

WORKSHOP ONE (2nd session).

Gender violence, family crisis and manipulation of children.

| Case 2. Reporter: José Luis Utrera. Family Judge in Málaga (Spain)-

RELEVANT FACTS

Mr and Ms X, both British, have a son. Although at the beginning of their relationship under the same roof without being married, they got on well, after some years they broke up. The proceedings to resolve all matters related to parental obligations commenced; an English Court gave precautionary custody to the mother and the father was granted visitation rights.

In 2007, while the final custody of the child was being resolved, Ms X, without asking the father or obtaining authorisation from the English court, decided to move on a permanent basis to Spain with the child, who was 9 years old then, as her retired parents were living in the Costa del Sol.

When the father learned of the move, he filed with the English central authority an application for the return of the child under the 1980 Hague Convention and EU Regulation 2201/2003.

The said application must be resolved by a Malaga Family Court.

The proceedings were instituted and the mother was required to return the child. The mother alleged article 13, Paragraph 1 b) of The Hague Convention, as the reason for not returning the child, as she was subjected to abuse while she was living with the father and also the child was against being returned as he did not want to have any kind of contact with the father and given his age (9 years old) his decision had to be respected.

The Malaga Family Court, before giving a decision on the application for return, decided that the Judge assisted by the Court's psychologist would hear the child. During the hearing it was proven that the mother may have manipulated the child's decision. For this reason the Judge decided that a psychological report of the child be issued in relation to the possible existence of parental alienation syndrome in the child induced by the mother.

The report ratified that the mother showed clear relationship intolerance and gave a negative image of the father to the child, which the child adopted, and this was the direct reason for his not wanting to have any kind of contact with the father; there was no objective data to support the refusal of the child. Nevertheless, the report considered that, if the return was resolved, the child's country of origin must take certain

precautionary measures for contact with the father to be gradual with psychological assistance to the child.

Also, the allegation of domestic violence by the mother was not proven in the procedure nor was it proven that, if this violence ever existed, it affected the child.

RESOLUTION TO BE ADOPTED.

(RESOLUTION ADOPTED BY THE COURT THAT HEARD THE CASE)

The Malaga Court resolved the return of the child as it considered that there was no grave physical or psychological risk to the child, nor could his opinions be taken into consideration owing to the context (manipulation by the mother) in which they were given (art. 13, paragraph 1 b) 1980 Hague Convention). However, it was ordered that the resolution of return announced must enclose the report drafted by the Court psychologist with the recommendations given on the child that must be followed in the country of origin for contact with the father to be resumed.