as to which country the child had left Australia to live in, is clearly contained in the"Airport Departure Cards" filled and signed by mother and father for themselves and a separate Card for the child signed by the mother, in which **the travelers state the name of the country of their intended permanent residence.** These Airport Departure Cards were subpoenaed by the Perth Family Court in Hague Convention hearing in Perth .

Annexure # 8A - Australian Airport Departure Cards (sample) with originals released by Dept. of Foreign Affairs & Trade and by Dept. for Immigration & Citizenship in a subpoena court files in Annexure # 1, dated on 1 Sept.2010.

Reply to article 7 of Australia's submission:

My son is the Polish citizen by birth. I have a dual citizenship (Polish by birth and Australian gained in 1983). In 2004, I had applied to the Australian Embassy in Warsaw for the Australian citizenship to be granted to my son by descent. At the age of 2,5 the child emigrated to Australia with his father (Polish/Australian citizen) and with his mother (Belarusian) , whom father of the child had sponsored in a year 2000, to get a Permanent Residency Card in Poland and then to get the Australian Residence Migrant Visa in 2006, which permitted the mother of my son to migrate to Australia with us.

The child lived in Australia for a further 2,5 years, after which time, the family decided to leave Australia permanently and go back to live in Poland in 2009. We had returned back to live in the same matrimonial house in Poland, which we had left in December 2006.

The Australian Government (Family Assistance Office Dept.) in their letter addressed to me, dated 1 December 2009 , which was over a month after we left Australia permanently for Poland– had written:

" Information received from the immigration department shows that your child left Australia permanently to live in another country".

This information relied on the evidence included on the Airport Departure Cards, which were filled out on the date of departing Australia and before boarding the airplane by the mother and the author(father) for themselves and for the child separately – where the intention of us living Australia permanently was ticked and the name of the country, in which we heading for, to reside permanently in was written as being the country of Poland. All three Departure Cards were signed by a mother and myself.

Evidence in Annexure #8 - Letter from Australian Government – Family Assistance Office dated 1 December 2009.

The Committee has made an accurate claim in article 6.5 of Its views adopted on 5th November 2015, where the Committee wrote: " *The Committee takes note of the author's claims under article 14(1) of the Covenant, relating to the examination of the evidence by the Full Court. The Committee recalls, that it is generally for the organs of States parties to examine the facts and evidence of the case".*

I am claiming, that the Counsel of the State Party/Australian Central Authority had violated the Common Law by intentionally not adhering to the High Court precedence and guidance of the LK case in a High Court of Australia *(evidence in Annexure # 7C - Australia's Central Authority written submission to Full Court (par.15 and 16-20 of Annexure 7C(1), and par.25,26,27,28,29 of Annexure # 7C(2). Annexure #9: Complaint to Australian Ombudsman).*

The Counsel of the State Party during the Full Court hearing had not cross-examined (as they should have) the father and his eldest adult daughter , who were in attendance of the Full Court hearing .
The account of it happening: During the court hearing I, the father had scribbled the request to the State Party's Counsel , so she could offer to the Court for the father and daughter to be cross-examined. The Counsel offered the Court to cross-examine the father as for the habitual residence of the child and his close ties to Poland, to be established. The court however called for a recess. During the recess, either the Counsel was called to the judge's chamber and the Counsel was asked a question whether the Counsel will press further for the cross-examination or not , or if the Counsel on her own call withdrew from the cross-examination of the father.
The fact remains , that I was not cross-examined for the fact finding argument of a child's ties to Poland, so the habitual residence of the child could be and would be established to be in Poland.
The mother of a child was being cross-examined at all times , but still there was no testing as to the personal ties of a child to Poland.

At the "Senate Legal and Constitutional Affairs References Committee Inquiry: International Child Abduction to and from Australia, Response of the Chief Justice of the Family Court of Australia 10 August 2011" , The Australian Senate Committee could have been intentionally and falsely informed as in paragraph 22 of the "Senate Inquiry" , that the father was not present in the courtroom so to be cross-examined, as required per High Court's ruling in LK case.

Evidence: Annexures : #7 and 7A .

I have filed a complaint to the Australian Senate Human Rights Committee with request for an investigation. Nothing has been done about it. *Annexure @ 7B.*

Reply to art.8 of Australia's submission:

State Party did nothing to secure the access nor contact between the father and a child. The State Party did everything to obscure and to limit the contact & access between the son and the father. WA Central Authority had made a written statement to the Polish Central Authority and to the father, where it's Director Ms. Ilse Peterson had expressed her views months before the Hague Convention Court hearing was finalized, that the very scarse and limited contact & access rights between a child and a father are " *adequate and appropriate*", she wrote. *Annexure # 3A.*

The proof is in the Hague matter Court Application lodged by the State Party into West Australian Family Court on 2nd of July 2013.

Annexure # 3: D - full text of Application to Court. Annexure # 5A : The instructions from Canberra based Central Authority Ms.Furze . Annexure # 9 : My eldest daughter Jessica's sworn statement in . My current wife's statement . Annexure # 3A : West Australian Central Authority's Ms. Peterson's email promoting very limited contacts as "adequate and appropriate".

The State Party's witness Sgt. Mathew Rakich from the Missing Persons Dept. had rightfully confirmed that my child as abducted from under my rightful parental care in Poland, and Sgt. T.M.Rakich had confirmed all the circumstances of denying contact & access to my son in Australia, including my tireless efforts of the father to gain contacts and access "were true and correct" - as per Sgt. Terence Mathew Rakich Officer in Charge of The Missing Persons Unit , of The Major Crime Squad, Western Australian Police sworn statement under oath in his affidavit as part of WA Central Authority's Application to Court transmitted to Polish Central Authority on 26.06.2013 and then consequently filed into WA Family Court by WA Central Authority on 4th July 2013, as per official "List of Documents For File " of the "Commonwealth Courts Portal" (attached).

Annexures # 3D: WA Central Authority's Application to court, page 8 of the full text of Application. Annexure # 1: Commonwealth Courts Portal , List of documents filed TO Court.

The Australian Government had arbitrarily and without any court order decided to remove a child from under father's parental care in Poland. Then in Australia, the Australian Government again made an arbitrary decision, whereby the child's contacts with the father shall be almost completely reduced to zero claiming further , that such limitations are " adequate and appropriate" , as per written statement of the Senior Assistant State Solicitor Ms. Ilse Petersen of the West Australian Central Authority . The WA Family Court's Presiding Judge in a domestic custody proceedings in Perth had not taken into account author's three affidavits lodged into court and dated 26th July 2013, 25th September 2013, 19th December 2013, presented here in *Annexures numbered : 10, 10A, 10B.* The State Solicitors/WA Central Authority have always claimed in WA Family Court, to me and to Polish Central Authority, that they do not represent the father/author at the Hague Convention hearings and they refused to file my affidavits in Annexures # 10A and 10B. The Presiding Judge Walters however had made it clear otherwise, in His Court Directions where the Judge said, that the WA Central Authority " represent the father's interests" in this Hague matter - *Annexure 10C.* The affidavits had a vital evidence in relation to a child. The Presiding Judge at the Hague Convention

court hearings was presiding in a domestic Australian custody court hearing two months later and the judge possessed the knowledge of the contents of these affidavits. This is the same Family Court at which I was refused to be cross-examine and so was my eldest daughter in a December Hague Convention hearing.

Annexure # 11 (original sent to Committee with earlier submissions) : Transcript from the Hague Convention Court hearing in Australia, on the 24th December 2013.

In a December Hague Convention hearing ,the same Judge had limited himself to calling my 22 year old daughter to the bench, only to express to my daughter his negative and downgrading opinion of her father. It is all in the transcript provided to the Committee in earlier submission.

Reply to art.9 of Australia's submission:

The Committee has noted in art 6.3 of the Views adopted:

" The Committee notes that the author, who was residing in Poland, made significant efforts, in the form of administrative and judicial actions undertaken both in Poland and in Australia, to gain access to and custody of his son. The judicial actions undertaken in Poland led to court decision granting him custody of the child in August 2010. As regards to author's actions undertaken in the State party, the Committee notes these were aimed at both obtaining the return of the child and obtaining access to him".

The State party, by withdrawing from the Hague Convention proceedings for access & contact had administered further alienation of the child, which was ruled by the Committee to be a violation of articles 23(1), 24(1) and 14(1) of the Covenant.

The State party had acknowledged the evidence lodged into court by the father in a form of the affidavits in *Annexure #10* and two further father's affidavits as in *Annexures # 10A and 10B* lodged into court by the West Australian Central Authority itself, after initial rejections to file them into court. The State Party, in It's written Hague Application filed into court on 4th July 2013 (*Annexure #3D)* has had confirmed, that the child international abduction was a fact and that the details of child alienation administered by the Government while the child was retained in Australia after the abduction, was confirmed in a sworn affidavit on page 8 of the West Australian Central Authority's Court Application by Australia's Central Authority's witness - Sgt. Terence Mathew Rakich, Officer in Charge of The Missing Persons Unit , of The Major Crime Squad, Western Australian Police . The same witness has confirmed the facts of the father's (author) tremendous efforts to gain access & contact with his son.

The State party and the Australia's Courts had every multiple opportunity to cross-examine the father at each and every one court hearing for each he flew to attend each time to Perth, as well as an opportunity to cross-examine father's adult daughter, who for this purpose alone attended the Perth Full Court hearing for international child abduction, and she was in the courtroom again during

the Hague hearing on 24th December 2013, where the written request for cross-examination was filed into court. Instead of cross-examination, my daughter was called up to the court bench by a Judge, just to be "told off" and to be talked down on the integrity of her father .

Annexure # 11 court transcript in Hague Convention hearing on 24th Dec. 2013 was provided to the Committee in earlier submission.

I, the father had also sent a formal request on a court's form to be cross-examined by the State Party and by the court's judge during the same Hague court hearing on the 24th December 2013, where I stayed awake in Poland waiting to be called up by the court, so to alleviate mother's false allegations, but again – my pleas were left unanswered.

My eldest daughter and my current wife(on behalf of youngest daughter) have written letters to Presiding Judge of the West Australian Family Court, including the statement signed in front of Justice of The Peace in Australia, where they have described the anguish brought upon the siblings because of the alienation from their abducted and alienated brother Nikita Zoltowski – everything was ignored by Australia. *Annexure # 9 and # 9A.*

My son's expressed wish of who he wants to live with and why he asked the father to escape back to Poland could have been tested by cross-examining my eldest daughter and myself on two occasions: once during the Full Court's Hague hearing when the judges were offered to do so, and the second time – during the Hague court hearing on 24th December 2013. Neither , the WA Central Authority nor the courts took this opportunity and refused for mother's false allegation to be tested , and/or for the child's "views to be heard" in court via an Independent Child's Lawyer. Annexures and evidence were supplied to the Committee in an original Communication.

Reply to article 10,11,12,13,14,15,16,18,19 of Australia's submission:

During a domestic Australian court proceedings in March 2014, the same Presiding Judge (Judge Walters) who was two months presiding the Hague Convention hearings, together with sponsored by the Government Legal Aid, who has been representing the mother were aware of and had acknowledged the evidence supplied by the father in his sworn affidavits, as in *Annexures # 10, # 10A, #10B.*
Nevertheless, the Government sponsored Legal Aid and the court, had preferred to omit father's evidence, which described child being neglected and abused by the mother and well as facts of child alienation. The Government's sponsored Legal Aid had also forfeited the promise/undertaking given to the Court's Presiding Judge of arranging for an Independent Child's Lawyer , if and when the custody case will be entered into, two months later.
Annexure # 12: Legal Aid's undertaking to the Presiding Judge.
The same court (Judge Walters) of the Hague Convention contact & access proceedings and the same Legal Aid had also dealt with my evidence and with Sgt. Terrence Mathew Rakich's evidence of tireless father's contact efforts with his child , during the domestic and Hague court proceedings.

Yet , it is still falsely claimed by the State Party, that the father/author had not wished to contact his son in art.25 of Australia's submission to the Committee. For a record , I have supplied multiple of evidence of my tireless efforts to keep contact with my son and here is a

copy of a diary, in which the father keeps the records of weekly phone calls to the mother of a child, so the child could speak with his father. *Annexure # 14.*

Same as during the Hague Child Abduction hearings for return of my child to Poland, the child was never assigned the Independent Children's Lawyer, so his views could be heard in court.

Instead, the mother's false allegations were taken by the State party and by the Courts for granted, without it's due proper testing and examination, whatsoever.

The WA Central Authority claims, that I acted against the rules of the Hague Convention – it is not true. It is the State Party , who did not obey by the Hague Convention , nor by it's own Regulations 1986.

Reply to art.17 of Australia's submission:

As per art.6.3 of the Committee's Views:

"*the author, who was residing in Poland, made significant efforts in the form of administrative and judicial actions undertaken both in Poland and in Australia, to gain access to and custody of his son. The judicial actions undertaken in Poland led to court decision granting him custody of the child in August 2010. As regards to author's actions undertaken in the State party, the Committee notes these were aimed at both obtaining the return of the child and obtaining access to him".*

In February 2010 , while the family have lived permanently in their matrimonial house in the city of Plock, in Poland, where the child was born and raised until the age of two and a half, and later, after child's return to Poland for further five months - the author/father of a child had filed a Petition for divorce & custody, into the Polish District Court.

Awaiting the court hearing date, the father hid the child's passport , because the "*mother threatened the author with taking the child away to a place where the father would not find the child" (Committee's Views art.2.1)*

Unbeknown to the father/author, the mother of a child was secretly collaborating with the Australian Government (Australian Embassy Consul and their staff in Warsaw) to unlawfully abduct the child into Australia, which was later confirmed in the subpoena document raised by the West Australian Family Court Judge Hon.Crooks, at the Hague Child Abduction Convention hearing on the 1st September 2010. *(Annexure # 1)*

Mother, in her entire correspondence with the Embassy was making preposterous allegations that the "father/author wants to kill his child and her as well", so she could justify her secret application for a "Child Emergency Passport" to be able to abduct the child to Australia and fulfill her intent of "jurisdiction shopping".

The above subpoena documents contained copies of entire correspondence and phone calls between the mother and the Australian Embassy in Warsaw, and also between the Australian Consul and the Department of Foreign Affairs & Trade in Canberra (DFAT) – have shown to be of a discovery , that the Australian Government knew of the pending District Court divorce

& custody proceedings being on foot in Poland, and the State Party knew of a fact, that the family left Australia permanently to live in Poland (*Annexure # 8).*

The State Party essentially were aware at that point, that mother's claims of grave danger, which concerned the concurrent family's life in Poland could only be properly tested and solved by the local Polish District Court , before which the Petition was already filed.

The Australian Government knew, that by secretly granting the mother with a "Child Emergency Passport" – the Government of Australia will interfere in other country's (Poland) court proceedings.

The Australian Government had violated International Law and the Sovereign Law of Poland.

The Australian Government and the West Australian Family Court had received a response from a father, on the month of receiving the Hague Convention Child Abduction Application for the return of the child to Poland. In it, the author explained, why Poland is the proper country and Australia is not the right country to proceed with the child custody proceedings. *Annexure # 5. Author's response to WA Family Court and to the Australian Central Authority.*

At that point , the State Party shall return the child to Poland and live it upto the Polish Court to test mother's allegations in the Polish Court of Law.

The State Party should have obeyed by, and follow the 'Rules of The Supreme Court 1971" of Western Australia. State Party should have filed the Polish Court Petition in Australia's Registrar execute the later Polish District Court final Divorce & Custody Order made on 2nd August 2010, which was finalized long time before the Hague Convention Child Abduction court hearings have began in West Australian Family Court.

For farther reference , please refer to my "Legal Note" in *Annexure # 6*, to which I was invited to write personally by Dr.Augusto Zimmermann *(Annexure # 6A)*, who congratulated me on a win in a UN Human Rights Tribunal. Dr. Zimmermann is a Professor of Murdoch University in Western Australia, School of Law, Chief Editor of Western Australian Legal Theory Association (WALTA) and his titles are :

Augusto Zimmermann, LLB, LLM, PhD (Mon.)
Law Reform Commissioner, Law Reform Commission of Western Australia
Professor of Law (adjunct), The University of Notre Dame Australia – Sydney
Director of Post-Graduate Research, Murdoch University School of Law
President, Western Australian Legal Theory Association (WALTA)
Editor-in-Chief, The Western Australian Jurist

Reply to article 20 of Australia's submission:

The State party confused Committee's conclusions expressed by the Committee in art.7.2 of the Views, where in relations to the violation of art.17 of the Covenant, the Committee wrote:

"*The Committee further recalls that the removal of the child from the care of his or her parent(s) constitutes interference in the family of the parent(s) and the child. The issued thus arises of whether or not such interference was arbitrary or unlawful under article 17".*

In light of the above, Australia has incorrectly interpreted Committee's findings in relation to article 17 of the ICCPR. Australia has misinterpreted UN Views by writing: " violation of art.17 of the ICCPR happened through any alleged inaction by the Court". Australia further claims and assures the Committee of Australia's Courts being "independent".

The Committee in Its views have pointed out to the human rights violation by Australian Government, being the

"*interference in the* family " , which related to the "*arbitrary if not unlawful removal of the child" from under father's parental care* .

Australia doesn't seem to want to distinguish the meaning of the terms specified by the UN Committee, which are:

1. The interference in the "family", (the arbitrary/unlawful removal of a child).

2. The interference in the "family life" (not securing the contact & access between the child and his left behind parent).

Both violations were committed by Australia in violation of the child's human rights and in violation of the father's human rights.

The violations of art.17 of the Covenant was done by the Australian Government Authorities such as the Australian Department of Foreign Affairs & Trade and it's subordinate Embassy in Warsaw, who had removed the child, as well as by the federal Attorney General's Department in Canberra and by the West Australian Attorney General's Dept. and it's subordinate s – the West Australian State Solicitors/ WA Central Authority.

The WA Central Authority were supposed to represent father's interests and his son's interests before the Australian Courts during the Hague Convention court proceedings.

The Committee stated in art. 6.5 that *"it is generally for the organs of State parties to examine the facts and evidence of the case".*

The facts in my case are, that the State party did not examine the evidence, which were supplied by the author to the Australian Courts, whereby , if they did - it would be found unanimously – that the State party, who had secretly issued the "child emergency passport" to the mother was acting in collusion with the mother and was aiding the mother with the international child abduction.

State party (Attorney General's Dept., DFAT and Australian Embassy in Warsaw) had arbitrarily if not unlawfully removed my five year old son (a Polish citizen) from under my parental care in Poland, amidst the Polish divorce & custody court proceedings being underway, thus administratively interfering in other country's court proceedings.

The same Australian Government Department (DFAT), who had confirmed in writing to other Australian Government Dept.(Family Assistance Office), that my "*son had left*

Australia permanently to live in another country" – has secretly removed my son from his birth home in Poland. *Annexure # 8.*

Reply to article 21 and 22 of Australia's submission:

In reference to State party's inaction in securing contact between the child and the father and the State party's written letter to the author with a clear promotion to minimize and block the contact & access between the son and the father – I have produced plentiful of evidence of, to the Committee.

The Polish Court Final Order dated 2nd August 2010 gave the father a sole custody rights over the child and at the same Court Order , the Polish Court did not specify nor limit in any way contacts & access between the mother and the son.
This Order was acknowledged by the Australian Central Authority on three months before the first Hague Convention court hearing took place in Australia, in November 2010.

The Hague Convention have the provisions within its covenant for consideration of all evidence supplied by the Applicant within the Hague Convention 1980 and within the Australian Child Convention Regulations 1986 , (https://www.legislation.gov.au/Details/F2007C00550) :

25A Orders

(1) If a court is satisfied that it is desirable to do so, the court may, in relation to an application made under subregulation 25 (1):

(a) make an order of a kind mentioned in that regulation; and

(b) make any other order that the court considers to be appropriate to give effect to the Convention; and

(c) include in an order to which paragraph (a) or (b) applies a condition that the court considers to be appropriate to give effect to the Convention.

(2) In determining an application made under subregulation 25 (1) seeking an order of the kind mentioned in paragraph 25 (1) (a), the court must have regard to the matters set out in section 111CW of the Act if the convention country under the laws of which the person mentioned in paragraph 24 (1) (a) claims to have access rights to the child is also a Convention country within the meaning of subsection 111CA (1) of the Act.

(3) The court may make an order under subregulation (1) regardless of:

(a) whether an order or determination (however described) has been made under a law in force in another convention country about rights of access to the child concerned; or

(b) if the child was removed to Australia — when that happened; or

(c) whether the child has been wrongfully removed to, or retained in, Australia.

State party – Australia had promoted in writing, to significantly reduce access and contact with the child, right from the point when the State party had received an information from it's Permanent Post at the Human Rights Commission in Geneva, that my Communication No.2279/2013 was accepted by the Committee and the previous rejection was cancelled.

It was a turning point, where the State party had decided to withdraw their court application from the Perth Family Court, in my Hague Convention access & contact matter. The State Party's ultimate goal from then on, was to draw me into a domestic court proceedings instead, so my Human Rights Communication could be easily rejected by the Committee.

The Australian Party's change of tactics, whereby on 2pd July 2013, the date of filing by them a court application in Hague Convention matter for access & contact, and then soon after rejecting to file my evidence in a matter (requests to file my affidavits) - had nothing to do with the "best interest of the child or the child's human rights", whose contacts with a father were terminated for so long, as stated and sworn by the witness , Sgt. Mathew Rakich of Australian Police Dept., The Missing Persons Deptartment

4. The Hague Convention Application filed into the WA Family Court by WA Central Authority with a special focus on the State's witness Sgt. Mathew Rakich' s written statement made under oath confirming the arbitrary removal a child and the lack of access & contact between the father and the child, whilst the retention of the child in Australia. *Annexures # 3D*

5. My eldest daughter's request to court. *Annexure # 9*
6. My current wife's letter to court. *Annexure # 9A*
7. My latest recorded contact efforts (Diary) with my son. *Annexure # 14*
8. The earlier contact efforts made by a father were filed with the Committee with the original Communication.

Reply to article 23, 24,25,26,27 of Australia's submission:

State party keeps relying on mother's false allegation, which were never tested by the court , nor by the State party. Father had formally requested the State Party and then directly the Australian Court during the Hague Convention proceedings to cross-examine him, so to alleviate the false allegations but I was denied this process. My eldest daughter had attended the court during the Hague Convention proceedings and was called to the bench by the judge , but she was also denied the rights to be cross-examined.

State party, nor the Court had taken into account father's evidence filed in a form of sworn affidavits into court during the Hague Convention court proceedings in a year of 2013.

The State Party , nor the West Australian Family Court had not taken the "child's best interest" into account as a primary consideration at all.

All efforts by the State Party were aimed at covering up the initial arbitrary/unlawful removal of a child from under father's parental care, away from child's birth home place in Poland, where he was born as Polish citizen and raised since his birth, until the emigration to Australia, 2,5 years later.

After living in Australia for the following 2,5 years , the child returned to live in Poland in the same home in Poland , where he was born and raised, in the same city , where his uncles, aunties and grandparents still were living, where he has had close family ties to.

The State Party wrote in § 23 of their submission: *"Although, the Court (again on 17 June 2014) observed that the author had elected not to contact his child for an extended period of time".*

It is entirely untrue because the Court, where the Presiding Judge was the Hon. Judge Walters (author of the above statement)was the same judge, who presided in Hague Convention proceeding filed into Court by WA Central Authority on 2nd July 2013, as well as later, in a domestic custody proceedings in 2014, where the Court had made a severely restrictive custody order. The same Presiding Judge and the Government lawyers from WA Central Authority had rejected to cross-examine me the father and my adult daughter, who attended the court hearing on 24th December 2013. The same Court had multiple of evidence from the father, but the State Party and the Court, each time chose to rely on mother's untested false allegations. The Court has had the solid evidence of the father's tireless and continuous efforts to contact his son. The same evidence has been in a possession of the UN Committee.

Evidence.

I had written many letters to the Australian public officials complaining on the way that my son's rights and my own rights were being grossly violated and that the law was not being properly adhered to – but none of them had been investigated.

Annexure # 18: Letter to and replies from the West Australian Ombudsman. Annexure # 19: Letter to and replies from the Australian Federal Police, Annexure# 20: Letter to the Chief Police Commissioner. Annexure # 21:Letter to and reply from the Attorney General of Western Australia. Annexure # 22: Letter to and reply from the Governor General Australia. Annexure # 23: Letters to the Department of Foreign Affairs and Trade. Annexure # 24: Letter to Chief Judge of Western Australian Family Court. Annexure # 25: Letter from The Law Council of Australia. Annexure # 26: Letter to Chief Justice of Family Court of Australia.Annexure # 27: Annexure # 27: Letter to Presiding Judge in a Hague Convention court hearings for access & contact" (later the same judge in Australia's domestic custody proceeding).

... and many more.

Least but not last, the complaint and a request for help, to the Queen of England, *Annexures # 15, # 15A.*

Reply to article 28 to 35

The author refers the State Party to the "Legal Note" ; *Annexure # 6*

As to the State party's constant denial of human rights violations committed against my son and I, I refer the State Party to the correspondence with the Minister for Education and my son's Primary School Principal. *Annexure # 16.*

With all due respect to the UN Human Rights Committee, I refer the Committee to the renown and countrywide respected media opinion of Australia being the " child stealing capital of the world" :

http://www.theaustralian.com.au/national-affairs/australia-branded-childstealing-capital-of-the-western-world/news-story/646b43762af19dad04d7e23c8af6950e

I also refer the State Party and the honourable UN Human Rights Committee to the reply letter I have received from the Law Council of Australia, in which they wrote : *"The Law Council is unsure of the reasons why the decision has not been implemented by the Australian Government" (Annexure # 25),* as well as another grand impact of a opinion shared in a single sentence made to me in relation to Australia's objectionable human rights violation record, expressed to me in an email by the Australia's leading Human Rights Lawyers Association President about State Party's attitude towards the Human Rights Committee's rulings and towards the implementations of Committee's Views. *Annexure # 17.*

He wrote:

"Yes, in the past 2-3 decades Australia has degenerated from international human rights leader to laggard. It is highly unfortunate but unfortunately unsurprising the dismissive responses you've received." .

Best Regards,

Benedict Coyne
President
Australian Lawyers for Human Rights
E: president@alhr.org.au
W: www.alhr.org.au

AUSTRALIAN
LAWYERS
FOR
HUMAN RIGHTS

ALHR was established in 1993 and is a national network of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and a secretariat at La Trobe University Law School in Melbourne. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

With my highest respects, I avail myself to the Committee for further consultation.

Arkadiusz Zoltowski

The Author of the Communication CCPR 2279/2013

Date: 18 November 2016

Enclosed: For relevant Annexures not yet supplied to the Committee, please accept the ones numbered 14 till 27 and annexure number 8.

Author's response (Part II) to Australia's submission to the UN Human Rights Committee, in Communication No. 2279/2013

THE UN HUMAN RIGHTS DECISION ADOPTED IN GENEVA AT THE
115 SESSION, ON 5 NOVEMBER 2015
CCPR 2279/2013 Zoltowski v Australia

THE CONFLICT OF INTEREST FOR WA CENTRAL AUTHORITY IN CONDUCTING THE COURT HEARINGS AT MATTERS RELATING TO HAGUE CONVENTION CHILD ABDUCTIONS INTO AUSTRALIA.

JURISDICTION SHOPPING

Arkadiusz Zoltowski *

I. INTRODUCTION

On the 21 January 2013, the Secretariat of the Human Rights Committee in Geneva Switzerland, dealing with individual communications, had received an individual complaint against Australia, lodged by author Mr. Arkadiusz Zoltowski on his own behalf and on behalf of his son Nikita Zoltowski, for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights.

On the 29 July 2013, the Human Rights Committee had registered the complaint as communication No.2279/2013 and in accordance with rule 97 of the Committee's rules of procedure, a copy of the communication was sent to the State party, with request that any information or observation in respect of the question of admissibility and merits of the communication is to reach the Committee within six months, meaning by 29 January 2014.
The Committee had made an annotation to the State party, that any reply from the State party will be communicated to the author in due course to enable the author to comment thereon.

The Office of International Law of the Attorney-General's Department in Canberra , being the State party representing Australia in the matter , had requested the Committee for an extension of time to lodge submissions by 30 May 2014 , and such extension was granted.

The Attorney General's Office of International Law in Canberra , had submitted its response to the UN Committee in June 2014.

The Views of the Human Rights Committee were adopted at its 115 Session, on 5 November 2015 and the advanced unedited text of it, was transmitted to the author and to the State Party Australia.

In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy, that requires it to make full reparation to individuals whose Covenant rights have been violated, as in par.9 of the UN Decision.

The par.10 of the UN Decision states , that Australia by becoming a party to the Optional Protocol, 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 has undertaken to ensure to

all individuals within its territory or subject to its jurisdictions the rights recognized in the Covenant and to provide and effective and enforceable remedy when the violation has been established.

* Author of UN Human Rights communication CCPR 2279/2013 and an author of this document called "Legal Note".

II. BACKGROUND OF THE UN DECISION AND THE INTERWEAVING DATELINES OF THE AUSTRALIAN HAGUE CONVENTION AND DOMESTIC CUSTODY PROCEEDINGS

In the shadow of the synchronized timing and dates, it is worth mentioning, of how the WA Central Authority had scheduled the Hague Child Abduction Convention 1980 court matters for access & contact lodged by the author with the Australian Central Authority on 6 of December 2011 and permanently stayed on 29 January 2014 ,as per par.2.10 of the UN Committee's Decision. Also worth noticing is the synchronized timing of the amended Australian custody application lodged to the WA Family Court by a mother and Legal Aid, on the 10 April 2014. Mother's amended custody application was allowed to be filed to WAFC by Judge Hon. Walters' by a court order made on 18 March 2014.

On 27 May 2014, Judge Walters of the WA Family Court had made a custody order, which significantly limited child's contact with a father to one hour per week of a telephone conversation on each Thursday under a supervision and no personal unsupervised child access.
Father did not submit to Australian Domestic proceedings , due to already having a final custody order made in a divorce proceedings by a Polish Circuit Court on 2 August 2010, as in par. 2.5 of the UN Decision.

In par.6.3 of the UN Decision, under the heading "Issues and proceedings before the Committee (Consideration of admissibility), the UN Committee has stated : " As regards the author's actions undertaken in the State party, the Committee notes that these were aimed at both obtaining the return of the child and obtaining access to him, and that both of these avenues were duly exhausted, as acknowledged by the State party.

Hon. Judge Walters was a Presiding Judge in a Hague Child Abduction 1980 Convention matter for "access & contact" , as well as a Presiding Judge in an amended Australian domestic custody matter, thus having all the evidence provided by a father, at hand. Father's evidence enclosed in the affidavits and the Polish Circuit Court's divorce & custody order were not taken into account by the WA Family Court.

The conflict of interest in conducting findings of evidence, which had led to the international child abduction into Australia and the conflict of interest in conducting the followed court proceedings in Hague Convention matters within Australian jurisdiction emerges from within the statutory obligation of WA State Solicitors, who at the same time and within the same department act as the WA Central Authority.

III. THE CONFLICT OF INTEREST AND THE DUE DILIGENCE

The conflict of interest multiplies at the rate of direct proportions to the Australian Government's collusion and complicity in the act of the international child abduction aided by Australian Government.

The primary and statutory obligation of the WA State Solicitors is to defend Federal and the State Government officials, including giving the assistance in representing those officials in the court of law, even if it may be, that these public official's decisions beforehand were arbitrary, or even it could initially be on the verge of being illegal.

This correlation reveals a tenuous line for the WA State Solicitors to maintain a just juridical support for the left behind parent in a Hague Convention child abduction proceeding in Australia.
The conflict may arise with adhering to proper proceedings in the administration of the law and evidence gathering for the left behind parent during the international child abduction courts' procedures, which were a result of the direct involvement of the Australian Government officials in abetting of the international child removal/abduction.
In relation to Human Rights Decision 2279/2013 , the WA Central Authority was officially representing another government official a WA Commissioner of Police during the child abduction proceedings, in WA Court and in the Full Court of Australia . The arrangement of switching the role of the left behind parent to a mere passive observer during the court proceedings in Western Australia is against the High Court of Australia precedence rulings and against the spirit of the legislators, who formed the Hague Convention Child Abduction 1980 document. The left behind parent, who is the actual Hague Convention Applicant and who had submitted the Hague Application is also obliged to submit a formal written authorization to the WA Australian Central Authority , where he agrees to be represented by them in Australian courts during the Hague Convention proceedings. This parent is then entirely deprived by WA Central Authority of any rights to have a say in the matter being presented for him to WA courts by the WA Central Authority. The left behind parent/Hague Applicant is also entirely deprived by WA Central Authority of any influence in the way his evidence is to be presented to the court or whether it will be presented at all, to be later taken into account by the court. WA Central Authority chooses, which claims of parental rights will or will not form part of the court file lodged by the WACA and what evidence of the left behind parent will be filed to court, or if his affidavit will be filed to court at all.

All of these West Australian State Solicitor's exceptions to the legislation contained within the text of 1980 Hague Child Abduction Convention are at the discretion of the individual/personal interpretation of the particular Counsel of the WA Central Authority and as in my case were made against the Hague Convention legislation signed by Australia (court pseudonym: *Zotkiewicz*)

Having said that, and in the addition of WA Central Authority not adhering to the Hague Child Abduction Convention 1980, to the Child Abduction Regulation 1986 and to the High Court precedence in establishing a country of habitual residence, also by the Australian Government not respecting the International and Sovereign Law in recognizing the Polish Court's Final Order in relation to child custody made in a divorce proceedings, and by the Australia's violation of the UN Human Rights in relation to Family Protection, I had little alternative left, but to lodge a formal individual complaint to the UN Human Rights Commission in Geneva.

In my son's case of international child abduction into Australia from Poland , it was the Australian Government officials , who took active role in the removal/child abduction of my five year old son.
The Australian Embassy's Consul in Warsaw had personally recommended to the superior of DFAT in Canberra , for the "Emergency Passport" to be issued to my son without father's knowledge, nor consent, and only on the basis of mother's unverified violence allegations, which she had secretly made against the father, to the Warsaw based Australian Embassy officials.

The Consul of the Warsaw based Australian Embassy, being the employee of Australian DFAT and the Passport Office of DFAT 's Delegate in Canberra, who have administered and then had made a decision to issue an unauthorized by the father "Emergency Passport" to a child, had at their disposal a documented written inter-departmental statement, which has said: " *the information received from the immigration department shows that your child left Australia permanently to live in another country*"- unquote, printed on the 1 December 2009. This statement was copied to the father by the Australian Government Family Assistance Office.

For another piece of evidence of permanent international relocation to have taken place, was the Australian Airport Departure Cards available at first hand, to the Warsaw Embassy and to the DFAT Delegate. In the Airport Departure Cards, mother had signed a declaration, that the child had left Australia permanently, and she had informed the Immigration Department in writing, of the new country of residence for the child to be Poland.

Last and foremost, was the Schengen Border Control information, which was available to the Australian Mission in Warsaw, as well as to DFAT Passport Offices' Delegate in Canberra, before they had arbitrarily administered and unlawfully granted my son with the "Emergency Child Passport" , so he could be removed from his Family of his home country of Poland without any specific court order. The information from the Schengen Border Control had registered, that my son and I had crossed the Schengen border on a return flight to Poland upon presentation of Polish Passports, and the mother of a child upon presentation of her Belarusian Passport accompanied the Polish Permanent Residency Card - not by presenting the Australian Passports. This was the final indication of Polish residents returning home permanently.

The question remains, whether the due diligence was applied before the infelicitous diplomatic arbitrary decision was made by the Australian Government - remains to be seen.

It requires for the formal investigation to be carried out by the Government of Australia. Whether it will be the Attorney General's Office , or the High Court of Australia - it is owed to the child. It is an Australian Government's obligation, which lies within the Australian Family Law, within the Hague Child Abduction Convention, the UN Human Rights Convention and within the Rights Of a Child Convention, whereby " THE BEST INTEREST OF A CHILD IS OF PRIMARY CONSIDERATION".

IV. THE INTERPRETATION OF THE UN HUMAN RIGHTS DECISION

The interpretation of par.7.2 and 7.3 of the UN Human Rights Decision deals with two separate aspects of the Human Rights Committee considerations and thus violations.

The aspect described in art.7.2 deals with a violation to protect the "Family", which "must be understood broadly" - as it is worded in a Decision.
It is concluded in the paragraph 7.2 and in par.7.4 of the UN Decision , that : "the arbitrary removal of a child from the care of a parent constitutes interference in the "family" of the parent and the child"- as it is worded.
It is thus violation of the art.17(1) and 23 of the Covenant.

The faulty approach of the Full Court during the appeal court hearing in relation to the abduction and the habitual residence of a child was based on mother's false allegations, as it is understood by reading the Full Court's Reasons For Judgment".

The so called "individual analysis" conducted by the Full Court to establish the habitual residence of a child by bypassing the precedence and the guidelines of the High Court of Australia in the case of LK v Director General, Dept. of Community Svcs. was faulty. The High Court precedence rules , that the left behind parent, a father in my case should have been cross-examined for the allegations of violence and child abuse raised by a mother , and for the child abuse raised by a father against the mother. Besides, the appointment of Independent Child's Lawyer was also a necessity, which was not satisfied.

The child should have been allocated with the Independent Children's Lawyer , who could communicate child's views on the matter. The Full Court should also have examined if the child has had strong ties to Poland before emigrating to Australia and after the child's return to Poland 2,5 years later. The High Court guidelines were later confirmed as valid in an official Australian Senate document : *"Senate Legal and Constitutional Affairs Reference Committee Inquiry: International Child Abduction to and from Australia. Response of the Chief Justice of the Family Court of Australia 10 August 2011"* in par. 20,22,41,42 of the Inquiry.

The Senate inquiry also shows , that the Senate Committee was misled to believe, that in my particular Hague child abduction case, which was considered by the UN Committee, it was implied that the father was not in attendance at the Full Court hearing to be able to be cross-examined, as in

par.,22 and 42 of the Senate Inquiry. However the father, the child's half sister and the guest Australian-Polish International lawyer were in attendance at the Full Court hearing and the Court was verbally given the offer exclaimed by the Counsel representing the Applicant, for the witnesses to be cross-examined in context of the habitual residence and in context of child's close ties to Poland , as well as in relation to the violence and a child abuse allegations.

The Court however had rejected to allow this opportunity of truth seeking, which if taken would be of no significance to the time duration within which this Hague application would have been determined. This is to the contrary of what the Senate was made to believe, as stated in art.22 of the Senate Inquiry. By the time the Hague hearings were proceeded and up until the Full Court hearing date had already been in it's 10-th month of duration. The two hours longer for the time to be allowed to cross-examine the father in a Full Court's duration of the appeal hearing - considering the matter at stake - would not make any significant difference.

The best interest of a child however, would then be taken more seriously into account.

The genealogy of the article 7.2 and the conclusion of the UN Committees' Decision in art. 7.4 deals directly with the abduction/removal of a child by secretly granting an Emergency Passport to my son, so the international abduction/removal could be carried out by the mother. Here, it was the violation of art.17(1) and 23(1) of the UN HRC Covenant.

The art.7.3 of the UN Decision deals with the human rights violation of the "*specific interference*" (as it is worded) with "*Family Life*". This meaning of human rights violation is "*in the light of effective right of a parent and a child to maintain personal relations and regular contacts*"- unquote. This is where WA Solicitors failed , when proceeding with the Hague Convention Application forcefully excluding the child custody awarded to the father by the Polish Circuit Court and by not assisting in securing contacts with child immediately after the Australian Government's removal of my child from under my parental care, up until now.

The art.7.3 deals directly with access & contact with a child from the point of , when the child was arbitrarily/unlawfully removed from under the parental care of the father. The unlawful aspect would obviously have to be decided by the law courts of Australia and it is reflected in UN Decision when the provisions for remedies are stated as *"inter alia'*. Specifically, it is up to the High Court of Australia to decided, if removing a child from under father's care by granting a child an Emergency Australian Passport" was unlawful, besides being arbitrary. The access to appeal to High Court of Australia was numerously denied by the WA Central Authority.

The conclusion to the interference in "*Family Life*" , as described in art.7.3, was made by the Committee in art.7.5 of the Committee's Decision.

Art.7.5 of the UN Decision also deals with the violation of my son's human rights by "*not taking into account the best interests of the child*" and "*by failing to take such measure of protection as required by the minor*", thus violating the art.24(1) of the UN Covenant.

The genealogy of the violation of art. 14(1) of the Covenant, is stated by the Committee in art.7.6 of the HRC Decision, and it refers to the Hague Convention of Child Abduction in Hague Convention access & contact proceedings, which " *were plagued by undue delays*" - as it is worded in a UN Decision.

The violation of art.24 of the Covenant relates to my son and it deals with the Australian Government's interference with my son's "*FAMILY*" in a way of an arbitrary removal from his family and with his "*FAMILY LIFE*" ,by not securing his contacts and access with a father, from whom the Australian Government removed a child.

The issue of the Australian Government granting my child an Emergency Passport", so he could be removed/abducted from my parental care, was viewed by the UN Committee as arbitrary, but it could also be unlawful, if it was properly investigated by the Australian Courts.

In other words, the Committee debated, if besides the removal being and arbitrary interference (violation of art.17 and 23 of the Covenant), it could also have been unlawful interference on the Australian Government's part.

For the unlawful factor, it is up to the Attorney General or the High Court of Australia to decide, because the UN HRC could not go into the Australian Law

Would the Committee be suggesting here, that there has to be such inquiry provided by the Australian Government which would prove, if the Australian Government's decision to issue my son with an Emergency Passport without my knowledge was unlawful ?

Most certainly - Yes.

This necessity of conducting an official independent inquiry to be initiated by the Australian Government/ Attorney General and The Senate is reflected in the final views of the Committee in art. 9 of their Decision, where the Committee phrased this particular obligation towards Australia, as in per *"inter alia"*.

The Australian Government has been obligated by the UN Human Rights Committee to "*provide an author with adequate compensation*"", which is to cover all parental time lost/bereft with his son, from the time of abduction in Poland until the time to be, when the father and son will be reunited with each other. Besides the restitution, the remedy shall also contain the redress and the satisfaction.

The *Inter alia* term also relates to the Australian Government's ignorance towards the International Law and to the Sovereign Law, which is the key to the Australian Government Policy. This relates to the domestic custody proceedings in Australia versus the related court proceedings commenced by a father, by way of the father filing a Polish Circuit Court application in a divorce & custody proceedings. The commencement of the Polish divorce & child custody proceedings started while the whole family was living in Poland, in their matrimonial house and after they permanently have relocated to Poland. The divorce proceedings were commenced by the Polish Circuit Court four months after the family permanently relocated to Poland and before the Australian Government decided to grant an Emergency Passport to a child without father's knowledge, so to make the child abduction possible to Australia.
The Polish Circuit Court had made it's final court order in a divorce & custody proceedings, before the first Hague court hearing was heard in WA Family Court in Perth. The couple got married in Poland and divorced in Poland. Poland had a sole jurisdiction over the matter. Poland had the sovereignty over the marriage of the author and his wife, and also over the custody of their son. Poland had sole jurisdiction in a divorce & custody proceedings in their territory, where the child and father were the Polish born citizens and the mother had been a permanent resident of Poland , and she has held the Polish Permanent Residency Card.

The WA Central Authority during the first Hague court hearing in Perth Family Court had not followed up an spoken by the Presiding Judge verbal statement, who acknowledged the existence of the Polish Court Order and has had addressed the Counsel of the WA State Solicitors by saying: "*There already is a Polish Court Custody final order made in a divorce proceedings in Poland, so what are we doing here ?* " - the Presiding Judge said.
The Hague Abduction Convention matter should have been immediately stayed at the first Hague court hearing in Perth in Western Australia , and the child should have been returned to Poland as per Polish Court Order.

There is yet another argument for the immediate retum of a child to Poland and into father's parental care to be activated by Australia,.
For one reason being , it is the "access to justice" and the lack of adherence to the Australian Law of Child Abduction Regulation 1986.
The Full Court should have had rejected the appeal due to the lower court violating the Australian Child Abduction Regulation 1986 , per.20 (2a,b) in granting an appeal to the mother beyond the statutory limit time, where the law clearly does not leave any option to the Court , for it says: "*if a return order is made and the application for appeal is not received within the seven days of an order, the child must be returned in accordance with the court order*"- this is the letter of the Law.

V. THE INTERNATIONAL LAW , THE SOVEREIGN LAW AND JURISDICTION SHOPPING

The Polish Circuit Court had the exclusive rights of jurisdiction over the divorce proceedings and the Polish Circuit Court's child custody order was made as a part of the divorce proceedings in Poland. The Polish Circuit Court has had confirmed afresh, its exclusive rights of having a jurisdiction over the matter in a court's official statement made to the author, in July 2015.
The analytical reasoning exist in Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law.... , https://www.hcch.net/en/instruments/conventions/full-text/?cid=70

In article 9 and 10 (1,2) , it says:

(1) Without prejudice to Articles 5 to 9, the authorities of a Contracting State exercising jurisdiction to decide upon an application for divorce or legal separation of the parents of a child habitually resident in another Contracting State, or for annulment of their marriage, may, if the law of their State so provides, take measures directed to the protection of the person or property of such child

2) jurisdiction provided for by paragraph 1 to take measures for the protection of the child ceases as soon as the decision allowing or refusing the application for divorce, legal separation or annulment of the marriage has become final, or the proceedings have come to an end for another reason .

...and in article 11(1 and 2) of the Hague Convention, it says:

(1) In all cases of urgency, the authorities of any Contracting State in whose territory the child or property belonging to the child is present, have jurisdiction to take any necessary measures of protection.

(2) The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken the measures required by the situation.

The initiation of the court proceedings commenced, when the application for divorce was filed with the Polish Circuit Court on 26 Feb. 2010, while both parents and a child were living permanently in their matrimonial house in Poland. Mother had secretly abducted the child more than two months later, on 31 March 2010, which is reflected in Geneva's HR Committee's Decision , in par.2.2 of the UN Decision.

The Polish Circuit Court had made a divorce & custody final order on 2 August 2010 and the first Hague Convention Court hearing in WA Family Court was on 8 th November 2010, which was reflected by UN HRC in par.2.5 of the Decision. The WA Central Authority did nothing to formally request the Polish Central Authority, if they could take over the custody proceedings while it was "on foot" in Poland , until the 2 August 2010. The Australian Central Authority, the WA Central Authority and the WA Family Court were informed in writing about the Polish court proceedings, before and after they had received the Hague Convention Application for return of a child to Poland.

VI. THE EARLIEST DATE OF THE COMMENCED DIVORCE PROCEEDINGS AND THE EXISTENCE OF A FINAL COURT ORDER IN THE FOREIGN COURT - COUNTS,

THE FINAL COURT ORDER MADE FIRST IN A FOREIGN COURT PREVAILS THE INTERNATIONAL LAW AND THE SOVEREIGN LAW

(*1. " Forum Shopping – An Australian Perspective at European Chapter Meeting Munich Germany on 5 – 9 May 2010. The author Ian Kennedy AM, is a senior partner of Wisewoulds Lawyers, Melbourne and the President of the International Academy of Matrimonial Lawyers.)

(* 2. Melbourne University Law Review Associations Inc, in April 1999 , author: Richard Garnett: Pending Proceedings in a Foreign Court)

Mr. Richard Garnett wrote a Legal Note about the "Pending Proceedings in A Foreign Court" , in chapter VIII, of the Melbourne University Law Review Associations Inc, in April 1999 issue of his works, and I am relying of his findings, especially corresponding to matters raised by him on pages No.13,14 and 15 of his works.

I am also relying on the works titled: Forum Shopping – An Australian Perspective" of Mr. Ian Kennedy AM, who is a senior partner of Wisewoulds Lawyers of Melbourne and the President of the International Academy of Matrimonial Lawyers.

The International Law (common law) and the Sovereign Law were in my case not honored by the Australian Central Authority, nor by the Australian Courts during the two separate Hague Child Abduction Convention proceedings in WA Family Court and during the appeal hearing of the Full Court, nor during the domestic child custody WA Family Court hearing, in 2014. The Australian Central Authority and both Australian courts had refused to take into account the Polish Circuit Court final divorce & custody order , made in August 2010, in relation to the custody of a child and in relation to with which parent the child shall reside with.

There is a High Court precedence of a conflict in the international divorce proceedings in Australia where one party, in my case here being a mother, who initialed a parallel custody proceedings in Australian court without disclosing to WA Family Court, that there already is the same court proceeding on foot in Poland (High Court principal basis in Henry v Henry 1996 (1)). Mother was seeking "a different forum" in Australia, also known as committing a "jurisdiction shopping" or a forum seeking.

The Australian Central Authority and a WA Family Court in their analysis of a child abduction and by taking into account the faulty domestic custody proceedings in Perth, as well as during the initial Hague Convention court hearing - should have each time rejected mother's court response in a Hague Convention matter and reject the appeal to Full Court, by making an immediate return order of the child to Poland, where the final court order was already made in a divorce proceeding. The court proceedings in Poland were formally commenced 1,5 month before the child was internationally abducted by a mother to Australia. Mother had filed the parallel custody application to Australian court two weeks, following her abducting the child.

Australian Court shall decide to exclude its own rights and to permanently stay the proceedings in deciding about the child custody matter because Australia was "an inappropriate forum".

Australian Court, when it was making its decision in a child custody proceedings in Perth , during the court hearings conducted between January and May 2014 , HAS ALREADY HAD IN ITS POSESSION FOR THE PAST FOUR YEARS, A FINAL CUSTODY COURT ORDER MADE IN A DIVORCE PROCEEDING BY THE POLISH CIRCUIT COURT FINALISED by the Court on 2 August 2010.

Such conclusion is well described in the works: " Forum Shopping – An Australian Perspective" at European Chapter Meeting Munich Germany on 5 – 9 May 2010. The author Ian Kennedy AM, is a senior partner of Wisewoulds Lawyers, Melbourne and the President of the International Academy of Matrimonial Lawyers.

Doctrine of *res judicata*

Where a cause of action, including the adjustment of property rights, has been fully and finally determined by a foreign court, the doctrine of *res judicata* (cause of action estoppel) applies and the prior adjudication of a cause of action estops parties from proceeding with the same cause of action in another forum. The relief granted in such a situation is a permanent stay of the subsequent claim.
The elements of the doctrine of *res judicata* (derived from the English case of *Marginson* [1939] 2 KB 426) are that:

The decision was judicial;

The decision was in fact pronounced;

The tribunal had jurisdiction over the parties and the subject matter;

The decision was final and on the merits;

The decision determined the same question as raised in later litigation; and

The parties to the later litigation were the parties to the earlier litigation.

The Full Court held that the existence of a prior judicial decision of a court of competent jurisdiction, which was final and which involved the determination between the same parties of the same question sought to be litigated in Australia, meant that a cause of action estoppel arose against the wife. The Full Court was not satisfied that merely declaratory judgments (in contrast to orders for adjustment of property) are excluded from the operation of the doctrine of *res judicata*.

On the 16 June 2010, I have lodged my response to the WA Family Court, on an approved court form (Response to an Application in Case and Client Information Form), where had I pointed out, that Australia is clearly an "inappropriate forum" to investigate the child custody matter, which is already on foot before the Polish Circuit Court. The same information was supplied to Australian Central Authority and it was acknowledged by the ACA in a fax message , dated 5 July 2010.

If a respondent (in Zoltowski case being a husband and a father) claims that an application is improperly instituted in Australia, or asserts Australia to be a clearly inappropriate forum (father sent a response to WA Family Court three months after the abduction), that party should not take an active part in the proceedings other than to file a response objecting to jurisdiction and, if appropriate, seeking a stay of the Australian proceedings. The issue of whether the Australian court should then decline jurisdiction will be determined as a threshold issue before the Court embarks on any consideration of substantive relief.

For the reasons and on the basis of the above, the Australian Central Authority should have applied for a "permanent stay" of the earlier made interim custody order in Australia, after it received a note from me on 5 July 2010.
The "interim order" made by a WA Family Court on 21 April 2010 shall be "definitely quashed" or "permanently stayed" , as soon as the Polish Circuit Court's final order was acknowledged to be made and as soon as it was received by WA Central Authority and by WA Family Court on 8 November 2010, during the first Hague court hearing.

No Australian Court, nor Legal Aid representing the mother, nor WA Central Authority have had considered a threshold issue before embarking on consideration of approaching a decision in relation

to a child abduction and the custody of a child, in a court decision making "with whom the child shall live "during its domestic custody proceeding in 2014.

The WA Court, the Legal Aid and the WA Central Authority rather simply disregarded the fact and the proof, that there already is a final Polish Court order made in a matter, which all the parties including the Australian Courts had acknowledged to have had in their possession ever since the Hague Convention Child Abduction hearings have started in the WA Family Court in Perth, in the year 2010.

Australian Central Authority and the WA Family Court should have dismissed the Hague Child Abduction Application Response from a mother, and "permanently stay" the Australian court proceedings, as soon as the Polish Courts' final order was received by them, and make a decision to send the child back to Polish jurisdiction, and in accordance with Polish Circuit Courts' final order.

By reflecting to Mr.Richard Garnett's work when applying the International Law and the Sovereign Law, the Australian Government shall apply the Spiliada Principle as the most appropriate form of test conveying onto Voth principle in deciding, whether the Australian forum/jurisdiction was appropriate or not appropriate ,for the custody proceedings or for deciding the best interest of a child.

The doctrine of the forum of "non convenience" shall be taken into account by the Australian Government, where a Spiliada and Voth test factors are overlapping each other and the following test principles should have been applied:

a)the relevance of connecting factors of a married couple, with the fact of being married in Poland and the time spent in Poland as married couple, as well as that Polish jurisdiction, which has had already made a final decision in divorce matter,

b) the child was born in Poland as Polish citizen and the relevance of connecting factors between the child and the country of Poland,

c) the business was carried on in Poland and it had continued to be carried on in Poland after the relocation, as the only source of the families' income before migrating to Australia and after relocating to Poland,

d) the grandparents and further family has been living in Poland and in neighboring Belarus (from mother's side),

e) the matrimonial house owned by the father was in Poland , to which the family has moved back after the relocation from Australia,

f) Poland was the law governing country in legislating the marriage six years before the migration to Australia and in legislating the couple's divorce,

g) Poland had a greater juridical advantage over Australia, which included the existence of assets within the forum and the greater judicial advantage for the satisfaction of any judgment obtained in the best interest of the child,

h) the parties would receive better services out of Polish jurisdiction , than from Australia and so was the availability of relief better in Poland than in Australia,

i) most of the evidence was within Polish jurisdiction, than in Australia,

j) Poland was a better forum for cross-examining mother's allegations of abuse and violence made against a father, which as mother claimed has happened while in Poland. Mother had used these claims in her secretive communication with the Australian Government in Poland, to gain an Emergency Passport for a child, and then after the abduction, in the WA Family Court in Perth.

k) Poland was the country , where the cause of action of the crumbling of marriage arose, as claimed by a wife,

Australian Embassy.

m) the Polish forum could provide more effectively to a complete resolution of matters involved in the parties' controversy(FN 125)

n) the focus should be placed upon the Polish court divorce proceedings and on it's final order , the stage which has reached and the costs which have been incurred.

o) such relevance of factors shall be applied by Australia as: the examination of the connection of the parties with each jurisdiction and the actions they had undertaken, having regard to their resources and their understanding of language , so to confirm that the parties were able to participate in the Polish court proceeding on more equal footing , than in Australian jurisdiction.

Mr. Richard Garnett further concludes:

"Their judgment begins by noting that, even where foreign proceedings are pending which involve the same or related factual issues as those involved in the local proceedings, but not the same legal issue or not the same parties, a temporary stay of the local proceedings should be issued to enable the foreign court to determine the factual issues. The joint judgment approved a decision in which ***54** such a remedy had been granted. [FN118] The concern to minimise the possibility of overlapping jurisdiction is manifest.

However, the judges said, 'more compelling considerations in favour of a stay' arise where 'there are proceedings in another country which has jurisdiction to entertain those proceedings and the proceedings are between the same parties and with respect to the same issue or controversy.' [FN119] In this context, the judges noted, there is likely to be significant "'inconvenience and embarrassment to parties' [FN120] given the possibility of 'entirely different outcomes'. [FN121] Therefore, it was necessary to give pending proceedings much greater prominence when applying the Voth test. Henceforth, it would be 'prima facie vexatious or oppressive in the Voth sense of those words' to commence a second or subsequent action in an Australian court, if an action is already pending with respect to the matter in issue between the same parties. [FN122] Seemingly, the presumption in favour of a stay could be rebutted in a case where the connecting factors with the Australian forum were much more numerous than with another jurisdiction, but this is likely to be a rare situation.

However, the judgment noted that no question of a stay can arise unless the courts of the respective countries both have jurisdiction with respect to the parties and the action. If there is a question as to the jurisdiction of the foreign court, it may be necessary to adjourn the local proceedings to enable the foreign court to determine the question. Where both courts have jurisdiction, then the following factors may be relevant in determining whether a stay should be ordered.

Firstly, it must be determined whether each court will recognise the other's orders and judgments. If the orders of the foreign court would not be recognised in Australia, then 'that will ordinarily dispose of any suggestion that the local proceedings should not continue.' [FN123] If, however, the orders of the foreign court would be recognised in Australia, it will then be relevant to consider the extent to which 'any orders need to be enforced in other countries and the relative ease with which this can be done.' [FN124] On this point, it will also be relevant to consider 'which forum can provide more effectively for complete resolution of the matters involved in the parties' controversy.' [FN125].

Secondly, focus should be placed upon the order in which the proceedings were instituted, [FN126] the stage which they have reached, and the costs which have been incurred. Thirdly, ***55** it will also be relevant to examine the connection of the parties and the action with each of the jurisdictions and whether 'having regard to their resources and their understanding of language, the parties are able to participate in the respective proceedings on an equal footing.' [FN127]

A much wider comparative examination of the merits of litigating both here and abroad is required, so as to give proper weight to the fact that parallel proceedings are on foot with a much greater risk of conflicting results between courts. Not only is such an approach more conducive to comity between courts, it also reduces the cost and inconvenience incurred by parties when having to simultaneously defend and pursue identical proceedings in different countries, which may be a great distance from each other. It is an approach, it could be argued, which is much more similar to the Spiliada 'more appropriate forum' test.

The problem with this reasoning, as Henry illustrates, is that it is impossible to determine the advantages and disadvantages of litigating here without undertaking an examination of the comparative merits of suing abroad. Thus, while Brennan CJ was correct in suggesting that the effect of the joint judgment is to move toward a Spiliada-type test, it is suggested that, in any stay application, with or without pending proceedings, some sort of comparative analysis of the claims of the competing jurisdictions is inescapable.

The High Court decision in Henry has been considered in a number of subsequent decisions."

Having said the above and by quoting the above verses of Mr. Garnett's works, I am of the view, that Australia should not have infringed on the court proceedings pending in Poland immediately after the child abduction into Australia was committed, nor during the early months of 2010 and later in 2014.

VII. CONCLUSION

The Australian Central Authority and the Australian Family Court shall immediately and permanently have stayed the Australian court proceedings , straight after they have received father's response to the custody application made by a mother to Family Court in Perth, and secondly after the Australian Central Authority has received the Hague Convention Child Abduction Application, in which the father had again provided the information of pending divorce & custody court proceedings being past the stage of the first court hearing in Poland. All the court proceedings relating to the child abduction into Australia and relating to the custody of a child shall be stayed in Australia, immediately after the father had provided Australian Central Authority and the WA Family Court, with the certified copy of the Polish Circuit Court final order, made in a divorce proceedings in Poland.

All further WA Family Court proceedings in relation to with whom the child shall reside and the court proceedings relating to child's abduction to Australia shall be stayed permanently after the acknowledgement by the Australian Central Authority and by the WA Family Court, that the Polish Circuit Court proceedings were concluded , and that the court order in a divorce & custody proceedings was made as a final order.

This was a decisive moment for the West Australian Central Authority and for the WA Family Court, to return the child back to Poland and into the father's parental care.

However, in the current situation as described above and included in the UN Human Rights Decision No. 2279/2013 on the basis of *fait accompli* , the Attorney General of Australia has no option but to return the child to Poland in accordance the Polish Circuit Court Order and in accordance with the UN Decision, and/or appeal the adverse Full Court's Order made in a Hague Child Abduction Convention proceedings to a High Court of Australia, beyond the statutory limit time.

In relation to future Hague Convention Child Abduction Applications in matters filed with and considered by WA Central Authority, it should be noted, that if there was a slightest presumption or suspicion of the Australian Government's official to have committed the abetting of the act of international child abduction, the left behind parent shall have the right to be offered by the Australian Central Authority, a choice of the independent lawyer other than the State Lawyer paid for, by the Australian Authority, to represent the left behind parent in Australian Courts of Law.

Mr. Arkadiusz Zoltowski — victim of UN Human Rights violations by Australia

21 November 2016