



Neutral Citation Number: [2020] EWHC 2413 (Fam)

Case No: FD19P00646

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

IN THE MATTER OF THE SENIOR COURTS ACT 1981

IN THE MATTER OF THE CHILD ABDUCTION AND CUSTODY ACT 1985
COUNCIL REGULATION (EC) No. 2201/2003

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 February 2020

Before:

MR DAVID LOCK QC
SITTING AS A DEPUTY HIGH COURT JUDGE

Between:

ZM

Applicant

- and -

NM

Respondent

Ms Anita Guha (instructed by Dawson Cornwell) for the Applicant
Ms Mehvish Chaudhry (instructed by Freemans) for the Respondent

Hearing date: 20 February 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
MR DAVID LOCK QC

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mr David Lock QC:

1. This is an application by ZM (“**the Father**”) for the summary return of his 2 twin children to Croatia pursuant to the provisions of the Hague Convention on the Civil Aspects of International Child Abduction (hereafter ‘**the Convention**’) and the Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning the jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (hereafter “**BIIa**”).
2. The Respondent is NM (“**the Mother**”). The children are presently living with the Mother in England, having travelled to England with their Mother in late August 2019. The children and their Mother presently reside with her parents. The Mother opposes the return of the children to Croatia and, despite having brought them to England without the Father’s consent and in breach of the terms of the Convention, submits that she has a defence to any application for an order that they should return to Croatia under article 13 of the Convention.
3. The Father was represented by Ms Anita Guha and the Mother was represented by Ms Mehvish Chaudhry. I am grateful to both counsel for the helpful and focused way in which they made their submissions.

The background

4. The Father is a Croatian national and has lived in Croatia for virtually all of his life. The Mother was born in England and has British citizenship. Her Mother is Bosnian and her Father is English. The Mother completed a degree in Russian Studies and spent a period of time living in the Czech Republic before moving to Croatia to improve her Croatian and to explore her family and cultural roots. She applied for and was granted Croatian citizenship in about 2004.
5. The parties met in Croatia in about 2008 and married in June 2011. They continued living in Croatia until 2016 as I describe below. At this time the Father was working in the intelligence services and the Mother was working at a real estate development company. They have both had problems with their employment but the Father is now working in a senior position as a customs official in Zagreb. At present, the Mother is not working.
6. The children were born on 9 December 2013. Shortly after the twins were born the parents secured UK passports for them. Accordingly, the children have joint Croatian and British nationality. Although they have lived most of their lives in Croatia, it appears that English is their first language and they appear fluent in English. There is mixed evidence about their ability to speak Croatian but it appears that at present they both have some, albeit perhaps limited, grasp of the Croatian language.
7. In 2016 the Father managed to obtain a period of paternity leave and the couple decided to move to England with the children to see whether living and working in England would suit them. The Mother secured a job in England and moved in February 2016. The Father joined her with the children about one month later. They moved to live with the Mother’s parents but hoped to move into their own property later that year. Whilst living in England seemed to work well for the Mother, the

Father, who at this point was a full-time carer for the children, reached the view that he wished to return to Croatia

8. In June 2016 the Father returned to Croatia with the children. This was supposed to be a three-week holiday but the Father subsequently informed the Mother that he was not prepared to bring the children back to England and considered that he had moved permanently to Croatia. That decision appears to have caused the effective end to the relationship between the Father and the Mother.
9. In June 2016, the Father issued an application in Croatia for divorce proceedings and also commenced child arrangement proceedings. At about the same time, the Mother issued an application under the Children Act 1989 in the High Court in England seeking orders for the return of the children to the UK. Proceedings under the Convention were commenced in Croatia. On 25 November 2016 by Mr Justice Bodey effectively stayed the English proceedings until the results of the Croatian proceedings were known.
10. On 21 December 2017 the Croatian court handed down a decision dated 13 December 2017 which concluded that the children had been habitually resident in the UK at the time the Father took them to Croatia and the court ordered that the children should return to live with the Mother in England. The Father appealed that decision and the children remained living in Croatia until the result of the appeal was known. The Mother was the primary carer for the children and she moved with them to a property in a village about 30 miles outside Zagreb.
11. The Father's appeal was successful and the Croatian court was required to rehear the Convention case. That re-hearing took place in October 2017. On this occasion, the Court decided that the children had not been habitually resident in England in the summer of 2016, and it thus refused the Mother's application for an order that the children should return to live with her in England.
12. The Mother appealed that decision but her appeal was rejected by the Croatian Constitutional Court in July 2018. The Mother attempted to appeal to the European Court of Human Rights but there appears to have been some problem with the documentation and the appeal was dismissed. No application was made by the Mother to restore the Convention proceedings in the High Court pursuant to the order of Mr Justice Bodey. Accordingly, from the summer of 2016, the children were living in Croatia and the Croatian courts had determined that they were habitually resident in Croatia. Both parties before me accepted that this decision was binding on this court and therefore the children are required to be treated for all purposes as being habitually resident in Croatia.
13. Meanwhile, the Mother and finalised their divorce in January 2017. They have also been involved in extensive legal proceedings concerning the arrangements for the children. In February 2019, the Croatian court ordered that the parents should share care of the children. The Mother appealed that decision and, on 3 September 2019, the appeal court revoked that order. The Father then applied for an order that the children should live with him, but that application was refused. The court directed that there should be a report from the Office of Social Welfare. This report proposed that the children stay with the Father but should have alternative weekends with the Mother and periods with the Mother during the school holidays.

14. Despite the recommendation, it appears that in practice the children continued to live with the Mother in her flat in the village outside Zagreb. It appears that at first the Father returned to live at the Mother's flat for parts of the week whilst he was seeing the children, and spent the rest of the week working in Zagreb at work. In about May 2018 the Father terminated this arrangement by renting a property close by. He then says he had contact with the children on a regular basis in the same village. One of the features from the evidence in this case is that it is clear that both Mother and Father are devoted to their children and are both determined to provide them with the best parenting possible. Further, it is commendable that neither parent has sought to disturb or impair the relationship between the children and the other parent. However, the relationship between the Mother and the Father has been extremely difficult. The Mother perceived that the Father was only seeking custody of the children as a way to attempt to exert control over her. In contrast, the Father asserts that he was seeking custody because he felt that this would be the best thing for the children. She felt, for example, that the Father had set the neighbours up to spy on her. This is denied by the Father.
15. The Mother was unable to secure work in Croatia and was therefore financially reliant on maintenance payments from the Father. There is some dispute about the regularity of maintenance payments but it is clear that payments were made but this financial dependency caused the Mother considerable difficulties.
16. In February 2019, the Croatian court reached the decision that the Father and the Mother should share the care of the children. The Mother appealed this decision but, by August 2019, the appeal had not yet been heard. Complaints are made by the Mother that the Croatian court system takes an excessive amount of time to reach decisions. Given the large number of hearings that there have been in the Croatian courts over the past three years, I do not accept that any delays are excessive. It is, of course, always better for court hearings to be heard promptly but I am not satisfied that the history of hearings in this case in Croatia indicate any excessive level of delay. The children arrangements proceedings have taken a number of years to resolve primarily because of appeals made by both parties, and not solely by delays as a result of court listing.
17. In the summer of 2019, the Mother decided to take matters into our own hands. The Mother applied for new UK passports for the children, claiming that their existing passports have been lost. The Mother knew this was untrue. The Father had retained the childrens' passports. The Mother instructed the children that they were not allowed to tell the Father that they had new passports. Then, in August 2019, the Mother informed the Father that she was taking children on holiday to the Croatian island of Korcula. However, instead of travelling to Korcula, the Mother took the children to her parents' house in England. It is clear that this was a carefully planned operation because the children started school in England very soon afterwards.
18. On 3 September 2019, the Mother's appeal in the Croatian courts against the decision of February 2019 that the Mother and Father should have shared care was allowed. The appeal court directed that the case should be returned to the court of first instance to make a new child arrangements order. Accordingly, some years after the commencement of the child arrangement proceedings in Croatia, no final decision had been made concerning the arrangements for the children.

19. On 3 October 2019, there was a hearing at the municipal court in Zlatar, Croatia concerning the child arrangements and a social welfare report was filed before the Croatian court on 27 October 2019. However, by this time, the children were living in England
20. These proceedings were commenced by the Father on 15 November 2019. There have been three directions hearings within these proceedings, namely directions made by Mrs Justice Judd on the papers on 18 November 2019, a detailed order made by Mr Justice Cobb on 11 December 2019 and an order made by HHJ Richards, sitting as a judge of the High Court, on 8 January 2020 relating to expert psychiatric evidence. That medical evidence was requested in order to support a case by the mother that she suffers from mental health problems and these would be exacerbated by any return to Croatia. In the event the expert report from Dr McClintock did not support that case.

The law

21. The hearing took place before me on Monday, 10 February 2020. Both the Mother and Father were present in court and represented by counsel. The only witness called to give evidence in person was the CAF/CASS officer, Ms Kay Demery. However, I make it clear that I have considered all of the evidence filed by the parties and have carefully read the documents attached to their witness statements along with the other papers in the case.
22. As a result of a combination of the European Union (Withdrawal Agreement) Act 2020 and the European Union (Withdrawal) Act 2018 the United Kingdom is in the process of leaving the European Union. Despite the fact that “exit day”, namely 31 January 2020, has now passed and that the UK has formally withdrawn from the EU, EU Regulations continue to have effect as part of UK domestic law during the implementation period: see sections 1A and 3 of the European Union (Withdrawal) Act 2018. As a result, as agreed by both counsel, BIIa continues to have effect as part of UK domestic law.
23. It was common ground between the parties that the Mother’s removal of the children to England in August 2019 was wrongful within the meaning of that term in article 3 of the Convention. Accordingly, and this was again common ground, I am required to order the return of the child forthwith under article 12 unless the Mother is able to establish a case under article 13.
24. The material parts of article 13 of the Convention provide:

“Notwithstanding the provisions of the previous Article, the judicial ... authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that:

(a) ...; or

(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial ..authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and

degree of maturity at which it is appropriate to take account of [the child's] views.”

In considering the circumstances referred to in this Article, the judicial ... authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence

25. The Mother advances her case under article 13 on two grounds. First, she asserts that the children object to returning to Croatia and their objections should result in this court exercising its discretion not to order their return. Secondly, she asserts that the children would suffer a grave risk of psychological harm or would otherwise find themselves in an intolerable situation if they were required to return to Croatia.

The Mother's position

26. A key feature of the Mother's case, as explained to the court, is that the Mother's present settled intention is to remain in the United Kingdom. Hence, even if this Court makes an order for the children to return to Croatia, the Mother asserts that she will remain in the United Kingdom and therefore will cease to be the primary caregiver for her children. Although this case was presented to me as her clear and settled intention, counsel for the Father urged me to consider both potential scenarios, namely that the Mother remains in the United Kingdom or returns with the children to Croatia. Given that the Mother has only reached this position in the days before the court hearing and has previously asserted that she could not contemplate living away from her children, it seems to me that counsel for the Father is correct in saying that I cannot be confident that, if the children are required to return to Croatia, the Mother will carry through her present intention to remain in the United Kingdom. I do not doubt the genuineness of her present intentions. However, these intentions were not clear from her extensive witness statement and, as her counsel frankly admitted, her thoughts had only become crystallised in the days leading up to the hearing. These intentions were also not clear from the psychiatric report prepared for these proceedings by Dr T McLintock dated 22 January 2020. In those circumstances there must be a real possibility that, if I order the children to return to Croatia, the Mother will change her mind and will resume living in Croatia. Accordingly, I need to consider both potential scenarios.

The Children's objections

27. The law concerning the proper approach to considering objections from the children was common ground between the parties. It involves three stages. First, I have to decide whether, as a matter of fact, the children do object to returning to Croatia. Secondly, I have to decide whether the children have the “age and maturity” so that their objections stand as eligible objections for the purposes of article 13 of the Convention. Thirdly, if the children do have eligible objections, I have a discretion to exercise to determine whether to order their return or not.
28. In approaching this issue I am mindful of the developing jurisprudence which has emphasised the importance of listening to the views of children. The proper approach was summarised by Black LJ (as she then was) in *Re M (Children) (Abduction:*

Child's Objections: Joinder of Children as Parties to Appeal) [2016] Fam 1 (“*Re M*”) at paragraph 16 where the Judge referred to article 11(2) BIIa which provides:

“When applying article 12 and 13 of the 1980 Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity.”

29. The judge also referred to article 12 of the United Nations Convention on the Rights of the Child (1989) (Cm 1976) and to the approach taken in the House of Lords cases of *In re D (A Child) (Abduction: Rights of Custody)* [2007] 1 AC 619 and *In re M (Children) (Abduction: Rights of Custody)* [2008] AC 1288. The correct approach was summarised at paragraph 27 where the judge said:

“Baroness Hale of Richmond spoke [2007] 1 AC 619 , para 57 of the “growing understanding of the importance of listening to the children involved in children's cases” and referred to article 11(2) of Brussels IIa which she considered required us to look afresh at the question of hearing children's views: paras 58 and 61. In her view, the principle that emerged from that article was applicable in every Hague Convention case and erected “a presumption that the child will be heard unless this appears inappropriate”. She spoke of the need for children to be heard far more frequently in Hague Convention cases (para 59) and examined the ways in which this might be done. She stressed, however, that hearing the child was not to be confused with giving effect to his views: paras 57 and 58.”

30. Accordingly, it seems to me appropriate to take account of any objections expressed by the children unless their age and maturity means that I consider it would be inappropriate to do so, which I do not.
31. Secondly, article 13 refers to “objections” by children to their relocation to a different country. It is clear that evidence supporting an “objection” is of a different level to evidence about a child’s preference concerning which in country the child would prefer to live. Accordingly, in deciding whether either of these children have expressed an objection to living in Croatia, I am looking for evidence that they actively do not want to live in Croatia, as opposed to expressing a preference to living in England.
32. The evidence of the childrens’ objections comes from the witness statement of the Mother. Mother states that the children expressed a desire to live in England whilst living in Croatia. However, there is no suggestion that either parent has had a detailed conversation with the children in language which they could understand in order to explore their views about living whether they would like to live in England or in Croatia.
33. Ms Demery gave evidence about her meeting with the children where she sought to understand their views on where they would like to live and their relationship with both parents. She said that they both expressed sadness about leaving Croatia (paragraph 29) and that they missed their Father and friends. They said they had seen their Father every day in Croatia until their parents broke up, but they loved their mummy and daddy the same.

34. Miss Demery explained that both boys had said that they did not want to go back to Croatia because of the schools. However, children do not start school in Croatia until aged seven and it doesn't appear that these children have any particular understanding about the operation of the Croatian school system. I have no evidence as to whether the school system is better in Croatia or in England and do not make any assumptions on the matter. Despite expressing a view that they did not want to go back to Croatia because of the schools, both boys had positive things to say about living in Croatia. They acknowledged that they had less money in Croatia than in England but they value the links they have with their wider family in Croatia.
35. Miss Demery suggested that the preferences expressed by the boys did not amount to "objections". She said in evidence that she did not interpret the words they were using as amounting to confirm objections to returning to Croatia and she noted that they were upset because they were missing their friends in Croatia and had had lots of positive experiences in that country. She suggested that, given their age and maturity, which was about average for their age, neither child had a sufficient level of sophistication to be able to balance out the options for them living in England and Croatia. In particular, there was no evidence about how the children would have reacted if they had been told that the Mother may not be going back to Croatia with them.
36. It seems to me that, consistent with the approach recommended in *re M* I should treat this somewhat equivocal evidence as just being sufficient to amount to "objections" for the purposes of article 13. However, when exercising my discretion, it seems to me that the lack of strength of the evidence of objections and the multiple positive things that the children have to say about Croatia are all factors which should diminish the weight to be put on the "objections" raised by the children.
37. I will return to the issue of discretion after considering the remaining aspects of the Mother's defence under article 13. In *AT v SS* [2016] 2 FLR 1102 Mr Justice MacDonald summarised the proper approach to an article 13(b) defence as follows;

"The law in respect of the defence of harm or intolerability under Art 13(b) was examined and clarified by the Supreme Court in Re E (Children)(Abduction: Custody Appeal) [2011] 2 FLR 758 . The applicable principles may be summarised as follows:

i) There is no need for Art 13(b) to be narrowly construed. By its very terms it is of restricted application. The words of Art 13 are quite plain and need no further elaboration or gloss.

ii) The burden lies on the person (or institution or other body) opposing return. It is for them to produce evidence to substantiate one of the exceptions. The standard of proof is the ordinary balance of probabilities but in evaluating the evidence the court will be mindful of the limitations involved in the summary nature of the Convention process.

iii) The risk to the child must be 'grave'. It is not enough for the risk to be 'real'. It must have reached such a level of seriousness that it can be characterised as 'grave'. Although 'grave' characterises the risk rather than the harm, there is in ordinary language a link between the two.

iv) The words 'physical or psychological harm' are not qualified but do gain colour from the alternative 'or otherwise' placed 'in an intolerable

situation'. 'Intolerable' is a strong word, but when applied to a child must mean 'a situation which this particular child in these particular circumstances should not be expected to tolerate'.

v) Art 13(b) looks to the future: the situation as it would be if the child were returned forthwith to his or her home country. The situation which the child will face on return depends crucially on the protective measures which can be put in place to ensure that the child will not be called upon to face an intolerable situation when he or she gets home (where, as in this case, Art 11(4) of BIIa applies, the court cannot refuse to return a child on the basis of Art 13(b) of the Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return). Where the risk is serious enough the court will be concerned not only with the child's immediate future because the need for protection may persist.

vi) Where the defence under Art 13(b) is said to be based on the anxieties of a respondent Mother about a return with the child which are not based upon objective risk to her but are nevertheless of such intensity as to be likely, in the event of a return, to destabilise her parenting of the child to a point where the child's situation would become intolerable the court will look very critically at such an assertion and will, among other things, ask if it can be dispelled. However, in principle, such anxieties can found the defence under Art 13(b)''

38. The essence of the Mother's case is that it would be intolerable for the children to return to Croatia without her. She asserted that, because of the Father's domestic abuse of her, she was not prepared to return to Croatia and suggested that, given this abuse, her position was entirely understandable. However, her case was that it would be intolerable for the children to return to Croatia to live with their Father, and therefore the Father's application should be refused. There is no suggestion that, if the children returned to Croatia, they would come to any physical harm. Equally, there is no medical evidence to support a case that the children would suffer psychological harm if they were to return to Croatia.
39. Ms Chaudhry questioned Ms Demery about the likely consequences for the children if they were separated from their Mother who, to date, has been the primary caregiver. Ms Demery was frank about the extent to which the children would be likely to suffer distress if they were to lose day-to-day contact with the Mother. She accepted that would be very difficult for them and that they may have feelings of abandonment. She also accepted that the distress suffered by the children may be prolonged. However, she indicated that there was nothing in the extensive file of reports from the Croatian proceedings which suggested that the Father could not adequately parent the children and noted that both children maintain a good relationship with both parents and said they loved them equally. Despite the potential detriment to the children's well-being as a result of the separation from the Mother, Ms Demery's clear professional opinion was that it remained a "realistic option" for the children to move to live with their Father. I accept Ms Demery's evidence. It is consistent with a large volume of evidence from the Croatian proceedings that both parents have the capacity to provide a loving home for the children. In my judgment, whilst it is clear that the

children would suffer a measure of distress if they were to return to Croatia without their Mother, in my judgment it does not reach the threshold of intolerability.

40. Ms Chaudhry also argued that there was a grave risk of psychological harm to the children if they were to return to Croatia without the Mother. She accepted that it was difficult to make that submission in the absence of any medical evidence but relies upon Ms Demerey's evidence that the children are likely to suffer distress if they are required to return to Croatia without the Mother. It does not appear to me that the evidence supports the case that there is a grave risk of psychological distress of a sufficiently serious nature to come within the meaning of article 13(b).

41. In those circumstances it is not strictly necessary for me to consider the effect of article 11(4) BIIa. However, for completeness I do so. This article provides:

"A court cannot refuse to return a child on the basis of Article 13b of the Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return."

42. The Father offered a series of undertakings to cover the position if the Mother were to return to Croatia. He said in his witness statement that he would "consider" the following effective measures but that was firmed up in submissions to make it clear that these were offered on his behalf:

- i) Not to prosecute the Mother in any criminal court for the removal of the children;
- ii) Not to remove the children from the Mother's care save for the purpose of an existing Croatian order which defines how and when the children should spend time with the Father and pending any further orders of the Croatian Court;
- iii) Not to seek to communicate with the Mother save through lawyers, for the purposes of mediation through a mediation service such as Reunite or for the purpose of making arrangements in respect of the children and not to harass her in any way;
- iv) To continue to pay maintenance to the Mother at the same rate as before.

43. No criticism was advanced by the Mother of those protective measures, all of which assumed that the children would be returning to live in Croatia with the Mother and flat in the village outside Zagreb. Accordingly, on that assumed basis, I consider that the Father has established that that adequate arrangements have been made to secure the protection of the children after their return. It follows that, pursuant to article 11(4) BIIa, the Mother cannot rely upon an article 13(b) Convention defence to avoid the obligation on the court to order the return of the children under article 12.

44. The Mother's case was that no protective measures had been or could be put in place by the Father if she did not return to Croatia. Her primary case for this rested on her allegations of domestic abuse. She claims to have suffered mental health problems as

a result of abuse from the Father. I have no doubt that the extensive litigation between the Mother and the Father concerning the children has been distressing for her. Dr McLintock also noted that she had had problems with her mental health following the birth of the children when she had panic attacks and some obsessive fears about the well-being but he notes that:

“with ... time, her symptoms became less marked and certainly before the children were one year old she did not have any significant symptoms”

45. Dr McLintock noted the distress that the Mother felt in discussing the history of her marriage but expressed the view that she did not appear clinically depressed or anxious, and that she was “psychologically resilient”. Dr McLintock was unable to offer a clear prognosis because of a number of uncertainties including the continuing litigation over the children. However, he expressed the overall view that it was likely that “given her resilience, she will remain well”.
46. The Mother feels very strongly that she has been the subject of domestic abuse and controlling behaviour from the Father but there is very little evidence to support this in the papers relating to the Croatian court. An analysis by a clinical psychologist appointed by the court in connection with the Croatian Convention proceedings, Prof Jasminka Horvatic, records a detailed assessment of the Mother in May 2017. A large number of reasons given by the Mother as to why she would prefer to live in the United Kingdom but there is no mention of this any serious allegation of domestic abuse. The Mother has produced a report by Amnesty International which suggests that the way in which the Croatian authorities deal with domestic abuse has a number of serious deficiencies. However, the focus of that report is on the approach of the police to the prosecution of men responsible for domestic violence. It is not primarily focused on the question as to whether or not domestic violence is properly taken into account in matrimonial proceedings.
47. In my judgment, there is no proper basis upon which I could conclude that the Mother would not be entitled to raise issues of domestic violence or coercive or controlling behaviour within the Croatian courts in order to support her case that it would be better for the children to live with her rather than with the Father. I am not in a position to make any final decision about the truth of the allegations that the Mother makes about the Father’s conduct towards her and I make no assumption about the truth or otherwise of her allegations. I am, however, satisfied those matters which she could raise within the Croatian courts inasmuch as they were relevant to the court’s determination about whether the children should live with her Father, and the arrangements for any contact.
48. However, if the Mother remains in the United Kingdom it seems highly unlikely that she will continue to suffer any form of domestic abuse from the Father in Croatia. Accordingly, the complaint that she makes about his conduct in the past are unlikely to affect the children in the future. It is, however, important that the children are able to maintain contact with the Mother. The Father had understandably not set out detailed protective measures that he was offering in the event that the Mother chose to remain in Croatia. However, through his counsel he offered to ensure that, if the children were living with him, he would continue to support a full relationship between the children and their Mother. He offered to facilitate direct contact taking place in Croatia and telephone or video contact when she was in England. He said

that he would be prepared to allow the Mother to take the children on holiday in both England and Croatia, offering her “extensive holiday contact”. I appreciate that these protective measures only emerged at the hearing but, because the Father had not appreciated the Mother’s clear position that she was not going to return to Croatia, it does not seem to me that she can be criticised for that.

49. As I understand the case advanced by the Mother, her primary submission was that any protective measures would be inadequate because they would still leave the children in a position where they were living in intolerable circumstances or at grave risk of psychological harm. I do not accept that submission. It seems to me that there is a wealth of evidence in this case that both parents have the capacity to offer a loving home to the twins. I have no reason to doubt the genuineness of the Father’s commitment to maintaining his childrens’ relationship with the Mother I note that generally neither parent has sought to speak ill of the other parent to the children.
50. I therefore do not consider that the allegations of domestic violence or abuse made by the Mother prevent the protective measures offered by the Father being entirely adequate for the purposes of article 11(4) BIIa. I therefore conclude that the Father has made out his case under that article and that accordingly the Mother’s case under article 13(b) must be dismissed.
51. That leaves the final question of the exercise of discretion based upon the objections raised by the children. Whilst there are factors which go both ways as summarised in both skeleton arguments, it seems to me that the decisive factors in this case are as follows:

(a) It is an important factor that “*the Hague Convention only works if, in general should, children who have been wrongly retained or removed from the country of habitual residence are returned and returned promptly*”: see Black LJ in *Re M* at paragraph 71. Further, as Lady Hale noted in *Re M (Children) (Abduction: Rights of Custody* [2011] UKSC 27 “*the message must go out to potential abductors that there are no safe havens among contracting states*”. Those considerations apply to this case because the Mother devised a plan to abduct the children by taking them to the United Kingdom. As part of that plan, the Mother unlawfully obtained duplicate passports and deceived the Father about her holiday intentions. It was thus a clear, calculated and deliberate attempt to relocate the children away from the control of the courts in Croatia because she was dissatisfied with court decisions the and her life in Croatia;

(b) The evidence suggests that both parents have the ability to offer a loving home to the children. The question as to whether it is in the best interest to live with their Mother or the Father and, the degree of contact with the other parent, is a matter that is presently being litigated in the Croatian courts. Any decision to return the children to Croatia will not inevitably lead to the children spending the rest of their childhood in Croatia. The question about whether it is in the best interests of the children to live in Croatia or in England is a matter which I consider should be properly determined within the courts in Croatia because that is the country in which the children are habitually resident, and it would be more appropriate to do so if the children are in Croatia;

(c) The evidence from the children which just crosses the threshold to being an objection is of the most marginal type. It is probably better characterised as the expression of a preference but I accept Ms Chaudhry's submission that the words taken literally could just be characterised as "objections". Nonetheless, they are not strong objections and the children have positive things to say about Croatia. This is not a situation where a child is adamantly refusing to return to a country where the child is habitually resident;

(d) The history of the Father's attempts to maintain contact with the children after they were abducted raises real concerns as to whether, if they were to remain in the United Kingdom, the Mother would genuinely facilitate an ongoing relationship between the children and the Father and thus maintain their Croatian heritage. By way of example, the Mother insisted that the Father meet the children in a contact centre rather than having them on his own. I do not accept that there was any proper basis for limited contact in this way. The Father was taking a full part in the London proceedings I do not accept that there was any proper basis for suggesting that he may have abducted the children if he had had contact with them on an unsupervised basis. There is reference in the report of Dr McClintock about the Mother having obsessive fears about the well-being of the children, albeit at an earlier stage. It seems to me that it is important for the children to maintain full contact with the Father and their wider Croatian family as well as maintaining contact with the British heritage. In my judgment, based on the limited information available to me, it seems that this is more likely to happen if the children are living in Croatia;

(e) It is important that the children speak Croatian in order to interact with their Croatian relatives and understand their Croatian heritage. In practice, it seems that they will only learn to speak Croatian fluently if they are living in that country;

(f) The children are clearly well settled in schools in England and therefore it will be disruptive of their schooling if they move back to Croatia. Whilst that would tend to support a case for the children to stay in the UK, children do not start school in Croatia until age 7 and these children have not yet reached that age. Hence, their Croatian schooling will not be disrupted by a move back to Croatia and this point is of less weight.

52. I have a general discretion to exercise in these circumstances. I have carefully considered all the points made by counsel in submissions and in the helpful skeleton arguments. However, for the reasons set out above, I do not exercise my discretion to refuse to make an order under article 12 because of the evidence of the objections raised by the children.
53. I will therefore make an order in accordance with article 12 of the Convention to require the return of the children forthwith to Croatia.