Neutral Citation Number: [2020] EWFC 65

Case No: NG18C00111

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 October 2020

Before :

MR JUSTICE MOSTYN

- -

Between :

A LOCAL AUTHORITY	**Applicant**
- and -	
MM	**1st Respondent**
- and -	
NM	**2nd Respondent**
- and -	
MC	**3rd Respondent**
- and -	
CM	**4th Respondent**
- and -	
W, X, Y and Z Children acting through their Guardian,	**5th to 8th Respondents**

- -
- -

Elizabeth McGrath QC (instructed by **the local authority**) for the **Applicant**
Stefano Nuvoloni QC and Nicola McIntosh (instructed by **NFLG Sols** for the **1st Respondent**
Lorraine Cavanagh QC and William Baker
(instructed by **Bhatia Best Ltd**) for the **2nd Respondent**
Vickie Hodges (instructed by **Elliot Mather Sols**) for the **3rd Respondent**
Mark Twomey QC and Amanda Bewley
(instructed by **Jackson Quinn Sols**) for the **4th Respondent**
Beryl Gilead (instructed by **Hawley and Rogers Sols**) for the **5th to 8th Respondents**

Hearing date: 28 September 2020
The hearing was conducted remotely by CVP

- -

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 JUSTICE MOSTYN

This judgment was delivered in private. The judge has given leave for this anonymised version of the judgment to be published. It would amount to a contempt of court for any publication to reveal the identities of the children and members of their family.

Mr Justice Mostyn:

1. This is an application by the fourth respondent under article 15 of Council Regulation (EC) No 2201/2003 ("Brussels IIa") for the welfare stage of these care proceedings to be transferred to Romania. Although this may be one of the last applications of its type to be heard given the United Kingdom's impending abandonment of the European Union, the issue will remain relevant as article 8 of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children contains a similar (but not identical) provision.

2. The care proceedings were commenced on 1 June 2018. The article 15 application was made on 21 January 2020, 19 months after the case was commenced and after a vast amount of work had been done on it.

3. The application is supported by the first, second and third respondents i.e. all the parent parties. It is opposed by the local authority and the guardian for the children.

4. The third and fourth respondents are the mother and father respectively to Z, a girl aged 12, and Y, a girl aged 10. They are also de facto non-biological parents to the second respondent who is the father of both X, a girl aged 4, and W, a girl aged 2. The first respondent is W's mother. All of the respondents formed one household. The whereabouts of X's mother is unknown, and she has not participated in these proceedings.

5. The children, in addition to the usual expected professional input, also receive support from CAMHS. Z is partially sighted and has started to use braille.

6. All the parents and all the children are Romanian nationals. Significantly, in the context of this application, the parents all identify as part of the Romani ethnic group, which linguistically and culturally is distinct from the Romanian language and culture. Indeed, the Roma language and culture transcends the borders of the State of Romania and has distinct origins. The children have been, or would have been were it not for separation, raised accordingly.

7. All the parents are assisted by interpreters, as they have been throughout these proceedings. I am told that whilst all of the parents are fluent in Romanian, the language spoken habitually at home is Roma. The first and third respondents are also assisted by the use of an intermediary. The third respondent's needs are such that she has been assessed as lacking litigation capacity and accordingly she is represented by the Official Solicitor.

8. Z and Y left Romania at the respective ages of seven and six and came to England in 2015. It is said that they now have very few memories of life in Romania and no longer speak Roma or Romanian. The children's guardian reports that they are particularly anxious about the prospect of a return to Romania and they had a number of questions about this prospect. The guardian has been able to complete direct work with Z and Y regarding this. Y considers England to be her home and although she likes to visit Romania, as her grandmother lives there, she does prefer England. She attends school here and has plenty of friends. Neither Y or Z could imagine what life would look like for them in Romania save that Y was able to give a vague description of the family

home. Both children shared their wish for proceedings to remain in England where they feel safe and listened to. They felt they may be questioned or pressured in Romania and that there was a risk of life going back to the way it was "before". Z is described as a bright and articulate young adolescent. She was concerned about her education and opportunities in Romania; she had heard about attending a residential school for blind children in Romania. She is currently making good progress at a mainstream school.

9. X and W were both born here in England.

10. All the children have been in foster care with English-only speaking foster carers since an interim care order was made in June 2018. Z and Y live together in one foster placement. X and W live together in another foster placement.

11. All counsel at the hearing before me accepted that the reality is, that if I were to order a transfer of these proceedings to Romania, that would entail the children being moved to Romania also. I know very little about what would happen in the immediate aftermath of the children's return to Romania. The only information I have is in a letter dated 22 June 2020 from Buzau County Council General Directorate for Social Care and Child Protection. It states:

> "In accordance with the provisions of the applicable legislation concerning the repatriation of minor children, we advise that Buzau General Directorate for Social Care and Child Protection, upon repatriation, will take over the minors and will put in place a special protection measure – respectively, emergency placement, in agreement with the provisions of Law 272/2004 with respect to the protection and promotion of children's rights, republished as subsequently amended and completed. Depending on the needs identified in the detailed assessment, specialist psychological and legal counselling services, as well as medical and educational integration services will be provided. Also, the psychological counselling of the minors and their family members can be provided, for the purpose of reintegration within the extended family, if this undertaking is in their interest."

12. Of the adult respondents, it is only counsel for the second respondent, Ms Cavanagh QC and Mr Baker, who engaged in any substantive way with the prospect of a summary return to Romania. In summary, they argued that:

    i) Y and Z lived in Romania previously and have some memories of there;

    ii) Until two years ago the children lived in a household where only Roma was spoken and work can be done to ensure that they retain a familiarity with the language;

    iii) Equally, the children were raised until two years ago in a household that was culturally Romani;

    iv) The children will be supported by being transferred together. Any suggestion that they would be separated is purely speculative;

v) Any short-term impact will be outweighed by long term benefits;

vi) The parents are intent on following the children to Romania in the event of a transfer; and

vii) The children will be caused emotional confusion and loss in the event that the parents are deported as they have never lived in a different country to one another before.

13. It is the events shortly after W's birth that precipitated the local authority's application for a care order. On 10 August 2019 the allocated Judge made a series of findings of the utmost seriousness against the parties following a fully contested fact-finding hearing conducted over 15 days. They are:

i) On 31 May 2018, at 41 days old, W was admitted following a routine midwife visit with extensive bruising and marks to her face and body and healing fractures to her right 6th rib posterolaterally and her left 3rd, 4th, 5th, 6th and 7th ribs posterolaterally;

ii) The rib injuries were inflicted by being crushed across her chest by an adult hand. This occurred during the care of the first to fourth respondents on or around 21 to 26 May 2018. It would have caused her exquisite pain during the crushing injury and also afterwards upon movement or handling. This would have been obvious to any carer or anyone within earshot of her screaming;

iii) The bruises and marks to W were caused by inappropriate application of excessive force on more than one occasion;

iv) The first, second and third respondents failed to seek medical attention for W;

v) The first to fourth respondents are within the pool of potential perpetrators of the injuries to W;

vi) Extensive nappy rash was caused due to neglect of W's basic care by infrequent nappy changes;

vii) W, being a girl, was unwanted by all the adults save for her mother, the first respondent;

viii) The first respondent was controlled and experienced coercive behaviour from the second, third and fourth respondents but they all would have accepted this as culturally normative;

ix) The second, third and fourth respondents used inappropriate force on Y, Z and X and in particular:

a) The third respondent would frequently slap and pinch X;

b) The third and fourth respondents would on occasion use inappropriate force towards X;

c) The third and fourth respondents would strike Z and Y usually by slapping or smacking;

d) The fourth respondent kicked Y on one or more occasions;

e) The second respondent would strike Y and Z on occasions with a closed fist;

f) No effective role was taken to protect Z, Y and X;

x) The third and fourth respondents frequently drank excessively in the household to the point where their ability to meet the physical and emotional needs of the children was compromised;

xi) On occasion the third and fourth respondents gave alcoholic drinks to X;

xii) Frequent physical fights and altercations took place between the adults in the household which was chaotic and pervaded by intrafamilial conflict. In particular there were frequent occasions when the fourth respondent would assault the third respondent;

xiii) The food provided for the children in the household was frequently taken from bins and then washed before being given to them;

xiv) On occasions Z accompanied the third respondent when she stole alcohol from shops and was afterwards involved in the process of hiding what had been stolen;

xv) Z and Y were coerced by the third and fourth respondents into remaining silent about the matters in respect of which they made the above allegations;

xvi) On occasion, Z and Y were left with inadequate and inappropriate care when the third and fourth respondents went to Romania or were absent from the home;

xvii) On occasion, Z was used by the third and fourth respondents to assist in attempts to obtain money or pecuniary advantage; and

xviii) The sleeping arrangements for the children in the household were at times unhygienic and inadequate.

14. The respondents also faced separate criminal charges with respect to their conduct towards the children. They were sentenced on 18 October 2019. The first respondent pleaded guilty to child cruelty. She was sentenced to 18 months' imprisonment, suspended for two years. The second respondent pleaded guilty to attempted abduction and child cruelty. The third and fourth respondents pleaded guilty to attempted abduction. The second, third and fourth respondents were each sentenced to 36 months' imprisonment.

15. The charges of abduction result from the parents leaving a contested interim hearing part way through on 4 June 2018 and attempting to flee the jurisdiction with Z, Y and X. W was left abandoned in hospital, this being the same day that the adults learnt of the diagnosis of the multiple rib fractures. The family was intercepted at Dover. X was

found in the footwell of the car. This was not only an overt attempt to subvert the jurisdiction of the court but also in breach of bail conditions at the time that the adults do not have contact with the children. The charges of cruelty relate to the injuries sustained by W.

16. The second, third and fourth respondents remain in prison. Although their expected dates of release have since passed, they await actual release. All the parents express an intention to return to Romania. For those parents who have received a custodial sentence it seems highly probable that they will have little choice in any event.

17. All of the extended family live in Romania. The crux of the parents' case is that, before the family court could make draconian orders for adoption or long-term foster care, as envisioned in the local authority's care plan, the option of rehabilitation to some of the parents or placement with relatives needs to be fully investigated and assessed. By virtue of the fact that all those alternative carers live in Romania and that the parents themselves will return to Romania, these proceedings now need to be transferred to Romania. Further, the parents make strident criticisms of the local authority's handling of the assessments and other matters to date.

18. For completeness I set out a summary of the arguments advanced by the parents:

    i) it would remove the need for interpretation of both lay and professional oral evidence, but also presumably written evidence as well, and therefore the risk of nuance and meaning being lost is removed;

    ii) this point is repeated with respect to undertaking assessments of the parents and alternative careers, all of whom are in any event in Romania or intending to return to Romania;

    iii) the current proposal for assessments is problematic in that there are no clear timescales or an identified assessor and the court has no power to make mandatory directions regarding these assessments being undertaken by Romanian professionals;

    iv) the local authority's assessments of the parents and alternative careers have to date been flawed and it is unclear why positive local assessments have not been accepted by the local authority. It is argued that the local authority's flawed assessments are in part a product of it being an international exercise and also conducted via an interpreter;

    v) Romania opposes the adoption of its nationals unless done in conformity with its laws;

    vi) The Romanian court would be better placed to assess what local support services could be available to the family;

    vii) Only the Romanian court has a realistic chance of ensuring the children continue to know and live within their Roma heritage and be brought up in their own nation. A Romanian court also has the benefit of being able to judge better the standard of care by the accepted standards in Romania as opposed to in England;

viii) In any event the advantage of judicial continuity in this jurisdiction will be lost if the fourth respondent's recently prefigured application for HHJ Lea to recuse himself is successful; and

ix) By the time of a final hearing many (indeed it is argued all) key witnesses will be in Romania and will be giving their evidence from there.

19. The final hearing was listed in July 2019 but was vacated to make provision for viability assessments to be conducted. The local authority's viability assessments have all been negative. Assessments by local assessors in regard to a number of alternative carers are positive in particular the maternal grandparents of W. They are prepared to care for W only. Other assessments are outstanding.

20. These proceedings are now in week 121. The children have been in foster care for 2¼ years.

21. Article 15 provides, so far as is material to this case:

> **Transfer to a court better placed to hear the case**
>
> "1. By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child:
>
> …
>
> (b) request a court of another Member State to assume jurisdiction in accordance with paragraph 5.
>
> 2. Paragraph 1 shall apply:
>
> (a) upon application from a party;
>
> …
>
> 3. The child shall be considered to have a particular connection to a Member State as mentioned in paragraph 1, if that Member State:
>
> …
>
> (c) is the place of the child's nationality; …"

22. In *AB v JLB (Brussels II Revised; Article 15*) [2009] 1 FLR 517 Munby J rightly construed this measure as giving rise to three separate questions for the court which he explained as follows at [35]:

> "First, it must determine whether the child has, within the meaning of Article 15(3), 'a particular connection' with the relevant other Member State. . . . Given the various matters set out in Article 15(3) as bearing on this question, this is, in essence, a simple question of fact. For example, is the other Member State the former habitual residence of the child (see Article 15(3)(b)) or the place of the child's nationality (see Article 15(3)(c)).
>
> Secondly, it must determine whether the court of that other Member State 'would be better placed to hear the case, or a specific part thereof'. This involves an exercise in evaluation, to be undertaken in the light of all the circumstances of the particular case.
>
> Thirdly, it must determine if a transfer to the other court 'is in the best interests of the child.' This again involves an evaluation undertaken in the light of all the circumstances of the particular child."

23. Here, there is no dispute about the first question. Romania is the place of the children's nationality. The debate has been about the answers to the second and third questions.

24. The Brussels IIa Practice Guide reverses the order of the second and third questions. The Court of Justice however maintains the sequence derived from the wording of article 15. I do not think it makes any difference in which order I address and answer these questions.

25. Under the second question this court has to be satisfied that the relevant court in Romania would be "better placed" to hear the welfare phase of these care proceedings. The phrase "better placed" is ambiguous. Does it mean merely that the other court is merely better situated geographically to deal with that part of the case? Or does it mean that the other court is more suitable, that is to say better adapted, for reasons wider than mere geography, to hear the case? It is interesting that the French translation of article 15 uses the same ambiguous phrase: "mieux placée". The Spanish translation, however, uses a phrase consistent with the narrow interpretation: "mejor situado". In contrast, the Italian translation uses a phrase consistent with the wider interpretation: "più adatta".

26. Our domestic authorities, and the teaching of the Court of Justice, clearly favour the wider interpretation of "better placed". In *Re M (A Child)* [2014] EWCA Civ 152, [2014] 2 FLR 1372 Ryder LJ held at [20]:

> "It is entirely proper to enquire into questions of fact that might inform the court's evaluation of whether a court is better placed to hear a case. Without wishing to prescribe an exhaustive list, those facts might include the availability of witnesses of fact, whether assessments can be conducted and if so by whom (i.e. not a comparative analysis of welfare perceptions and principles but, for example, whether an assessor will have to travel to another jurisdiction to undertake an assessment and whether that is a lawful and/or professionally appropriate course), and whether one court's knowledge of the case provides an

> advantage, for example by judicial continuity between fact finding and evaluation and so on."

27. In *Child and Family Agency v D (RPD intervening)* [2016] EUECJ C-428/15 (27 October 2016), [2017] Fam 248 the Court of Justice held:

> "56. Consequently, it remains the task of the court having jurisdiction to determine, secondly, whether there is, in the Member State with which the child has a particular connection, a court that is better placed to hear the case.
>
> 57. To that end, the court having jurisdiction must determine whether the transfer of the case to that other court is such as to provide genuine and specific added value, with respect to the decision to be taken in relation to the child, as compared with the possibility of the case remaining before that court. In that context, the court having jurisdiction may take into account, among other factors, the rules of procedure in the other Member State, such as those applicable to the taking of evidence required for dealing with the case. However, the court having jurisdiction should not take into consideration, within such an assessment, the substantive law of that other Member State which might be applicable by the court of that other Member State, if the case were transferred to it. If the court were to take that into consideration, doing so would be in breach of the principles of mutual trust between Member States and mutual recognition of judgments that are the basis of Regulation No 2201/2003 (see, to that effect, judgments of 23 December 2009, *Detiček*, C-403/09 PPU, EU:C:2009:810, paragraph 45, and of 15 July 2010, *Purrucker*, C-256/09, EU:C:2010:437, paragraphs 70 and 71)."

28. Therefore, in determining whether the other court is "better placed" to hear the case, or part of it, the court with jurisdiction is not confined to identification of advantages which merely derive from geographical location. It can look wider than that, specifically at the rules of procedure of the other court, for example (and this is the only example given by the Court of Justice) at the procedural method for taking evidence in that court.

29. However, the burden is on the applicant to show that the other court provides genuine and specific added value. When considering this I must remember that a transfer is an exception to the general rule that the court first validly seised will be the court of trial. Here I cite Lewison LJ in *Re M* at [50]:

> "It is clear, therefore, that the power to transfer a case (or part of a case) to the courts of another Member State is an exception to the general principle, as the opening words of article 15 (1) themselves make clear. One of the fundamental principles of community law is that of legal certainty. It is for that reason that the ECJ (now the CJEU) has consistently held that exceptions to general principles should be narrowly interpreted: see Case 33/78 *Etablissements Somafer SA v Saar-Ferngas AG* [1979] 1

> CMLR 490 at [7] (concerning jurisdiction in civil and commercial matters) and Case 348/87 *Stichting Uitvoering Financiële Acties v Staatssecretaris van Financiën* [1989] ECR 1737 (concerning exceptions to VAT liability)."

The exceptionality of the article 15 procedure is emphasised by para 3.3.1 of the Brussels IIa Practice Guide.

30. Further, the later in the progress of the case the heavier the burden will become. The transfer application should be made right at the start of the case. Here I cite Sir James Munby P in *Re M* at [58]:

> "It is also vital, as this case has demonstrated, that the Article 15 issue is considered at the earliest opportunity, that is, as Ryder LJ has pointed out, when the proceedings are issued and at the Case Management Hearing."

31. There is no evidence about the Romanian court or its procedures. I am not even told which court it would be. There is no evidence about the timescales involved in the resolution of the welfare phase of this case in Romania. There is no evidence about how evidence would be taken. Would it all be in writing, or would there be an oral hearing with the opportunity to confront witnesses? There is no evidence about how the voice of the children would be heard. Would it be through a welfare officer, or would they be represented by a Guardian and have party status in the proceedings? In the proceedings here the third respondent has been assessed as lacking litigation capacity. Therefore, she has a litigation friend, the Official Solicitor. Would that be replicated in the court in Romania?

32. Other obvious procedural questions arise. Who would hear the case? Would it be a bench of magistrates or a single professional judge? Will the judgment be rendered in writing? How long would the judgment be reserved? What are the rights of appeal?

33. I do not know the answers to any of these questions.

34. There is a striking dearth of evidence addressing the key question why the court in Romania would specifically add value to this case. The evidence, such as it is, focuses on the state apparatus for child protection, rather than on the specific advantages that the court process in Romania would offer over the court process here. It seems to me that the evidence has been aimed at entirely the wrong question.

35. I am prepared to assume that the fact-finding judgment of the allocated Judge would be recognised in Romania pursuant to article 21 of Brussels IIa, although it is surprising that there is no evidence from a qualified Romanian lawyer that it would be. Therefore, I am prepared to assume that the issues before the allocated Judge would not be rerun in Romania. But does Romanian procedural law allow an application to set aside that judgment? That is possible here, but it is extremely difficult. Would it be relatively easy in Romania? I just do not know.

36. When I raised these concerns with counsel for the family it was suggested that I should adjourn the case yet further (it has already been adjourned once for an appreciable period on account of the coronavirus crisis) so that evidence on Romanian law could

be obtained. Foreign law is a fact to be proved like any other fact. It was for the parties to get their cases in order before it began and not to seek yet further delays to shore it up when fundamental defects in it were identified. I made it very clear that I would not countenance any further delay in this matter. The parties chose not to adduce factual evidence of Romanian law as to the specific procedural advantages that the Romanian court would offer were the case to be transferred to it. Having made their bed, the parties must lie in it.

37. The only procedural advantage that I can alight on is the undoubted fact that proceedings in Romania would be conducted in the family's second language (Romanian) rather than its third (English). Plainly, this factor alone cannot justify the application of the exception. Were it otherwise, there would be a routine transfer in every case where the first language of the majority of the parties was not English. This can never have been intended by the framers of article 15. Mr Twomey QC and Ms Bewley argue that the example given by the Court of Justice of the mode of taking evidence in the other court is a reference to the language used by a witness. I cannot accept that. It is obviously a reference to the modality of the giving of evidence: is it in writing, by deposition, or by viva voce evidence in court?

38. To add to the obstacles lying in the path of the family is the inestimable advantage of judicial continuity were the case to remain here. The investment made in this case by the allocated judge has been massive. I have to say that I place no weight at all on the very late suggestion that the fourth respondent will apply for, and likely succeed in, an application that the judge should recuse himself on the ground of apparent bias because he was the sentencing judge in the criminal proceedings. It is noteworthy that none of the parties in the criminal proceedings objected to the family judge acting as the sentencing judge.

39. It is my conclusion that the family have not come anywhere close to discharging the burden posed by the second question. In any event, the application has been made far too late in the day.

40. Having reached that conclusion it is not strictly necessary for me to answer the third question, but I shall do so should a higher court conclude that my answer to the second question is wrong.

41. The third question is separate from, but inevitably linked to, the second question. In *Re N (Children) (Adoption: Jurisdiction)* [2016] UKSC 15 Baroness Hale of Richmond stated:

> "43. It is the case … that the "better placed" and "best interests" questions are inter-related. Some of the same factors may be relevant to both. But it is clear that they are separate questions and must be addressed separately. The second one does not inexorably follow from the first.
>
> 44. …The question is whether the transfer is in the child's best interests. This is a different question from what eventual outcome to the case will be in the child's best interests. The focus of the inquiry is different, but it is wrong to call it "attenuated". The factors relevant to deciding the question will vary according

> to the circumstances. It is impossible to be definitive. But there is no reason at all to exclude the impact upon the child's welfare, in the short or the longer term, of the transfer itself. What will be its immediate consequences? What impact will it have on the choices available to the court deciding upon the eventual outcome? This is not the same as deciding what outcome will be in the child's best interests. It is deciding whether it is in the child's best interests for the court currently seised of the case to retain it or whether it is in the child's best interests for the case to be transferred to the requested court."

42. In *Child and Family Agency v D (RPD intervening)* the Court of Justice put it this way at [58]:

> "Third and last, the requirement that the transfer must be in the best interests of the child implies that the court having jurisdiction must be satisfied, having regard to the specific circumstances of the case, that the envisaged transfer of the case to a court of another Member State is not liable to be detrimental to the situation of the child concerned."

43. Therefore, having answered the first and second questions affirmatively (as I assume I have for these purposes), I am required to stand back and ask myself the separate question whether the transfer of the case to the Romanian court, with the concomitant transfer of all four children to Romania, is liable to be detrimental to their situation.

44. The local authority and the Guardian both argue strenuously that the answer to this question is so obviously yes that I hardly need waste any time considering the second question. They say that a move of these children from the stability of their present placements, in direct contradiction to the wishes and feelings of the older two children, to an unknown placement with complete strangers unable to speak the language in which they now habitually communicate, is obviously detrimental to their situation. I agree. These children are especially vulnerable and under the support of CAMHS. Z is additionally vulnerable due to her partial sightedness. She is learning to use braille and is doing well in school. All the children overwhelmingly need stability and continuity of care. By care I mean not only from their primary carers but also from therapeutic caring professionals. The notion that the two elder girls should re-learn their birth language and that the two youngest girls should learn essentially a new language, in what I presume is a timescale to be measured in months, is unrealistic. I will not place this burden on them. That is not to say that cultural and linguistic identity is not important. It is and it should be promoted. However, this consideration cannot dominate to the exclusion of others. For the time being the parents all remain in this jurisdiction. It has not been suggested that their departure is imminent. Speculation about this is not sufficient to uproot the children. These children have fortunately had the benefit of consistent foster care since the beginning of these proceedings and have settled well. I would expect that if the children were to be moved again that such a move would be their final permanent move. I cannot countenance the removal of the children from their foster placement here to another temporary placement in Romania. How many moves will there be for them after that? Will they, or some of them, then get to live with their parents or alternative carers? Or will they then be moved to another foster carer once the Romanian proceedings are concluded? I just do not know. It is well accepted that

unnecessary moves should be avoided. If the English court finds at the final hearing that it is in the best interests of the children to move to Romania and into the care of their parents or other relatives, then it will make that order. However, I cannot pre-empt that decision today.

45. I find as a fact, albeit a future fact, that a transfer of these four children to Romania at this stage of the proceedings would be liable to be seriously, even disastrously, detrimental to their situation.

46. For these reasons the article 15 application is dismissed.

47. That is my judgment.