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Case No: FD23P00261

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24.11.23

Before :

Mrs Justice Morgan

- -

Between :

XK	**Applicant**
- and -	
JY	**Respondent**

- -
- -

Katharine Bundell (instructed by **Ben Hoare Bell LLP**) for the **Applicant**
Alex Aspinwall (instructed by **Birmingham Legal Ltd)** for the **Respondent**

Hearing dates: 29 and 30 August 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 24.11.23 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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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.

Approved Judgment

Mrs Justice Morgan:

1 By an application dated 22nd May 2023 and made pursuant to Article 12 of the Hague Convention on the Civil Aspects of International Child Abduction 1980, the applicant (who will be referred to in this judgment as 'the father') seeks the summary return of a child, ZK aged 5 years and 8 months, to Slovakia. The respondent to the application is ZK's mother (who will be referred to as 'the mother'). Both parties and the child are Slovakian nationals. The parents formed a relationship and lived together from 2017. ZK, who is their only child, was born later that year. They continued to live together with ZK until a date in March 2023. The Mother says it was 7th March, the father that it was the 15th. On the day the Mother left the home taking ZK with her, she went to attend the Christening of a cousin's child.

2 The Mother did not return home with ZK after the Christening. Neither did she keep to what the father says were arrangements to meet for such a return. Instead she removed ZK from Slovakia and brought him to England. She arrived in England on 23rd March.

3 At this hearing the Father has been represented by Ms Bundell, the Mother by Mr Aspinwall. Each had provided in advance of the hearing excellent skeleton arguments setting out their written arguments which they then amplified with skilled oral submissions. I have been very much assisted by their diligence.

4 The procedural history following the application may be summarised without unnecessary elaboration. Location orders were made by Mr Dias KC on 24th May 2023 and executed the next day. On 19th June Theis J made an order extending the time for the Mother's defence and listing the matter for a 2-day final hearing today. It was certified fit for vacation business since there was and remains a consensus that a decision must be made for ZK before the start of the school term – which is in September both in Slovakia and in the UK. Those representing the Mother had indicated that she would intend to raise an Article 13 b) defence and that permission would be sought for a part 25 application for expert assessment. Accordingly, Theis J also made provision for any such application to be considered at a directions hearing on 12th July 2023. The application was refused by Francis J on that day but he case managed further to ensure an effective hearing. Although there had been some slippage of compliance with the dates by which evidence was to be filed, Counsel had at some personal inconvenience ensured that this did not derail matters and had focused on the issues which remained.

5 By the time the matter came on for hearing today there was much that was no longer in dispute. The following salient points were agreed:

i) That the father had and was exercising immediately before the Mother left with ZK rights of custody
ii) That the child's Habitual Residence is in Slovakia
iii) That the removal of ZK was a wrongful removal
iv) That ZK is retained in England and Wales without his father's consent
v) That the father had issued proceedings for child arrangements in Slovakia within which proceedings decisions for ZK's future including any cross application made by the mother for relocation can be made. The proceedings are stayed pending this decision and, it appears have not yet been served on the Mother.

It was common ground also that this was not a case in which it was necessary to hear oral evidence but that it should be determined on submissions. A preliminary application which had been heralded by the father for the admission of additional material was not pursued.

6 The submissions in support of the Mother's defence to a summary return were structured to demonstrate that the Article 13 b) exception applies here and that therefore to direct a return would place ZK at grave risk of exposure to physical or psychological harm or would otherwise place him in an intolerable situation. The arguments advanced on her behalf had their roots in her allegations that she had been the victim of Domestic abuse and violence from the father and that ZK had been present during those episodes. It will be necessary to examine that aspect of her case later in this judgment. The making of those allegations however engages the court's responsibility to consider participation directions and so I raised explicitly with Mr Aspinwall the question of special measures which I noted had been recorded as being required by Francis J in his order. There having been such a recording it caused me some disquiet to see none obviously in place. Having canvassed the matter with Counsel I was assured that instructions had been taken and there was nothing asked for by way of special measures at this hearing. I was told that there had been some personal contact between the parties outside the court which had been without difficulty. My own observation as well as that assurance did not lead me to assess there as being the need for me to take any steps in respect of the mother's participation at this hearing. Although naturally, I kept that aspect under review

The Applicable Legal Framework

7 Unsurprisingly there was no dispute as to the legal principles to be applied. I agree with and largely adopt that which is set out by counsel in their respective documents.

Hague Convention 1980

8 Article 3 of the Convention concerns habitual residence: it is agreed that ZK and his family were habitually resident in Slovakia before removal.

9 Article 5 of the Convention concerns the exercise of custody rights. The father is registered as ZK's father. It is undisputed that he was exercising custody rights before removal .

10 Article 12 of the Convention provides in mandatory terms:
"*Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith ....*"

11 The only relief from return pursuant to Article 12 is where one of the exceptions apply. The Mother invites me to find that Article 13(b) exception applies here and then to go on to exercise discretion to refuse return:
"Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that ... 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."

12 Counsel have each referred me to the leading judgments in which the Supreme Court has considered the 13 b defence: *In re E (Children) (Abduction Custody Appeal) [2011] UKSC 27* and *Re S (Abduction : Article 13 (b) Defence) [2012] UKSC 10.*
Lord Justice Baker in *KG v JH/ Re IG [2021] EWCA Civ 1123* sets out at paragraph 46 a detailed summary, making reference to the judgment of Moylan LJ in *Re A (Children)*

(Abduction: Article 13b) [2021] EWCA Civ 939. In particular I am reminded by reference to his analysis, of the approach the court should take to consideration of allegations made by the mother in support of the defence. Mr Aspinwall readily concedes that I am not conducting a fact-finding hearing but as he couched it in his submissions that I must consider the potential for what the Mother alleges to establish the grave risk. Ms Bundell, whilst expressing her client's steadfast denial of the truth of any of the allegations levelled at him, likewise recognised on his behalf that the exercise is not one in which the court will interrogate the evidence in such a way as to permit her to advance a case to exonerate him. Thus each invited my close attention to the following passage of the judgment:

> *"46……I do not intend to add to the extensive jurisprudence on this topic in this judgment, but merely seek to identify the principles derived from the case law which are relevant to the present appeal.*
>
> *47.The relevant principles are, in summary, as follows.*
>
> *(1) The terms of Article 13(b) are by their very nature restricted in their scope. The defence has a high threshold, demonstrated by the use of the words "grave" and "intolerable".*
>
> *(2) The focus is on the child. The issue is the risk to the child in the event of his or her return.*
>
> *(3) The separation of the child from the abducting parent can establish the required grave risk.*
>
> *(4) When the allegations on which the abducting parent relies to establish grave risk are disputed, the court should first establish whether, if they are true, there would be a grave risk that the child would be exposed to physical or psychological harm or otherwise placed in an intolerable situation. If so, the court must then establish how the child can be protected from the risk.*
>
> *(5) In assessing these matters, the court must be mindful of the limitations involved in the summary nature of the Hague process. It will rarely be appropriate to hear oral evidence of the allegations made under Article 13(b) and so neither the allegations nor their rebuttal are usually tested in cross-examination.*
>
> *(6) That does not mean, however, that no evaluative assessment of the allegations should be undertaken by the court. The court must examine in concrete terms the situation in which the child would be on return. In analysing whether the allegations are of sufficient detail and substance to give rise to the grave risk, the judge will have*

to consider whether the evidence enables him or her confidently to discount the possibility that they do.

(7) If the judge concludes that the allegations would potentially establish the existence of an Article 13(b) risk, he or she must then carefully consider whether and how the risk can be addressed or sufficiently ameliorated so that the child will not be exposed to the risk.

(8) In many cases, sufficient protection will be afforded by extracting undertakings from the applicant as to the conditions in which the child will live when he returns;

(9) In deciding what weight can be placed on undertakings, the court has to take into account the extent to which they are likely to be effective, both in terms of compliance and in terms of the consequences, including remedies for enforcement in the requesting State, in the absence of compliance;

(10) As has been made clear by the Practice Guidance on "Case Management and Mediation of International Child Abduction Proceedings" issued by the President of the Family Division on 13 March 2018, the question of specific protective measures must be addressed at the earliest opportunity, including by obtaining information as to the protective measures that are available, or could be put in place, to meet the alleged identified risks.

48. *In his judgment in the recent case of Re A, Moylan LJ (at paragraph 97) gave this warning about the failure to follow the approach set out above in paragraph (4):* "*if the court does not follow the approach referred to above, it would create the inevitable prospect of the court's evaluation falling between two stools. The court's "process of reasoning", to adopt the expression used by Lord Wilson in Re S, at [22], would not include either (a) considering the risks to the child or children if the allegations were true; nor (b) confidently discounting the possibility that the allegations gave rise to an Article 13(b) risk. The court would, rather, by adopting something of a middle course, be likely to be distracted from considering the second element of the Re E approach, namely "how the child can be protected against the risk" which the allegations, if true, would potentially establish."*

13 I have held in my mind this analysis when thinking about the question of grave risk of harm to ZK here.

14 Ms Bundell relied also on the very recent consideration by Mr Dias KC in PvO [2023]EWHC 2128 to the summary by MacDonald J in *E v D* [2022] EWHC 1216 (Fam) and to the emphasis on the high bar of the defence:

" 29. *In E v D [2022] EWHC 1216 (Fam) MacDonald J, provided a summary of the law 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) [2012] 1 AC 144. 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 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, in principle, such anxieties can found the defence under Art 13(b).

30. In Re E, the Supreme Court made clear that in examining whether the exception in Art 13(b) has been made out, the court is required to evaluate the evidence against the civil standard of proof, namely the ordinary balance of probabilities whilst being mindful of the limitations involved in the summary nature of the Convention process. Within the context of this tension between the need to evaluate the evidence against the civil standard of proof and the summary nature of the proceedings, the Supreme Court further made clear that the approach to be adopted in respect of the harm defence is not one that demands the court engage in a fact-finding exercise to determine the veracity of the matters alleged as grounding the defence under Art 13(b). Rather, the court should assume the risk of harm at its highest and then, if that risk meets the test in Art 13(b), go on to consider whether protective measures sufficient to mitigate harm can be identified.

31. The methodology articulated in Re E forms part of the court's general process of reasoning in its appraisal of the exception under Art 13(b) (see Re S (A Child) (Abduction: Rights of Custody) [2012] 2 WLR 721), and this process will include evaluation of the evidence before the court in a manner commensurate with the summary nature of the proceedings. Within this context, the assumptions made with respect to the maximum level of risk must be reasoned and reasonable assumptions based on an evaluation that includes consideration of the relevant admissible evidence that is before the court, albeit an evaluation that is undertaken in a manner consistent with the summary nature of proceedings under the 1980 Hague Convention.

32. In determining whether protective measures, including those available in the requesting State beyond the protective measures proposed by one or both parties, can meet the level of risk reasonably assumed to exist on the evidence, the following principles can be drawn from the recent Court of Appeal decisions concerning protective measures in Re P (A Child) (Abduction: Consideration of Evidence) [2018] 4 WLR 16 , Re C (Children) (Abduction: Article 13(b)) [2019] 1 FLR 1045 and Re S (A Child) (Hague Convention 1980: Return to Third State) [2019] 2 FLR 194:

i) The court must examine in concrete terms the situation that would face a child on a return being ordered. If the court considers that it has insufficient information to answer these questions, it should adjourn the hearing to enable more detailed evidence to be obtained.

ii) In deciding what weight can be placed on undertakings as a protective measure, the court has to take into account the extent to which they are likely to be effective both in terms of compliance and in terms of the consequences, including remedies, in the absence of compliance.

iii) The issue is the effectiveness of the undertaking in question as a protective measure, which issue is not confined solely to the enforceability of the undertaking.
iv) There is a need for caution when relying on undertakings as a protective measure and there should not be a too ready acceptance of undertakings which are not enforceable in the courts of the requesting State.
v) There is a distinction to be drawn between the practical arrangements for the child's return and measures designed or relied on to protect the children from an Art 13(b) risk. The efficacy of the latter will need to be addressed with care.
vi) The more weight placed by the court on the protective nature of the measures in question when determining the application, the greater the scrutiny required in respect of their efficacy.
33.With respect to undertakings, what is therefore required is not simply an indication of what undertakings are offered by the left behind parent as protective measures, but sufficient evidence as to extent to which those undertakings will be effective in providing the protection they are offered up to provide.

15 I have had regard to that which emerges from the *HCCH's Guide to Good Practice: Part VI Article 13(1)(b)* and specifically to that part of the guidance which appears at [44] with the reminder that *Specific protective measures should only be put in place where necessary strictly and directly to address the grave risk. They are not to be imposed as a matter of course and should be of a time-limited nature that ends when the State of habitual residence of the child is able to determine what, if any, protective measures are appropriate for the child* .

16 I accept the submission that unless the contrary is proved, the presumption is that the administrative, judicial and social service authorities of a requesting State are equally adept in protecting children as they are in the requested State. See *Re H (Children) (Child Abduction: Grave Risk) [2003] EWCA Civ 355* and *G v D (Art. 13 (b):Absence of Protective Measures) [2020] EWHC 1476 (Fam) esp. para 39)***.** To establish the contrary requires "*most persuasive compelling evidence"* to support the contention *F v M [2008] 2 FLR 1263***.** It follows that here, in the event that I come to consider the availability of protective measures in Slovakia, I will take careful note of the details which have been provided from the Central Slovak authority via ICACU.

Discussion

17 Mr Aspinwall methodically took me to the allegations made by the mother of separate and distinct episodes of violence representing, he submitted, a pattern of abuse over time and one of escalating severity. The seriousness of the incidents and so, it follows he pointed out, the gravity of the risk was exacerbated by the fact that ZK was present on each occasion. At the time of the first, ZK was not yet a year old. At the time of the most recent he had recently turned five. The mother relies on photographs which she says support her account of the most recent incident, the marks and bruises which they show being at least partly consistent with the account she gives. She relies also on documentary evidence of a report she made to the police of that last event.

18 The allegations on which Mr Aspinwall focussed his main reliance are these

i) September/October 2018- Mother alleges Father hit her on the arms and legs for the first time. She says that ZK became upset upon hearing Mother shouting before Father slapped her on the face.

ii) On 9 June 2019- Mother alleges Father hit her at a barbeque given by her family. She further alleges that he degraded her by calling her fat before dragging her by her hair and slapping her face. She says he had been drinking before the incident took place.

iii) On an undated occasion (but later than the previous allegation) she alleges that there was abuse occurring at the paternal grandmother's home. She alleges that the father was again drinking before dragging her to the floor and hitting her. On this occasion she says that his brother intervened to stop the abuse.

iv) On 31 May 2020- Mother alleges that the father shouted and fought with a friend of the Mother. This escalated and he pushed Mother to the ground. Again, this she alleges followed a time where the father had been drinking.

v) The most recent allegation is dated 20th February 2023. The mother alleges that on this occasion the Father used both hands to choke and strangle her before kicking her thighs and arms. She says that she was in fear for her life. For this incident she has provided photographs of injuries which she says were sustained as a result and describes the injuries making it difficult to walk for three days. This incident was reported to the police and she had provided evidence of a summons in consequence.

19 I remind myself that I am not determining whether those allegations are true or not and also that they are allegations which the father denies. In his otherwise powerful submissions Mr Aspinwall strayed unwisely close to inviting me to reverse the burden of proof in commenting as he did that the father had provided no credible explanation to account for the injuries which he denied causing. His better point however was that if the mother's account were true – or even largely true – then the pitch of the violence to cause the physical injuries meant that were ZK to be returned to a situation where he would or might once again witness violence to one parent from the other then that could not but be a grave risk of psychological harm and furthermore a situation which would properly be characterised as intolerable. I note that in respect of the sexual abuse to which the mother alleges the father subjected her, she does not suggest that ZK was present. Taken together with her allegations of physical abuse however, it seems to me that it is right to consider as part of the risk to ZK the prospect of his having an awareness of it even if not fully cognisant. It does not seem sensible to me to consider it as being materially different in terms of psychological harm from the child who hears violence or abuse between his parents in the next room.

20 Even allowing for the fact that the bar is set high for the first limb of the 13 b) defence, the establishment of a grave risk, I am satisfied that the Mother who bears the burden, has established it. I agree with her Counsel that when I consider the nature detail and substance of the allegations they are persuasive. Were ZK to be returned to a situation in which he were once again – and at a time he is older and more aware – to be exposed to domestically violent environment that represents in my judgment a grave risk of harm to him. I am less convinced that there is a grave risk of harm to him by reason of his mother becoming unable to provide him with care were she to return with him to such circumstances, because of the effect on her own mental health and stability. I recognise that there is a possibility but the evidence before me is not such as to establish it. If however I am wrong about that, I am satisfied that when I come on to consider the protective measures which may be available to protect ZK on return, it will be necessary as part of that protection to consider how his relationship with his mother and her care for him could be preserved.

21 The Mother alleges also financially abusive behaviour from the father setting out details in her statement. The father by way of response provides evidence of his having provided financial support albeit that the evidence relates to recent months. The allegations made by the mother of financial abuse – as distinct from those which relate to other forms of

domestic abuse and violence are not ones on which I would have been prepared to regard the first limb of the 13 b) defence, the establishing of the grave risk of harm made out. If there is wider consideration in a court which is concerned with fact finding, I accept that it may be regarded as necessary, if it is possible, to determine where the truth lies between the parties.

22 I have taken a cautious approach to Mr Aspinwall's submissions about the mother's allegations that the father's behaviour represents a pattern of coercive and controlling behaviour and that consistent with H-N and others I should step back and look at whether a pattern emerges. I see why he makes such a point and I would have no hesitation in accepting it were I conducting a fact-finding hearing but I am not. Accordingly I have reminded myself that to the extent that a pattern of behaviour is relevant it is as part of what may potentially be the picture as I assess risk if the allegations by the mother are true. He further submits that the fact that the Father shows no remorse is something that I should regard as significant. It does not seem to me that that is something to which I can reasonably attach weight without a determination rather than a consideration of the allegations against him. I hold in mind that on the father's case he shows no remorse because it is an allegation he denies. In any event, in the light of the conclusions I have reached in respect of the grave risk of harm to ZK, it is unnecessary for me to consider further these aspects.

23 I agree with the submission made by Ms Bundell in opening that in the circumstances of this case the focus must be not on the gravity of the allegations made but on the extent to which the protective measures available are or are not sufficient to meet the risk of harm. She does not of course accept that there is a grave risk of harm nor does she acknowledge that the first limb is made out but was quite right to approach the case with a degree of reality on this aspect. As I turn now to consider the protective measures, I consider both the undertakings that the Father is prepared to give and the protective measures that the evidence obtained via ICACU from the Slovak Central Authority demonstrates are available.

24 The father offers undertakings:

i) To fund airline tickets for Mother and ZK to back to Slovakia
ii) Not to attend the airport when Mother and ZK return
iii) Not to support any prosecution or civil action in relation to ZK's wrongful removal from Slovakia

iv) Not to remove ZK from his mother's care once returned to Slovakia pending any decisions made by the Family court there (save for any contact by prior arrangement in writing)

v) Not to remove ZK from school or from the care of any person to whom the mother has delegated his care (save for any contact by prior arrangement in writing)

vi) Not to attend at any property at which the Mother and ZK are living (save by prior invitation and arrangement in writing for the purposes of contact with ZK)

vii) To vacate the former home so that the mother and ZK may have sole occupation of it or in the alternative and at the mother's election to meet the cost of a rental property

viii) To continue to make payments at the present rate for the financial support pending any decisions by the Slovakian court

ix) Undertakings in standard non molestation forms

25 So far as the non-molestation undertaking is concerned the father through counsel's submissions appeared to quibble as to whether he was prepared to agree not to contact the mother. This it appeared came from the fact that the parties have recently had, encouragingly, positive communications with each other to arrange contact with ZK. I did not find Ms Bundell's submissions on this point attractive when I asked whether the father would be prepared to give an undertaking that he would not ***initiate*** contact. It seemed to me that those submissions were indicative of the father seeking to split hairs about what would or would not be considered initiation by reference to for example the time that might elapse between messages. Although the father's hesitation in this respect gave me pause for thought, it is my view that if the need arises it should be possible for a suitably worded undertaking to be given which provides reassurance to the mother should there be a return, pending the Slovak court making decisions.

26 Turning now to the details of the protective measures available in Slovakia provided via ICACU, in summary the following emerged from the written evidence before me:

i) Emergency orders within 30 days of application (or within 24 hours in case of urgency)

ii) Orders restricting access to a residence; orders to protect a victim of violence; restricting contact with or proximity to an individual where the victims physical or mental well-being would be endangered by the actions of an alleged perpetrator. I

accept on the evidence before me that these are akin to the orders available in this jurisdiction in for example Family Law Act terms.

iii) The evidence from the Slovak Central Authority further indicated that *Slovak courts are mandated to recognise and enforce foreign orders relating to the safeguarding of children*

iv) There are mechanisms for the enforcement of protective orders or undertakings by application or on the court's own motion

v) There are appeal processes in relation to enforcement

vi) The court in the district where the child resides (or would reside on any return) has jurisdiction

vii) The Slovak Courts recognise and enforce both the Hague Convention and the Lugano Convention 2007

27 I am satisfied on the evidence that the protective measures available in Slovakia are at a high level – congruent with that which would be available in this jurisdiction. Ms Bundell makes the submission that it is hard to see what else could be offered by Slovakia in terms of protective measures available. I agree. I am satisfied that the protective measures available will safeguard ZK's position and enable him to remain in his mother's care whilst decisions are made for him. I agree with the parties' approach that he should be able to start school at or near the start of the new term. It is also the case that within the proceedings already issued, it is open to the mother to make an application for relocation permanently to the United Kingdom if that be her wish. Although Mr Aspinwall has sought valiantly to persuade me that I should give significant consideration to the fact that she would be at a disadvantage were she not able to afford representation in those courts, I reject his submissions on that point for the following reasons: first she has access to justice by access to the proceedings there, the fact that she may not have representation does not prevent that and – as is often the case in our own courts she may be a litigant in person but lack of legal representation is not a basis in the circumstances of this case to find that the exception is met; second that consideration may be given to coordinating with the relevant Central Authorities and/or by judicial liaison to make arrangements if possible for access to court proceedings soon after return; third following on from the hearing by agreement between counsel I was sent information published on the European e justice portal as to a route of access to legal aid in the Slovak courts which whilst not providing certainty at least indicated a possibility. For

sake of completeness, had I not been sent that link I would not in any event have regarded the question of representation as persuasive.

28 I have arrived at the conclusion having read carefully all of the evidence filed heard and read the able and detailed oral and written submissions that whilst Mr Aspinwall has established that there is a grave risk of harm, the protective measures available within the home state and the undertakings offered are more than sufficient.

29 In reaching this conclusion, I have reflected on how the question of the mother's application for settled status here assists if at all. Ultimately I have concluded that whilst it may well be of assistance to a Slovak Court considering an application for relocation it has not assisted me. On the evidence, what I know is that the mother has made such an application; there is no timescale by which it will be determined, nor any indication of outcome. She is at present here on a 6-month visa which would expire in September, and it may be –though the evidence is far from satisfactory – that the effect of making the application for settled status is that she may in immigration terms remain whilst it is determined. None of that however affects my decision that the appropriate course for me to take is to direct that ZK should be returned summarily to his country of habitual residence. The mother has always been clear that if such is directed she will accompany him. That of course can only be in his interests and she having given that indication it is unnecessary for me to consider taking steps to have him return to his father alone. I do not doubt for a moment that there will be court proceedings in the Slovakian courts to make decisions for his future living arrangements but that is the proper forum for those decisions.

30 I express my thanks to Counsel, neither of whom could have done more for their respective clients' cases, and I invite them to agree an order to give effect to the decision I have made.