

## UNITED KINGDOM

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### ***G (Appellant) v G (Respondent)* [2021] UKSC 9 (19 March 2021)**

Keywords: derivative claim, Hague Convention, international child abduction, non-refoulement, South Africa, stay of removal, United Kingdom

This case concerned G, an eight-year-old South African national, whose mother applied for international protection in the United Kingdom and listed G as a dependant on her application. G's mother, who identifies as lesbian, fled South Africa with G, and applied for asylum on the basis of her fear of persecution from her family as a result of her sexual orientation. After discovering that G had been taken to the UK, G's father applied for her return under the 1980 Hague Convention, claiming that G's removal from South Africa was wrongful. G's mother opposed his application on the ground that, amongst other matters, there was a serious risk that return to South Africa would expose G to physical or psychological harm or otherwise place her in an intolerable situation. On appeal from the High Court, the Supreme Court of the United Kingdom was called upon to consider the overlap between international protection claims and international child abduction proceedings. The central issue before the court was whether G was protected from *refoulement* as a result of being listed as a dependant on her mother's asylum application, such that she cannot be returned to South Africa pursuant to the Hague proceedings until after the asylum application is determined.

The Supreme Court found that the principle of *non-refoulement* that accompanies an as yet undetermined asylum claim prevents the return of a child under the Hague Convention. The asylum application need not be made by the child directly to enjoy this protection. In its judgment, the Supreme Court confirmed that an application for international protection made by a parent that includes a dependent child should, 'if objectively it

can be understood as such', be considered as an application by the child. In reaching this conclusion, the court held that there is an 'inherent likelihood' that any fear of persecution experienced by the parent would also apply to the child by reason of their relationship and that this understanding would protect the interests of the child. In the circumstances, the court held that the principle of *non-refoulement* would apply to prevent the return of G under the Hague Convention pending the determination of the application for international protection (including the exhaustion of appeal processes).

As regards the overlap between the two proceedings, the court held that the Family Division of the High Court could still progress proceedings commenced under the Hague Convention, but could not enforce a return order until such time as the asylum process had been fully exhausted. The court acknowledged that this could effectively undermine the primary objective of the Hague Convention, article 11 of which mandates that Contracting States act expeditiously by making decisions within six weeks of an application, and offered practical suggestions for closer liaison with the Family Division of the High Court in these cases. These include joining the Secretary of State for the Home Department into Hague proceedings, the potential release of evidence from the asylum proceedings to the child's legal representative, and early separate representation for child.

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