

# *G v G: One Year On*

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In March 2021, the Supreme Court handed down their important decision in *G v G* [2021] UKSC 9. The case considered the potential clash between the Refugee Convention 1951 and the Hague Convention on Child Abduction 1980. Now just over one year on, what is the result of that decision and has it achieved its aim of helping the two conventions to ‘march hand in hand’?

## **The problem**

The situation *G v G* attempted to address was when a child is abducted into the UK and then they, or the abducting parent, make a claim for asylum. The Hague Convention 1980 requires that the child is swiftly returned to the country of their habitual residence, but the Refugee Convention 1951 demands that asylum seekers are not refouled to a country where they are at risk of persecution. What if both conventions apply?

## **G v G**

The Supreme Court ruled that there is a bar to implementing a return order under the Hague Convention where a child is an asylum applicant in their own right or a dependant on their

parent's application, and whether their application is pending or subject to appeal. The Court accepted this is likely to have a "devastating impact" on Hague proceedings and urged a legislative solution (but gave no indication of what such a solution might involve).

### **What is going well?**

*G v G* prompted the SSHD to set up a "specialist asylum team" to deal with such cross-over cases. The Home Office have now published an **operating instruction for Hague Convention cases** that sets out a timetable for asylum decisions to be made within 31 days (in straightforward cases). This appears to be being implemented effectively, with decisions often being made within Hague Convention timescales, although there sometimes appear to be delays in the SSHD being notified that Hague proceedings have commenced.

### **What issues have already been addressed?**

As is commonly the case, the Supreme Court has set out the broad framework for how these two Conventions can work together, but the details of the process need to be worked out by the lower courts. One stage of the process is the issue of when a child can properly be considered a dependant on an asylum application. The High Court (in a decision as yet unreported) has accepted that this is a matter to be determined by the SSHD and is subject to judicial review.

A second issue is who might withdraw a child's application for asylum or as a dependant. In *J & H* [2022] EWHC 862 (Fam), Theis J made a declaration that, where a child was being looked after by the local authority, that authority was able to withdraw them as asylum dependants under s. 33, Children Act 1989. In that case it was not necessary to invoke the inherent jurisdiction of the High Court as the parents (eventually) consented to the withdrawal.

### **What issues might be still to come?**

The key issue that may still need to be addressed is the issue of 'third country' cases, where asylum is sought from one country, but a return order is sought to a different country altogether. Whilst at first glance this may not appear to engage the same issues of refoulement under the Refugee Convention 1951, the EU law on which *G v G* is based might give a different answer. The Procedures Directive grants a positive right for asylum-seekers to remain in the UK pending final determination of their application, as opposed to simply a ban on removal to the particular state where they might face persecution, meaning a Hague return

order would not be permitted even in 'third country' cases.

*G v G* has therefore provided a helpful framework for the courts to consider these difficult cases, but the finer procedural points (and some more significant legal issues) still need to be ironed out.

**Mark** is a barrister specialising in extradition, international family and immigration. Mark has appeared in the Supreme Court, Court of Appeal, and High Court Family Division in relation to international family matters. He is also regularly instructed in private children and care proceedings, especially those involving an international element. Mark has particular expertise in cases involving cross-border issues and parallel proceedings across multiple jurisdictions.