



Neutral Citation Number: [2021] EWHC 375 (Fam)

Case No: FD20P00482

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: 25 February 2021

Before:

MR DAVID LOCK QC
SITTING AS A DEPUTY HIGH COURT JUDGE

Between:

AB

Applicant

- and -

CD

Respondent

Mr Christopher Miller (instructed by Eskinazi and Partners) for the Applicant
Ms Jennifer Perrins (instructed International Family Law Group) for the Respondent

Hearing dates 3 December and 19 February 2021

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.

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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 AB (“**the Father**”) for the summary return of his son, EF (“**EF**”) to Italy pursuant to the provisions of the Hague Convention on the Civil Aspects of International Child Abduction (hereafter ‘**the 1980 Convention**’) and, to the extent that it remains part of UK domestic law, 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 “**BIa**”).
2. The Respondent is CD (“**the Mother**”). EF is presently living with the Mother at an undisclosed location in England, having travelled to England with his Mother in October 2019. The Mother opposes EF’s return to Italy despite having brought him to England without the Father’s consent and in breach of the terms of the 1980 Convention.
3. The Father was represented by Mr Christopher Miller and the Mother was represented by Ms Jennifer Perrins. I am grateful to both counsel for their assistance.

The background

4. In *Re E (Children)* [2011] UKSC 27 Lady Hale and Lord Wilson, delivering the judgment of the Court, set out the primary purposes of the Hague Convention as follows:

“The first object of the Convention is to deter either parent (or indeed anyone else) from taking the law into their own hands and pre-empting the result of any dispute between them about the future upbringing of their children. If an abduction does take place, the next object is to restore the children as soon as possible to their home country, so that any dispute can be determined there. The left-behind parent should not be put to the trouble and expense of coming to the requested state in order for factual disputes to be resolved there. The abducting parent should not gain an unfair advantage by having that dispute determined in the place to which she has come. And there almost always is a factual dispute, if not about the primary care of the children, then certainly about where they should live, and in cases where domestic abuse is alleged, about whether those allegations are well-founded. Factual disputes of this nature are likely to be better able to be resolved in the country where the family had its home. Hence it is one thing to say that the factual context has changed and another thing entirely to say that the change should result in any change to the interpretation and application of the Hague Convention”

5. In approaching this case it is important to bear in mind the primary purposes of the 1980 Convention. Accordingly, I am mindful that my role in this case is not to determine the question as to whether it is better for EF to live with his Mother or his Father, or to decide whether he should live on a long term basis in Italy or in the United Kingdom. The key question I have to decide is, assuming that the parents remain in dispute about arrangements for EF, and thus those arrangements will have to be determined by a court, whether those

important issues should be decided by the courts in Italy or by the courts in the United Kingdom. Further, in coming to my decision about which court should decide these matters, I acknowledge that I am not generally in a position to make final factual findings concerning a significant amount of the disputed evidence. Accordingly, save where specifically stated, nothing set out hereafter should be treated in any future hearings between the parties as constituting a final finding of fact on any contested matter.

The facts.

6. The Mother and the Father are both Italian nationals. However, they were both born and grew up in South Africa where they met and married on 17 December 2016. The Mother spent a period of about 6 months in Italy when she was aged 17 but, apart from that, lived in South Africa at all times until about April 2019.
7. EF was born on 22 February 2018 in South Africa. He also has Italian citizenship but was habitually resident in South Africa following his birth.
8. The Mother was working in events management in South Africa and the Father was working for his father's business.
9. It is reasonably clear that there were difficulties in the marriage during the period when the couple lived in South Africa. Although no complaints were made to the police at the time, the Mother now alleges that the Father sexually assaulted her whilst she was asleep, and that she suffered significant physical

and psychological injuries as a result. She says also that she suffered from postnatal depression following EF's birth and that the couple had constant arguments. She also complained that the Father was smoking cannabis excessively at a time when he ought to have been assisting her to look after EF.

10. She also alleges there were disputes because she alleges the Father and his family did not believe in conventional medicine and attempted to persuade her to use alternative medicines such as putting hot oil in a newspaper on his chest when he had a fever. This is strongly disputed by the Father.
11. What does not appear to be in dispute is that a time came when the Father's parents became victims in a series of criminal acts. Whilst there is a dispute between the Father and Mother about the timing, they agree that a time came when the Father's parents decided that South Africa was no longer safe for them, and that it would be better for them to move to live in Italy. That involved winding up the business and thus left the Father needing to move to Italy with his parents or look for new work in South Africa.
12. The Father says the couple decided to follow his parents to Italy but the Mother says that this led to a row between her and the Father because she made it clear that she did not want to move to Italy. Whatever may have happened, in early 2019 and possibly despite her objections, the Mother and the Father agreed to move to Italy. They packed up their belongings in South Africa and the Mother moved to Italy on 16 April 2019 with EF, with the Father to follow once all his affairs in South Africa were resolved. Tragically

the Mother's father, who had been living in Italy and from whom the Mother may have been estranged for an extended period, died very shortly after her move to Italy. I accept that this was distressing for her because, despite not having seen her Father for an extended period, the Mother was required to arrange his funeral and sort out his affairs in Italy. Meanwhile, the Father remained sorting out matters in South Africa until he followed her to Italy in August 2019.

13. The Mother and EF moved to live in a holiday home with her mother. This house was located in an area near where her grandmother lives in a property owned by her aunt, who continues to live in South Africa. There is a dispute between the Mother and the Father as to whether the Mother informed the Father that the marriage was over at this time and whether she informed him that she was planning to move to England with EF.
14. The Father arrived in Italy in August 2019. The Mother then made it clear to him that she considered the marriage to be over. By this point, the Mother had decided that she wanted to move to England with EF and applied for jobs but there is a dispute about how much she told the Father. She states that she visited England for a job interview in September 2019 and then moved to England with EF in October 2019 having obtained a job here.
15. Her case was originally that she had moved to England with the Father's express consent. As part of that case, she set out her claim that the Father had consented in a witness statement. However, that case unravelled when it became clear that some of the evidence she relied upon to support that claim

was based on doctored text messages. Whilst it is not the role of a Judge in these types of proceedings to make final findings of fact over all matters in dispute, there are some aspects of the Mother's evidence to this court which show clearly that she attempted to mislead the court. The Mother exhibited what she claimed were records of text exchanges between her and the Father in October 2019 in support of her case that she had discussed moving to England with the Father. The Father exhibited the originals of the text messages which demonstrated that these referred to the Mother claiming that she was in Tuscany at a time when she was in fact in England. All references to Tuscany had been edited out of the versions of the text messages exhibited to the Mother's evidence. Once the originals of the text messages were exposed, the Mother dropped her factual claim that the Father had consented to the Mother taking EF to England.

16. The Mother has also asserted in her evidence that she cannot work in Italy because she does not speak Italian. The Father disagrees and says she speaks perfectly functional Italian and points to the fact that she has been advertising her services on social media as a person who speaks fluent Italian. No explanation was offered by the Mother to respond to this obvious inconsistency. Instead, her counsel submitted that my focus in this case should be on EF's interests and it is not part of the court's function to judge the actions of the Mother.
17. Whilst that is correct, I am driven to the conclusion that, at least on these 2 important issues, there is a strong possibility that the Mother set out in a deliberate and calculated way to mislead this court. That does not, of course,

mean that she is attempting to mislead the court on other issues but equally it does mean that I should be circumspect about accepting her evidence on matters where there is no corroboration.

18. It was also originally part of the Mother's case that EF was never habitually resident in Italy because his period of stay in Italy between April and October 2019 was insufficient to give rise to him becoming habitually resident in Italy. That case was also abandoned by the Mother.
19. When this case came before the Court on 3 December 2020, the parties had extensive discussions to seek to resolve matters between them. The Mother and the Father are both represented in these proceedings by experienced counsel and solicitors and a large amount of work was undertaken between the legal teams to seek to narrow the issues between them.
20. At least part of those discussions were explained to me as having been held on an open, rather than without prejudice basis, and they explained that they had come close to resolving all of the issues in this case. On the basis that Mother would agree to return to Italy with EF, the parties were agreed on each of the following matters:
 1. The Father will not attend at the airport in Italy upon the Mother's and EF's return.
 2. Without prejudice to his position that he has not previously done so, the Father will not harass, molest, pester, use or threaten violence

towards the Mother or EF, nor will he instruct, encourage or allow any third party to do so. Nor will he attend at a property where he knows the Mother and EF are living, save for the purpose of agreed or court-ordered contact.

3. The Father will not remove EF from the mother's care and control save for the purpose of any agreed or court-ordered contact.
4. The Father will co-operate in any way necessary to lodge an order in the Italian courts providing for the interim financial maintenance set out below, such order to be lodged before EF's return to Italy.
5. Upon EF's return to Italy, the Father will not remove EF from that jurisdiction pending further order of the Italian court.
6. The Father will pay to the mother a sum of €400 per calendar month by way of contribution to accommodation costs, and €300 per calendar month by way of child maintenance for EF. Such payments to commence monthly in advance, with the first payment totalling €700 to be paid 7 days before the mother's return to Italy with EF; payments to be made monthly thereafter for a period of 3 months, and later confirmed these would be paid by way of a single payment in advance.

7. It is recorded for avoidance of doubt that the payments to be made at paragraph 6 are without prejudice to the Father's position in any proceedings concerning maintenance in the Italian court, and are not intended to bind the Italian court in any way.

21. There was a relatively minor dispute between the parties about the level of payment that the Father would make to fund travel for the Mother and EF back to Italy. I consider the sums offered by the Father are entirely adequate. He also explained that if the Mother applies for an injunction against the Father in Italy, he will agree to the Italian Court making an interim order preventing him from intimidating, harassing or pestering her, using or threatening violence against her (or encouraging a third party to do so) and preventing him from removing EF from her care without her permission or the order of the Italian Court. That concession would be on the same basis as the undertakings that he offered to the English Court during the trial, namely that the orders would last until the Italian Court can hold a proper hearing to determine disputed facts and whether or not there should be long term protective measures and the provision of such agreement would be on the basis that he has made no admissions, the English Court has not determined any findings in relation to allegations against him and that he reserved the right to dispute any and all allegations in full.

22. However, the major dispute between the parties on 3 December 2020 involved the consequences of the fact that the Father had reported the Mother to the Italian police for committing a crime under Italian law by removing EF from

Italy without the Father's consent and the consequences for the Mother of returning to Italy with EF to face criminal charges.

23. The UK courts have recognised that it is a serious infringement of the rights of one parent for the other parent to take a child to live abroad without the consent of both parents. In *EM v BK* [2021] EWHC 108 (Fam) Mr Justice Mostyn said:

“Child abduction is a particularly unpleasant and insidious form of abuse; it is an offence of "unspeakable cruelty" to the loving parent and to the child or children: R v Kayani [2012] 1 WLR 1927 at [54] per Lord Judge LCJ at [54]. It deprives children of one of the two most vital relationships in their upbringing”

24. Italy, in common with a number of other EU countries and parts of the United States, has determined that the removal of a child from the child's country of habitual residence is a criminal offence. The Mother's submissions came close to suggesting that there was something improper in Italy making child abduction a criminal offence or that, within child abduction proceedings, there was an understanding that the Father should take all steps to ensure that the Mother is not prosecuted for that offence. I do not accept that approach. The question as to what is and is not a criminal offence within any country, and especially an EU country, is exclusively a matter for the democratically elected legislatures of each country and, if an offence has been committed under Italian law, the Father is acting entirely properly in referring the Mother's conduct to the Italian authorities.

25. I do not know whether the Mother was aware that she may have been committing a criminal offence when she made the decision to take EF to England without the Father's consent but her knowledge is not necessarily relevant because she is bound by the terms of the criminal law in Italy whether she was aware of the law or not.
26. Equally, it does not seem to me that the Father can be subject to any criticism by this court for having reported the Mother to the Italian authorities for having broken the criminal law in Italy. He was perfectly within his rights to do so because, at least on a *prima facie* basis, both he and EF were victims of a crime committed by the Mother, as defined by the Italian state.
27. The positions of the parties on this issue were as follows. The Mother's position is that I should not make an order to require EF to be returned to Italy because (a) it would be intolerable for EF to be separated from her because she has been his primary carer since birth, (b) she may be imprisoned in Italy if she were to return with EF and (c) thus she should not be required to return to Italy with him unless and until the criminal proceedings have been dismissed or otherwise concluded in a way that removes the risk of the Mother going to prison. She also makes it clear that, if she was to return to Italy, she will seek permission from the Italian civil courts for EF to live with her in England. She is concerned that, even if she were to obtain an order to that effect from the Italian civil court, she may be required to remain in Italy as a result of an order made in the criminal court or could not leave Italy until the criminal

proceedings were concluded and that she may be stuck in Italy for an extended period, and that this would be intolerable for EF.

28. The Father's position is that the Mother has broken the criminal law and both he and EF are victims. He says that he does not support the Mother going to prison but otherwise wishes to see the criminal law process follow its due process. He states that there is only a very small chance that the Mother would be sent to prison but points out that the hearing of the criminal case is not until November 2021 and so says that the Mother has plenty of time to make contingency arrangements for EF in that period.

The Law

29. Article 13(b) of the 1980 Convention provides an exception to the general rule that a child should be returned to the country of the child's place of habitual residence so that custody issues can be determined by the courts of that state. It provides:

". . . 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

- ...

(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. . . .

In considering the circumstances referred to in this Article, the judicial and administrative 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”

30. The law relating to a case which is advanced by an abducting parent under article 13(b) has been summarised by Mr Justice MacDonald in *AT v SS* [2015] EWHC 2703 (Fam) 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)”

31. I have directed myself in accordance with the framework and approach that Mr Justice MacDonald has summarised.

32. The essence of the Mother’s case is that it would be intolerable for EF to be separated from her as a result of a sentence imposed under the criminal proceedings and thus, unless that risk was removed, there was a grave risk that he would be exposed to an intolerable situation. The Father submits that this is not the required approach and referred me to a decision of Mr Justice Wilson (as he was) in *Re L (Abduction: Pending Criminal Proceedings)* [1999] 1 FLR 433 where the Mother would have been arrested and imprisoned if she returned to Florida. She would have been entitled to apply for bail but, even if bailed, could be sentenced for child abduction at a later date. The Judge rejected the case that these facts gave rise to an article 13(b) defence. He said:

“Miss Cox submits that, unless the prosecuting and criminal judicial authorities in Florida were to make clear to this court that, if the mother and children were now to return, there would be no arrest, no prosecution and no imprisonment of the mother at any stage, the children would be at grave risk of physical or psychological harm in being forcibly separated from the mother upon arrival and/or in the long term following sentence. I do not accept the submission. Many Contracting States, including England and Wales, buttress the provisions of the Convention with criminal sanctions against parental kidnapping of children out of their jurisdiction. Following the mother's second abduction and prolonged disappearance, it was entirely predictable that criminal proceedings would be launched in Florida; indeed it seems to have been the warrant for arrest pursuant thereto which triggered the international police activity that led to the location of the mother and children in England. There is no reason to think that, in deciding whether to continue with the prosecution following any return of the mother and children, the state prosecutor would exclude consideration of the interests of the children; nor that, in deciding whether to grant bail or, in the event of conviction, whether to sentence the mother to any term of imprisonment, the Floridan judge would fail to pay significant regard to their interests

33. Whilst I fully accept that the approach outlined by Mr Justice Wilson (now Lord Wilson) in that case was the right approach on those facts, each of these case turns on their own particular facts, as the Court of Appeal made clear in the recent case of *Re GP (A Child: Abduction)* [2018] 1 FLR 892. In that case

the Mother was living in Italy when she took the children to England. She had already been prosecuted for an earlier act of child abduction when she moved the child from San Benedetto del Tronto, which is on the Adriatic Coast, and took her to Sommacampagna in northern Italy. Three years later the criminal case came before the court and the Mother was sentenced to 1 year's imprisonment. She was also ordered to pay the father compensation, with a payment on account of €5,000. The mother appealed against her conviction, which had the effect that her sentence was not activated pending the appeal. The Mother then moved with the child to England whilst the appeal was pending, also without the consent of the Father. Her appeal failed and there was somewhat inadequate evidence before the English court about the chances of the Mother being able to get the sentence suspended or being prosecuted for the second abduction. The Judge was unimpressed by the Mother's plea that this case brought the child within article 13(b). He said:

“Every child who is returned to a country from which he has been wrongfully removed must, logically, face the prospect that the abducting parent may be incarcerated. All children bear a burden when a parent serves a custodial sentence. These are part of the inevitable repercussions from which children cannot always be protected. Indeed, the realisation that actions have consequences and that breaches of the law may attract punishment, may be harsh lessons for a child but ones which carry at least some longer term benefits”

34. The appeal to the Court of Appeal was allowed substantially for the reasons as set out by Henderson LJ at §59, namely:

“With the greatest respect to the judge, I cannot escape the conclusion that he was unduly influenced by considerations of comity and the underlying policy of the Hague Convention, combined with his understandable wish not to let the mother profit from her deplorable behaviour, while paying insufficient regard to the predicament which was actually likely to face GP on her return to Italy with her mother and which needed to be considered with some care on the alternative assumptions that the mother would, or would not, be imprisoned”

35. The Court of Appeal then focused on the way in which the High Court should have approached this matter saying:

“60. The question upon which the judge had to focus, as he correctly appreciated, was whether the exception in Art 13(b) had been established by the mother on the evidence before him. If the exception was not established to his satisfaction, it was the judge’s duty to order the immediate return of GP to Italy, subject only to consideration by him of the second (discretionary) exception in the second limb of Art 13. Furthermore, the threshold test in Art 13(b) of a ‘grave risk’ that the return of GP to Italy would ‘expose [her] to physical or psychological harm’, or ‘otherwise place [her] in an intolerable situation’, is

undoubtedly a high one, as the Supreme Court emphasised in Re E (Children) (Abduction: Custody Appeal) [2011] UKSC 27, [2012] 1 AC 144, [2011] 2 WLR 1326, [2011] 2 FLR 758.

61. In order to decide whether this test was satisfied, it was in my opinion necessary for the judge to examine in concrete terms the situation that would actually face GP on her return to Italy. What would happen when she and her mother stepped off the plane? Would her mother be arrested? Where would they go, and what would they live on? Nobody suggests that it would be realistic, or in GP's best interests, for her to go immediately to live with her father in San Benedetto del Tronto, presumably without her mother who as matters now stand could hardly be expected to live under the same roof as the father. It is clear that GP has, or at least has come to have under her mother's influence, unhappy memories of time spent in her paternal grandmother's home; and it would anyway be contrary to Ms Julian's recommendations if GP were to live in her father's custody before careful consideration by the Italian courts of her welfare. All of that would take time, so what is to happen in the meantime?"

36. When this matter came before me in December 2020 there was a considerable dispute between the parties about the way that abduction cases operated under Italian law and the likelihood of the Mother going to prison if she were to be found guilty of this offence. I therefore adjourned this case so that a report from an expert on Italian law could be obtained so that the court could

understand the likely consequences “*in concrete terms*” on EF of his mother’s involvement in the criminal proceedings.

The impact and relevance of the criminal proceedings.

37. A helpful report was provided by an Italian Advocate, Ms Monica Barbara Gambirasio, dated 31 January 2021. The questions asked of Ms Gambirasio were deliberately couched in general terms concerning the way in which the relevant law worked in Italy. Ms Gambirasio was not provided with the papers relating to this particular case and was not asked to speculate what steps the Italian Criminal Court would be likely to take in this particular case. There was no provision in the order for Ms Gambirasio to supplement her evidence by appearing in person at the resumed hearing or for her to be cross-examined on her report. Despite that, the Mother’s counsel sought permission to cross-examine Ms Gambirasio on her report on the day before the hearing. The Father’s counsel argued that it was unnecessary.

38. In the event the Father’s counsel was largely proven to be correct but, in order to be as fair as possible to the Mother, I allowed a short period of oral evidence and cross examination. Ms Gambirasio was able to join the hearing by MS Teams and, through an interpreter, provided further evidence to amplify her report. I am grateful to Ms Gambirasio for making herself available at short notice although, the more she proceeded with her evidence, the more it became clear that the Mother’s case about the likely consequences for her of the criminal proceedings were far removed from the realities of the situation.

39. The first relevant point made by Ms Gambirasio is that a complaining Father cannot “withdraw” a criminal complaint once it has been made. Ms Gambirasio explained that “*the Authorities proceed with a criminal prosecution without the active support by complainant*”. At one stage, one of the complaints made by the Mother was, in effect, that the Father had not taken active steps to withdraw the prosecution. That complaint appears to me to be misconceived because (a) there can be no duty on the Father to do so and (b) even if he did do so, Ms Gambirasio explained that any attempts to do so would be ignored under Italian law as he had no power to require the prosecuting authorities to withdraw the complaint under Italian law.
40. The second point made by Ms Gambirasio is that once the Mother returned to Italy with the child, there would be no legal requirement on her to remain in Italy until the case was heard. She has been given a court date of November 2021 but Ms Gambirasio explained that she would be fully entitled to return to England with EF before then if she could do so either with the Father’s consent or as a result of the order of the Italian civil court. However, having returned, if she were to leave the country again without either the Father’s consent or as a result of the order of the Italian civil court, she may commit a further criminal offence and may aggravate her sentence for the original offence.
41. Thirdly, Ms Gambirasio explained that it is not likely that the Mother would be taken into custody in advance of a trial, especially if she were to

come back to Italy with the child or there was dialogue between the parents to seek to resolve matters.

42. Fourthly, Ms Gambirasio explained that there is a difference between what UK lawyers would understand by “probation” and the Italian system. In Italy a person is entitled to seek an agreement with the prosecutors to serve a period of probation as an alternative to being prosecuted. Thus, as Ms Gambirasio confirmed, the Mother could now approach the prosecuting authorities to negotiate a period of probation as an alternative to being prosecuted. She explained that a common period of probation for a child abduction offence would be in the region of 6 to 8 months. Once a proposed period of probation was agreed with the prosecuting authorities as a way of disposing of the criminal case, the probation order would need to be confirmed by a Judge. She also explained that, even if the matter proceeded to a criminal trial, a sentence of what she described as “testing until proven”, which appears akin to probation, could be imposed. That sentence would not result in the Mother going to prison. Ms Gambirasio said that an approach to the prosecutors to discuss probation could take place whilst the Mother was in England but that the 6 to 8 month anticipated period of probation would have to be served with the Mother in Italy.

43. Fifthly, Ms Gambirasio explained that if the Italian criminal case came to court and was proven, the Judge would be required to impose a sentence of between one and four years imprisonment. However, she explained that a custodial sentence of up to two years would “*most likely be suspended by the Judge*”. She also explained that a higher sentence of up to 4 years “*can be*

served through community sanctions, as probationary assigned by the Judge”.

Thus, her view is that it was unlikely that the Mother would have to serve a sentence of imprisonment. It was put to her by Mr Miller for the Father that it was “*extremely unlikely*” that she would face an immediate custodial sentence. Ms Gambirasio agreed saying that, as she had set out in her report, if the court did impose any sentence of imprisonment “*it will not be a custodial sentence*”. I understood that part of her evidence to be expressing a high level of confidence that, if the case came before the court for sentencing, it would not result in the Mother being separated from EF as a result of an immediate requirement on her to go to prison.

44. Sixthly, Ms Gambirasio explained that the Father could have some influence on the sentence. She said:

“The parent who made a complaint for child abduction against the other parent could always represent to the Authorities the new good relationship between the parents, avoiding the risk of custodial precautionary measures and toning down the criminal responsibility”

45. Various scenarios were put to Ms Gambirasio by Ms Perrins to attempt to paint a picture that the Mother’s conduct might be considered sufficiently heinous that there was a realistic possibility that the Judge might impose a sentence of immediate imprisonment in this case, including the period of time that the Mother has been in the UK with EF and the continuing bad relationship between the Mother and the Father. My overall impression from her evidence is that, whilst these are all matters which a Judge may consider,

she did not move from her position that it was somewhere between unlikely and very unlikely that the Judge would reach the position where an immediate custodial sentence would be imposed, and that there is a great deal that the Mother could do to work with the prosecuting authorities to ensure that she was not subject to an immediate custodial sentence.

46. Seventhly, Ms Perrins was concerned that the criminal court had the right to make an order that custody of the child be transferred from the abducting parent to the other parent. Ms Gambirasio explained that this power only arose in a case where the Judge made an immediate custodial sentence of more than two years. However, she did not think this would be a likely outcome in this case. I also bear in mind that Italy is a signatory to the United Nations Convention on the Rights of the Child and thus any court making such a decision would only do so if the court was satisfied that it was in the paramount interests of the child to make such an order. Whilst I understand the Mother's fears, there is no basis for considering that the Italian Court would be likely to make such an order without having reached conclusion that it was in EF's interests to make such an order. It follows that it would be close to improper for me to refuse to return EF to Italy because of a fear that the Italian Court would act so as to put EF in an intolerable position as a result of exercising this power.

47. Lastly, Ms Perrins expressed a concern that the Father's application for custody in the civil courts would affect the outcome of the criminal

proceedings. That was firmly rebuffed by Ms Gambirasio who explained that the Father's application would not be relevant to the criminal proceedings.

48. I have set out the evidence in some detail because Ms Gambirasio explained how, in general, the Italian courts approach sentencing for the criminal offence of child abduction. I accept her evidence and, as a result, it seems to me that the Mother's case that there is grave risk that she will be subject to a sentence of imprisonment which has to be served resulting in her forced separation from EF is not made out.

49. The Mother, through her counsel, suggested that the Father was not acting properly in continuing to support the criminal proceedings and, in effect, was attempting to use the criminal proceedings as a lever to secure custody of EF. I appreciate that it may seem that way to the Mother but, in my judgment, that is not a fair or accurate characterisation of the Father's position in this case. The better way to consider these matters is that the Father is one of the two parents of this child and is fully within his rights to ask the Italian court to make a decision as to whether the welfare of the child would be better served by the child residing with him or the Mother. I have to assume that that decision will be made by the Italian Court after looking at all the facts and with EF's best interests as the court's paramount consideration.

50. The Mother abducted the child from Italy and thus opened herself to the possibility of being reported to the Italian authorities for the commission of a criminal offence by the Father. She now faces criminal proceedings in Italy as a result of that decision and, in facing those proceedings, must take personal

responsibility for the consequences of her own actions. The Father cannot make those proceedings “go away” and cannot be expected to say anything in her favour to the Italian court which is untrue. Relations between the Mother and the Father in this case are pretty bad at the moment and thus the Father cannot be asked to say otherwise to the Italian court.

51. However, as Ms Gambirasio explained, there are a series of steps that the Mother could take to reduce the possibility that she will face an immediate prison sentence at the hearing in November. I accept that evidence and thus consider that whether the Mother faces a prison sentence or not is very largely in her own hands. If she is prepared to co-operate with the Italian authorities in the period between now and November 2021, I conclude that there is only a small chance that she would face a sentence of immediate imprisonment. The Mother’s case is that it would be intolerable for EF to be separated from her for any period if she were to be sentenced to a period of imprisonment. Assuming for present purposes that this were to be the case, the issue under Article 13(b) of the 1980 Convention is whether the Mother has proved (bearing in mind that the onus of proof is on her) that there is a “grave risk” that this will happen. In my judgment she has not proved that there is a grave risk of such an outcome. If the Mother returns to Italy with EF, she can take steps that will substantially reduce the small chance of her going to prison. It seems to me that, much as she does not want to be in this position, if she returns to Italy it is highly likely that she will take those steps in order to avoid a prison sentence and the consequent separation from her son. I thus do not consider that she has made out her case in relation to article 13(b) on the

grounds that there is a grave risk that she will go to prison as a result of the institution of criminal proceedings.

52. I also do not accept that she has made out her case that she will be stuck in Italy indefinitely as a result of the criminal proceedings and that this will make the situation intolerable for EF. As Ms Gambirasio made clear, any period of probation is likely to be limited to 6 to 8 months or, as an alternative, if a suspended sentence is imposed, it is likely that there will be no requirement on the Mother to remain in Italy during the period of the suspended sentence. Thus, if the Mother persuades the Italian Civil Court that she should have sole custody of her son and should be permitted to return to England with him, I do not consider that there is a grave risk that she will be stuck in Italy because of the criminal proceedings for any extended period that could lead to life becoming intolerable for EF.

Finances and accommodation.

53. Next, the Mother relies on the precariousness of her financial position in Italy and suggests that the extent of the maintenance offered by the Father presents a grave risk that EF will be left in an intolerable position. I do not accept that the Mother has proved her case under article 13(b) on this point for a series of different reasons. First, the Mother, through her counsel, accepted the financial offer made by the Father as part of the negotiations between the parties in December. The Mother's counsel specifically accepted that she was not seeking to go behind that agreement but argued that it would leave EF in

an intolerable position notwithstanding her agreement. That seems to me to be a very difficult position for her to adopt.

54. Secondly, I do not accept that she has proved that she does not speak Italian to a level that would allow her to work in Italy. She has not disclosed details about her current financial position, what she is doing as a job to support herself in England or indeed where she is living. However, she has worked consistently through the marriage and clearly has an ability to earn a living. I do not accept that she has proved that, even given the relatively modest level of financial support offered by the Father, she has shown that there is a grave risk that the situation will become intolerable for EF. I could only have reached that conclusion if the Mother had made full disclosure of her financial position which she has not.

55. Thirdly, the Mother would be returning to a country where she has a significant network of family support. Whilst I do not know precisely where she will live on a short or long term basis on a return, since no plans have been disclosed to the court, given her network of family support in Italy and the various accommodation options that appear to be open to her with members of her family, I do not accept that she has proved that there is a grave risk that her financial or accommodation situation is such that there is a grave risk that the situation will become intolerable for EF in the short or medium term on her return.

56. The Mother complains that the financial undertakings offered by the Father are only expressed to continue for 3 months. This matter will come before the

Italian Civil Court, which is due to hear the Father's custody application, on 2 March. I accept that this means there is an element of uncertainty for the Mother but, as counsel for the Father fairly points out, once the Italian civil court is seized of the matter it will be able to make appropriate orders to protect EF, but will do so on the basis of full disclosure being provided by both parties. That will give the Italian civil court a considerable advantage over this court and means that it is entirely appropriate that financial arrangements should be determined by that court from the earliest opportunity. I thus do not consider that the length of the undertakings offered by the Father brings the case within the scope of article 13(b).

Domestic violence and controlling behaviour.

57. Next the Mother claims that the undertakings offered by the Father are inadequate to protect the Mother against domestic violence and controlling behaviour from the Father if she were to return to Italy. The Mother's counsel summarised her case on this point by saying in closing that the Mother was a victim of "*controlling and coercive behaviour and EF needs to incorporate protections from domestic abuse*". The background here is that the Mother has made serious allegations of sexual assault and controlling behaviour against the Father. Whilst these are strongly denied by the Father, I do not accept that he has shown that these allegations cannot be true. I therefore proceed on the basis that the Mother has shown that the allegations made by her may be true.

58. It is not suggested that the Mother and Father will resume cohabiting and accordingly the opportunities for the Mother to be the victim of any resumed domestic violence or sexual assault will be substantially reduced. Nonetheless, I fully accept that it does not remove the risk entirely. The Father has offered standard non-molestation undertakings but the Mother states that these would be worthless once the Mother returned to Italy because she would not be able to enforce a breach of the undertakings in the UK courts.
59. I do not accept that submission. First, I agree with counsel for the Father that this court can accept undertakings from the Father to this court which, in accordance with article 20 of BIIa are, assuming article 20 of BIIa remains part of UK domestic law, are enforceable in the UK courts. Article 11 of the 1996 Convention provides that protective measure can also be enforceable in the courts of the child's habitual residence up to the time when the home state court is seized of the child's case and decides what provisions to make itself relating to the child: see *Re J (Jurisdiction: Abduction)* [2015] UKSC 70 [2015] 1 FLR 170 at §27. I will consider the law on the extent to which BIIa remains part of UK domestic law and how the 1996 Convention works in the present case below.
60. Secondly, the Father agreed that it could be recorded in an order made by this court that, if the Mother applies for an injunction against the Father in Italy, he will agree to the Italian Court making an interim order preventing him from intimidating, harassing or pestering her, using or threatening violence against her (or encouraging a third party to do so) and preventing him from removing

EF from her care without her permission or the order of the Italian Court. He explains that he would agree to this on the same basis as the undertakings that he offered to the English Court during the trial, namely that the orders would last until the Italian Court can hold a proper hearing to determine disputed facts and whether or not there should be long term protective measures and the provision of such agreement would be on the basis that he has made no admissions, the English Court has not determined any findings in relation to allegations against him and that he reserved the right to dispute any and all allegations in full.

61. I accept, of course, as the Mother's counsel submits that if there is a grave risk of EF having to face an intolerable situation, the source of that risk is largely irrelevant. The question is whether the undertakings offered by the Father mean that EF faces a grave risk of an intolerable situation if he were to return to Italy because of the risks that his mother will face domestic violence from the Father. In my judgment, having regard to a combination of the facts which will arise on the ground when EF returns, the undertakings offered by the Father and the fact that civil proceedings are already in existence in Italy which could be used to protect EF, the Mother has not proved that there is a grave risk of such a situation arising.
62. I thus find that the Mother has failed to prove a case under article 13(b) on the facts of this case, and thus I am obliged to make an order for EF to return to Italy under the 1980 Convention. However, in case I am wrong about this, I

have been asked by the Father's counsel to consider whether the Father is offering adequate protective measures under article 11(4) of BIIa.

63. I have had 2 cases this week in which the question has arisen as to how the Court should approach the question of protective measures in a case which was commenced before 31 December 2020 in the light of the UK's exit from the European Union. I am grateful to counsel in both cases for their submissions on this point which, in the end, reached a consensus as to how this matter should be approached. The following passages are common to both judgments.

64. BIIa is an EU Regulation which has direct effect as law and thus is required to be applied as law by the court of EU member states. This Regulation became part of UK domestic law as a result of provisions in the European Communities Act 1972.

65. Recital 17 provides:

“In cases of wrongful removal or retention of a child, the return of the child should be obtained without delay, and to this end the Hague 1980 Convention of 25 October 1980 would continue to apply as complemented by the provisions of this Regulation, in particular Article 11. The courts of the Member State to or in which the child has been wrongfully removed or retained should be able to oppose his or her return in specific, duly justified cases. However, such a decision could be replaced by a subsequent decision by the court of the Member State of habitual

residence of the child prior to the wrongful removal or retention. Should that judgment entail the return of the child, the return should take place without any special procedure being required for recognition and enforcement of that judgment in the Member State to or in which the child has been removed or retained”

66. Chapter II of BIIa is titled “Jurisdiction”. Article 11 is part of the Jurisdiction chapter, as indicated in recital 17. Articles 11(1) to 11(4) provide:

“Where a person, institution or other body having rights of custody applies to the competent authorities in a Member State to deliver a judgment on the basis of the Hague 1980 Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter “the 1980 Hague 1980 Convention”), in order to obtain the return of a child that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, paragraphs 2 to 8 shall apply.

2. When applying Articles 12 and 13 of the 1980 Hague 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.

3. A court to which an application for return of a child is made as mentioned in paragraph 1 shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law.

Without prejudice to the first subparagraph, the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.

4. A court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague 1980 Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return”

67. The European Union (Withdrawal) Act 2018 (“**the 2018 Act**”), as amended by the European Union (Withdrawal Agreement) Act 2020 (“**the 2020 Act**”), contained provisions for EU law to continue to have effect as part of UK domestic law unless UK statutory provisions were made to the contrary. Section 3(1) of the 2018 Act provides:

“Direct EU legislation, so far as operative immediately before IP Completion Day, forms part of domestic law on and after IP Completion Day”

68. Accordingly, if there were no provisions to the contrary in a statutory instrument, BIIa would remain as part of UK domestic law. Regulation 5(d)

of the European Union (Withdrawal) Act 2018 and European Union (Withdrawal Agreement) Act 2020 (Commencement, Transitional and Savings Provisions) Regulations 2020 provided that “IP Completion Day” was 31 December 2020 for present purposes: see section 25 of the 2020 Act. However, Regulation 3 of the Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/519) provides “*Council Regulation No. 2201/2003 is revoked*”. Thus, BIIa is revoked as from 31 December 2020.

69. The Family Procedure Rules 2010 and Court of Protection Rules 2017 (Amendment) (EU Exit) Regulations 2019 then made changes to the Family Procedure Rules 2010 (“**the 2010 Rules**”) which set out the extent to which EU law continues to apply in relation to *inter alia* family matters. Proceedings relating to child abduction are governed by Part 12 of the 2010 Rules and amendments made by the 2019 Regulations remove any references to the BIIa. However, section 7A of the 2018 Act, as introduced by 2020 Act, gives effect to transitional provisions contained within the UK/EU Withdrawal Agreement to the extent that they refer to retained EU law continuing to have effect. It follows that, as agreed by all counsel, EU law continues to have effect as part of UK domestic law to the extent that the Withdrawal Agreement provides in relation to cases before the courts which fall within a provision of the Withdrawal Agreement.
70. The material parts for present purposes are article 67 of the Withdrawal Agreement which provides:

“Article 67

Jurisdiction, recognition and enforcement of judicial decisions, and related cooperation between central authorities

1. *In the United Kingdom, ..., in respect of legal proceedings instituted before the end of the transition period ..., the following acts or provisions shall apply:*
 - (a) ...
 - (b) ...
 - (c) *The provisions of Regulation (EC) No 2201/2003 regarding jurisdiction*
 - (d) ...”

2. *In the United Kingdom, ..., the following acts or provisions shall apply as follows in respect of the recognition and enforcement of judgments, decisions, authentic instruments, court settlements and agreements:*
 - (a) ...
 - (b) *the provisions of Regulation (EC) No 2201/2003 regarding recognition and enforcement shall apply to judgments given in legal proceedings instituted before the end of the transition period, and to documents formally drawn up or registered as authentic instruments, and agreements concluded before the end of the transition period*
 - (c) ...
 - (d) ...

3. *In the United Kingdom, ... the following provisions shall apply as follows:*
 - (a) *Chapter IV of Regulation (EC) No 2201/2003 shall apply to requests and applications received by the central authority or*

other competent authority of the requested State before the end of the transition period ...”

71. This is not a case within Chapter IV of BIIa and accordingly article 11(4) can only continue to apply if (a) these proceedings were commenced prior to 31 December 2020 (which they were) and (b) the case is within article 67(1)(c), namely “*The provisions of Regulation (EC) No 2201/2003 regarding jurisdiction*”.
72. The words “*provisions regarding jurisdiction*” suggest that the continuing operation of parts of BIIa are perhaps wider than just the articles of the Regulation which give the UK courts jurisdiction on a matter. I say that because, having given the court jurisdiction to hear a particular matter by reason of the continuing application of the Regulation, the court must be both entitled and required to hear and determine the matter in accordance with the relevant set in the Regulation, given that it has jurisdiction to make a decision under the Regulation. I therefore do not agree with the initial position taken by one counsel in one of the cases before me that the court retained jurisdiction in relation to child abduction to make an order for the return of the child under article 11 of BIIa but could not apply that jurisdiction in accordance with the remaining parts of Section 2 of Chapter II of the Regulation, including article 11(4). The better interpretation, as I think counsel was inclined to accept after argument, was that if jurisdiction in relation to the welfare of the child was retained by the home country under article 10 BIIa and jurisdiction to make a return order continued under article 11 BIIa, any return order decision was required to be made by the court in accordance with that jurisdiction, namely

made in accordance with the scheme set out in the remaining relevant provisions in that part of the Regulation.

73. It is also relevant that the whole of Chapter 2 of BIIa is titled “Jurisdiction”. I do not consider that the drafters of the Withdrawal Agreement can have intended to retain part of Chapter II for making these decisions but to have intended to remove the ability of the court to rely on other parts of Chapter II.
74. It thus follows that, in my judgment, where a child abduction case is commenced before 31 December 2020 in relation to another EU state, Chapter II of BIIa continues to have effect as “saved EU law” in relation to that application, and thus any court considering making a return order under Regulation 11(1) must apply the provisions of Regulation 11(4) when considering such a case.
75. Further, I agree with counsel for the Father that this court can accept undertakings from the Father to this court which, in accordance with article 20 of BIIa are enforceable in the UK courts. However, as the Supreme Court explained in *Re J (Jurisdiction: Abduction)* [2015] UKSC 70 [2015] 1 FLR 170 the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children 1996, concluded on 19 October 1996 (“**the 1996 Hague Convention**”), came into force in the UK on 1 November. Article 11 of the 1996 Hague Convention enables this Court to “take any necessary measures of protection” with regard to a child if the court considers

that there is a case of urgency. Lady Hale explained that a child return case will usually require any protection matters to be considered as to secure a “soft landing” for the child which is being returned: see §31. Further the word “urgency” is to be given a wide meaning see §39.

76. Whilst the primary focus of the undertakings offered by the Father is to protect the Mother, they are also designed to protect the child. I am thus satisfied that the undertakings set out above are measures of protection within article 11 of the 1996 Convention. It follows that, once the undertakings set out above are contained within an order of the UK court, these undertakings can be enforced by the Mother in either the UK or Italian courts because they will continue to have effect until the Italian court makes its own decisions as to what, if any, measures should be put in place to protect EF.

77. The Mother asked for the child’s return to Italy to be delayed until the Mother had secured an injunction in the Italian court to protect her along the lines set out above. Given that undertakings given by the Father to the English court are enforceable in Italy for the reasons set out above and that she will have a copy of this judgment providing that to be the case, I cannot see it is justifiable to delay EF’s return for the Italian court to consider and make an order. I am however prepared to indicate that the order should not require the Mother to return with EF within the next 14 days to allow the Mother the opportunity to arrange for an application to be made in the Italian court if the Mother wishes to take that course.

78. I am prepared to accept the undertakings offered by the Father in this case as amounting to adequate arrangements to secure the protection of the child on return and I thus accept that the provisions of article 11(4) of BIIa are satisfied. On that basis, even if I had found that the Mother had succeeded in establishing a case under article 13(b), I would not have been prepared to refuse from making an order to require EF to return to Italy.
79. The Father also seeks the following protective measures under article 11 of the 1996 Convention:
- i) The mother shall deposit her passports and those of the child (together with any travel documentation under which the child can travel across international borders) with the father's Italian Solicitors upon arrival in Italy, such passports to be held to the order of the Italian Court;
 - ii) The mother shall not remove EF from Italy without the permission of the Italian Courts or the advance written consent of the father;
 - iii) The mother must disclose the address at which EF is to live to the father's Italian solicitors, providing always that they do not release this information to the father;
 - iv) The mother must not permit EF to stay overnight at any address other than the one that she notified the father of above; and
 - v) EF must not live outside a 50 mile radius of Rome.
80. Whilst I make no findings about whether the Mother has been a victim of domestic violence and abuse and I accept that she may be able to prove that

case within the Italian court, it is clear that she has shown that she is prepared to mislead the court in order to deceive both the Father and the court in relation to relevant matters. I can therefore see that are grounds to support the Father's concerns that the Mother will return to Italy to comply with this order but then either take herself and EF off to live at an unknown location in Italy or take him to another country such as South Africa. I thus agree that some measure of protection is in EF's best interests. However, I am not prepared to go as far as the Father wishes because the requested measures seem to be more extensive than are reasonably required to protect EF from being taken out of Italy. I am prepared to make the following orders, all of which shall be expressly stated to apply until the Italian court shall make welfare and protective orders relating to EF:

- i) After arriving in Italy, the Mother shall not remove EF from Italy without the permission of the Italian Courts or the advance written consent of the Father;
- ii) The Mother shall deposit her passports and those of the child (together with any travel documentation under which the child can travel across international borders) with the Father's Italian Solicitors within 48 hours of her arrival in Italy, such passports to be held to the order of the Italian Court;
- iii) The Mother must disclose the address at which EF is to live to the Father's Italian solicitors within 48 hours of her arrival in Italy, providing always that they do not release this information to the father

and shall provide them with information on a change of address within 48 hours of any change of address.

- iv) The Mother must not permit EF to stay for more than 3 days overnight at any address other than the current one that she has notified to the Father's solicitors.

81. Finally, having regard to the case as a whole, even if the undertakings were not adequate, a combination of the undertakings offered and the overall policy lying behind the 1980 Convention means that I would not be prepared to exercise any residual discretion I may have to refuse to return EF to Italy.

A suspension of the order.

82. If an order is to be made to require EF to return to Italy, the Mother seeks a suspension of that order. In *BK v NK (Suspension of Return Order)* [2016] EWHC 2496 (Fam) Macdonald J said at §52:

“It would appear that the court, having determined to make an order for summary return in circumstances where none of the defences to the same are made out, has the power to stay or suspend the operation of that order pending steps being taken in the court of the child's habitual residence, which steps may result in the child not returning to the jurisdiction of habitual residence. It would also appear that this power is one to be exercised only in exceptional circumstances”

83. I do not read the term “exceptional circumstances” as meaning that there had to be truly exceptional features of a case before an order would be suspended. It seems to me more that this is an indication that that there would only be a limited number of cases where it would be appropriate to exercise that power: see *Huang v Secretary of State for the Home Department* [2007] UKHL 11 at §20.
84. The problem with the Mother’s application for suspension in this case is the lack of detail she has chosen to put before the Court about her and EF’s present circumstances in England. The cases where the power to suspend has been used in the past all concern very particular circumstances where the child’s needs are sufficiently different from normal cases that his or her life in the UK should not be disrupted by a move back to a home state only to be followed by an anticipated move back to the UK. In this case the Mother has chosen not to put full details of her life in the UK before the Court and in particular there are no details about EF’s life in the UK and how that would be disrupted if he were return to Italy.
85. In the absence of full disclosure, I decline to exercise the “exceptional” discretion to suspend an order to require EF to return to Italy. It seems to me that, sooner or later, the Mother will have to engage with the Italian authorities investigating her abduction and that it is in EF’s interests that she does so as soon as possible so that an arrangement can be agreed which keeps her out of prison. The Mother has not engaged with the Italian authorities investigating her abduction to date and it seems to me that she is unlikely to do so until she

goes back to Italy. It seems to me that it would be against EF's interests to delay that engagement and thus suspending the order would not be in his interests.

Conclusion.

86. I will therefore make an order in accordance with article 12 of the 1980 Convention to require the return of the child forthwith to Italy. I would be grateful if counsel for the Father were to draft a suitable form of order and to provide a copy to the Mother for her comments on the terms of the order prior to passing it to me. The delays in resolving this matter due to the instruction of the Italian legal expert probably mean that the Mother will not return in time to be able to attend the directions hearing before the Civil Court on 2 March 2021 but Hague Convention proceedings should be resolved within 6 weeks and thus, after the 14 day period I have indicated above, the order should provide that EF should return to Italy as quickly as it can be arranged.