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Meeting: 1362nd meeting (December 2019) (DH)

Communication from the authorities (14/10/2019) in the case of Tonello v. Hungary
(Application No. 46524/14)

Information made available under Rule 8.2a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.
(French only)

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Réunion : 1362^e réunion (décembre 2019) (DH)

Communication des autorités (14/10/2019) relative à l'affaire Tonello c. Hongrie (requête n° 46524/14)

Informations mises à disposition en vertu de la Règle 8.2a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

INFORMATION NOTE

on individual measures taken and/or envisaged in the case of

Tonello v. Hungary (no. 46524/14, judgment of 24 April 2018, final on 24 April 2018)

Referring to the letter of request for supplementary information, 27 August 2019 concerning the case of Tonello v. Hungary, I hereby give you the following information:

I. "Who has seen the child the last time, when and where was it?" "What was the last time when the whereabouts of the child could be identified?"

1. Dr. Á.M. paediatrician, declared at her witness statement of 19 June 2019 before the District Court of Szolnok in the course of a criminal proceeding regarding the unlawful change of a minor's place of care against I.K.S., that she saw the minor Ildikó Tonello Chantal on 3 September 2018 in her office in Mezőtúr. (record no. 18. B.744/2018/45). On that occasion the child was taken there for a general health examination by a person unknown to the doctor at the request by the mother. The child was healthy, no prescription was prepared.

2. Based on the available information, the child was seen the last time by dr. Á.M.paediatrician. On the basis of the documents of investigation, her whereabouts cannot be tracked down since the child and her mother arrived in Hungary, no concrete information regarding her place of residence has been obtained by the investigation authority.

II. "The child and the mother stayed in Mezőtúr for an uncertain period of time, moreover, on two occasions the authorities found baby items in the house of the mother and her relatives. When did the police authorities noticed the change, i.e. when did they noticed that the child and the mother are no longer residing in Mezőtúr, and did the authorities find any baby items in the house of the mother and in the house of the mother's relatives?"

1. The house searches and checking of premises carried out in May 2014 at the permanent address and interim residence of the mother made it likely that she and the child were living permanently at the given place. During the investigation an arrest warrant was issued against the mother on 19 May 2014. Thereafter, there was no actual information showing that the mother and her child reside in Mezőtúr.

2. Following the house searches and checking of premises of May 2014, there have been checking of the said premises and in the circle of relatives during the year of 2015. Thereafter there were no signs that the wanted persons were residing there.

In the course of the proceeding for finding a wanted person – as part of the measures taken – the authorities regularly check the address of the mother, the minor and their relatives.

III. “What evidence refuted the impression of the authorities that the mother and child reside in Mezőtúr?”

In the course of the investigation and the search for the wanted person no direct evidence were found that would prove beyond doubt that the mother and her child are residing or not residing in Mezőtúr.

IV. “Is the mother’s bank account under continuous monitoring, and if yes was there any result thereof?”

The bank account under the name I.K.S. was continuously monitored during the investigation, following January of 2015, but this brought no result. The bank account was opened on 28 December 2011, and was closed on 9 November 2015. Based on the bank data it can not be established who closed the bank account, in the bank report it is merely shown that “closed by the Client”. The information in connection with the bank account and the bank statements were checked and analysed during the investigation with respect to the above mentioned period.

On 17 September 2018 the Police Headquarters of Jász-Nagykun-Szolnok County called the Exclusive Cash Zrt, az Intercash Zrt, and the Security Directorate of the Hungarian Post to obtain data regarding any eventual international bank transfers. The call was related to I.K.S and her relatives in order to establish whether the relatives provide any financial help for her. The measure brought no result.

V. “It is obvious that the authorities obtained the information at specific dates, but it is not clear, what was the period covered by the information and what period was examined. For example, what period is covered by any eventual health services? Moreover, in your supplementary information of 24 April 2019, the statement in Section 1. c) “-to obtain data about the persons who resided in the given period” refers to which period exactly?”

1. In the course of the proceedings data regarding health services and education were obtained from the year of 2011. The analysis of the data covered the entire period. Data from financial institutions were obtained from the year of 2012 until the closure of the bank account and were analysed. During a proceeding, the data are obtained and analysed continuously and regularly – with monthly frequency. This case is treated as highly important in the search measures, and beyond the organised general measures there are monthly collections of data carried out by the police officers personally.

2. The Authorities’ Network Department of the Social Service Directorate of the Central Administration of National Pension Insurance (in Hungarian: „*Országos Nyugdíjbiztosítási Igazgatóság Szociális Ellátások Főigazgatóság Hatósági Rendszerek Osztálya*”) was approached on 20 November 2018 requesting for information (contact details, ID numbers and the name of the given institution where they were residing) on persons (both adults and minors) residing in mothers’ homes, crisis centres, hostels in the city of Debrecen.

On 10 December 2018 the investigating authority repeatedly called the Central Administration of National Pension Insurance to provide information on data of persons residing in mothers' homes and crisis centres in the city of Debrecen during the years of 2017 and 2018.

The first occasion was on 26 January 2017, when the National Health Insurance Fund Administration was requested to provide information regarding the period starting on 1 of January 2016, and this request was repeated in a number of times during the proceedings, in certain cases with a more detailed content. The last occasion when the said organisation was called to provide information, was 27 May 2019.

VI. "It is necessary to clarify whether the lack of success in a particular investigation effort means that the given organisation has no information on the given subject matter, or this means that the mother and her relatives refused to comply with the instructions taken as part of the given measures?"

The residence of the wanted persons could not be identified during the investigation and the search. I.K.S. refuses to implement the measures of the criminal proceeding and hides the minor. The aim of this conduct is to make it impossible to implement the legally binding and final decisions regarding the release of the child.

VII. Description of the measures in connection with the Italian authorities' requests for judicial assistance:

At the beginning of 2013 the High Prosecution acting besides the Padua Court started a criminal proceeding on the basis of Art. 574 of the Italian Criminal Code for kidnapping of a minor and keeping a minor detained abroad, and then in the year of 2014 also started a proceeding under Art. 605 (kidnapping) and Art. 572 (crimes of ill-treatment of family members and life partners).

On 23 January 2013 the Court of Padua issued a European warrant of arrest against the mother for kidnapping minors and detaining minors abroad, and then on 29 December 2014 the Venice Court in Charge of Matters Related to Minors also issued a European warrant of arrest and on 27 September issued a search for a person regarding a crime. The warrant and the search are still in effect at the date of this letter.

In the course of the criminal proceeding carried out in Italy, the Deputy High Prosecutor of the High Prosecution acting besides the Court of Padua submitted several requests for judicial assistance to the Hungarian Office of the Prosecutor General.

The request of the Italian authorities for judicial assistance dated 6 March 2013 in connection with kidnapping of minors and detaining minors abroad – which under Hungarian criminal law qualifies as a suspect to changing of the custody of a child - could not be implemented because the preconditions for double punishment did not prevail.

The precondition of establishing a crime of changing the custody of a child under both Paragraph 194 of Act IV of 1978 (the former Criminal Code) and Paragraph 211 of Act C of 2012 (Criminal Code) is the existence of a decision issued by Hungarian authority regarding the custody of the child.

In the meantime the resolution of the Italian court deciding that minor I.C.T. is placed with the applicant has become enforceable in Hungary as of 25 November 2014, and on 3 February 2014 a criminal proceeding was started against the mother by the Police Headquarters of Jász-Nagykun-Szolnok County for changing the custody of a child and for abuse of a child.

In its requests for judicial assistance dated 23 December 2014 and 1 June 2017 the Italian judicial authority qualified the same criminal conduct as described above also as kidnapping and ill-treatment of family members and life partners.

The subject matter of the cases described by the Italian authorities in their requests for judicial assistance – irrespective of the legal classification of the criminal conduct by the request for legal assistance by the Italian authorities – was the same criminal act, that was committed by the Hungarian citizen to the detriment of another Hungarian citizen in the territory of Hungary. Therefore, Hungary has jurisdiction to carry out the criminal proceeding.

Paragraph 190 of the Criminal Code includes the rules regulating the criminal consequences of kidnapping, whereby this crime is committed by a person who deprives another person of his freedom by force or imminent duress against life or bodily integrity, or by taking advantage of his condition of being unable to defend himself or to declare his will, and makes his release dependent upon the performance of a demand.

Based on the facts of this case, there is no evidence as to whether a release was made dependent of performing any demand or detention of the child, and on the basis of the circumstances of the case the possibility of such conduct did not even occur. In connection with the crime of kidnapping which is threatened by longer imprisonment, and which was claimed in the request for judicial assistance to have been committed, there was not even a suspicion, moreover the precondition for imposing a double punishment under Art. 2 of the European Convention on Mutual Assistance on Criminal Matters was also lacking.

Contrary to the crime what was alleged in the requests for judicial assistance, it can be established on the basis of the factual data that on the one hand the mother was fully entitled to exercise her parental custody rights upon her arrival in Hungary and on the other hand her staying in Hungary was not contrary to the will of the other parent, because the mother and her two-month old child arrived in Hungary with the consent and co-operation of the applicant.

The act of the mother – namely that since 25 November 2015 she is keeping the child concealed in order to change parental custody of the child, who was placed by the authority with the applicant – would mean committing a misdemeanour of changing the custody of a child under Subsection (1) of Paragraph 211 of the Criminal Code, provided that committing such a crime would be proven.

The request for legal assistance in connection with ill-treatment of family members and life partners did not include a description of facts, therefore it could not be established which are the facts (place of crime, description of the criminal conduct, manner and result of committing the crime) serving the basis for the Italian authorities to establish their jurisdiction and investigation efforts.

The Italian judicial authority did not refer to any facts that would be the basis of any suspicion that a crime was committed in the territory of Italy.

According to the High Prosecution acting besides the Court of Padua, the Italian authorities wish to carry out two simultaneous criminal proceedings against the mother, the citizen of Hungary for crimes committed with the same conduct, for which a criminal proceeding is being carried out in Hungary for a misdemeanour of changing the custody of a child, and based on which the criminal liability of the mother for abuse of a child could not be established on the basis of the investigation carried out in Hungary.

Therefore the requests for judicial assistance could not be implemented.

Budapest, 14 October 2019

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Zoltán Tallódi'.

Zoltán Tallódi

Agent of the Government of Hungary

SUPPLEMENTARY INFORMATION NOTE

on individual measures taken and/or envisaged in the case of

Tonello v. Hungary (no. 46524/14, judgment of 24 April 2018, final on 24 April 2018)

Description of the co-operation with the Italian authorities:

2 May 2019: On the basis of the agreement reached at a meeting of Dr. Sándor Pintér, Minister of Interior and Mr. Matteo Salvini, Minister of Interior of Italy, and on the basis of the ministerial decision / instruction issued thereafter, a possibility of creating a joint group of investigators, in a way that on 28 May 2019 CICC – with the diplomatic assistance of Mr. Giorgio Butini attaché - requested the Italian counterpart organisations to send an official request to the Hungarian authorities. On 29 May 2019 in his letter to Dr. Mátyás Hegyaljai Deputy Secretary of State in charge of matters of the European Union and International Affairs, Maj. Gen. Dr. Sándor Tőreki, Deputy Head of the National Criminal Police Headquarters requested that the approaching of the Italian authorities are made at ministerial level as well.

11 June 2019: Mr Butini attaché submitted a request regarding the creation of a joint group of investigators, in which he requested information whether the prosecution had been contacted, the creation of the joint group of investigators had been approved, and what is the actual criminal offence which is the basis of the creation of such a group of investigators. Following an arrangement of measures between the Head of the Criminal Department of the National Police Headquarters and the Deputy Head of the Criminal Police of PHQ, the Attaché was informed that according to the information provided by the Prosecution there is no such circumstance that would warrant a commencement of a new proceeding in Hungary, therefore solely the Italian proceeding may serve as a basis for the co-operation, and the Hungarian authorities would support the work of the Italian colleagues through the joint group of investigators.

1 July 2019: The Italian Bureau of Interpol informed that they find it useful to hold a preparatory meeting as soon as possible in order to speed up the process of creating the joint group of investigators. They proposed Budapest as a venue for this meeting and requested the Hungarian authority to advice on a possible date or period that would be suitable. On 3 July this information has been provided to the Italian party, stating that the meeting can be held at any time, the appropriate representation of the relevant Hungarian organisations can be arranged at any time. On 4 July the Italian party made a proposal, whereby the period between 17 – 19 July. The date was confirmed on 5 July and at the same time – at the recommendation of the Prosecution General – it was proposed that beyond the experts previously indicated, the Italian delegation include a prosecutor as well.

15 July 2019: Since no further message arrived thereafter from the Italian National Office of Interpol, CICC submitted a message urging the matter. On 16 July 2019 the Italian partner office informed CICC that they will provide an answer at a later date.

6 September 2019: With reference to the earlier correspondence through the channels of Interpol, Mr. Giorgio Butini attaché submitted a question whether either 10 or 11 of September 2019 would be suitable for the Hungarian authorities to hold the meeting. As a venue for the meeting, he proposed the premises of the police or any other premises that the Hungarian authorities find suitable. He indicated that L.L. would attend in representation of their office, besides the Italian Interpol Office and the Criminal Police of Padua would be represented. The date of 11 September was confirmed to the contact officer. Information on the above arrangement was provided to the Department for Priority, Corruption and Organized Crime Cases of the Office of the Prosecution General and to the Deputy Head of the PHQ Criminal Police Department.

9 September 2019: L.L. officer in charge of contacts sent a message whereby the date of 11 September is not suitable for the Italian authorities and requested that the meeting is postponed to 12 September in the afternoon. CICC still on the same day confirmed the date of 12 September, and designated 01:30 p.m. L.L. thanked for the co-operation and informed that five persons would attend the meeting.

11 September, 06:00 p.m. : L.L. Italian police officer in charge of contacts advised the Hungarian authorities on telephone that the Italian party cannot attend the meeting organised for the next day in the Tonello case. Thereafter the police attaché requested the postponement of the meeting in written form as well, referring to unexpected obligations of colleagues who were to attend the meeting. He expressed his request that the Hungarian authorities consider the possibility that the meeting is postponed to the afternoon of 3 October 2019.

The necessary measures have been taken in order to organise the meeting at the new date.

Pursuant to Subsection (1) of Paragraph 70/A Act CLXXX of 2012 on the co-operation with the member states of the European Union in criminal matters, the Prosecutor General or the prosecutor designated by the Prosecutor General has jurisdiction and power to accept a request by the judicial authorities of a member state to create a joint group of investigators, or to initiate such a request. No such request regarding a joint group of investigators has arrived from the Italian authorities.

Budapest, 14 October 2019

Yours sincerely,

Zoltan Teller

Zoltán Tallódi

Agent of the Government of Hungary