Neutral Citation Number: [2025] EWHC 450 (Fam)

Case No: FD24P00588

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 February 2025

Before :

THE HONOURABLE MR JUSTICE GARRIDO

- -

Re K (Children) (Application for return orders: Concurrent asylum claims)

Between :

Kent County Council	**Applicant**
- and –	
(1) EK	
(2) SK	
(3) MIK & (4) MAK **(By their Children's Guardian)**	**Respondents**
The Secretary of State for the Home Department	**Intervener**

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Edward Devereux KC and Edward Bennett (instructed by **Bevan Brittan LLP**) for the **Applicant**
Charlotte Gilroy KC, Ruth Kirby KC, **Charlotte Baker,** and **Michelle Knorr** (instructed by **Osbornes Law LLP**) for the **1st & 2nd Respondent**
Henry Lamb (instructed by **Creighton & Partners LLP**) for the **3rd and 4th Respondents**
Alexander Laing and **Paul Skinner** (instructed by the **Government Legal Department**) for the **Intervener**

Hearing dates: 21, 22 and 23 January 2025

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Approved Judgment

This judgment was handed down remotely at 14:00 on 28th February 2025 by circulation to the parties or their representatives by e-mail.

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THE HONOURABLE MR JUSTICE GARRIDO

This judgment was delivered in private, and a transparency order is in force. 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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

The Honourable Mr Justice Garrido:

Introduction

1. At the heart of these family proceedings are two young children aged 6 and 9. When they travelled here from France at their parents' instigation on 19 July 2024, they undertook a traumatic and potentially fatal journey across the English Channel on a small boat. They travelled without their parents, who it is said became separated from the children as a result of a violent incident and were therefore left behind in France.

2. On arrival, they were placed with foster carers pursuant to Kent County Council's (Kent) obligations under section 20, *Children Act* 1989. It was anticipated by the local authority that the parents would follow the children very shortly afterwards by the same means. In this way, had the parents survived the crossing, the family would have been reunited in England and accommodated together, at least pending the outcome of their inevitable claims for asylum.

3. However, the parents did not arrive in England. Nor did they exercise their parental responsibility to require (and at the date of this hearing, have still not required) Kent to return their children to them (see subsections 20(7) and (8), *Children Act* 1989). Nor did Kent decide to do so, either by seeking an order of this court or otherwise. Instead, on 21 August 2024, the parents applied for entry clearance to the UK to join their children here and Kent decided to await the outcome of that application. By then, the children, as unaccompanied minors, were deemed to have made their own applications for asylum.

4. Following their applications for entry clearance, the parents also sought admission to the UK as a form of interim relief pending the outcome of an application for judicial review made by them on 27 September 2024. The resulting tribunal orders were subject to appeal by the Secretary of State for the Home Department (SSHD) and the Court of Appeal handed down judgment on 20 December 2024 (see *SSHD v EK and Others* [2024] EWCA Civ 1601). In essence, the Court set aside tribunal decisions requiring the SSHD to admit the parents to the UK and permitted her to delay any decision on entry clearance until at least after the conclusion of these family proceedings. In doing so, at paragraph 54 Lord Justice Underhill VP said:

> "It is worth repeating that the initial separation is not of [the SSHD's] making: on the contrary, she is having to address the consequences of a situation created by the illegal and dangerous activities of the people smugglers – and, it has to be said, by the parents in seeking to take advantage of those activities rather than seeking asylum in Belgium or France."

5. Nevertheless, the SSHD did not await the outcome of these proceedings. She refused the parents' application for entry clearance on 30 December 2024, and they remain in France from where I am told they intend to challenge that decision, a timescale for the conclusion of which is not yet clear but likely to be measured in months. The parents were unable to confirm to the Upper Tribunal at a hearing on 9 January 2025 that they intend to expedite their application to the First-tier Tribunal to challenge the entry clearance refusal. I was told that they will await the outcome of these proceedings before deciding whether expedition is necessary, resulting in further delay.

6. The parents have still not, it seems, applied for asylum in France, although there is no dispute that they would be entitled so to do. On this point, the Court of Appeal observed at paragraph 57 of *SSHD v EK and Others*:

> "Even if… their belief that France is not a safe country is genuine, the evidence on which they rely falls far short of establishing that that is the case, as they may come to appreciate."

7. The net result is that these traumatised children have been separated from their parents for six months. If nothing is done, or is capable of being done, by the family court, their separation may well continue for another six months, or conceivably longer, as the parents continue to pursue entry to the UK.

8. In a belated attempt to facilitate an earlier reunification of the children with their parents, Kent applied to this court on 28 November 2024 for "such orders as are appropriate under the inherent jurisdiction, including an order for a return of the children to France." An urgent hearing on 29 November was accommodated, when I listed a final hearing on the then earliest available dates of 18-20 February 2025 and a further directions hearing on 10 December 2024.

9. On 6 December 2024 on paper, I refused an application by the parents to adjourn the directions hearing. They had submitted in essence that the case was not urgent, and the first hearing had been procedurally unfair. It was not sufficiently clear to me why, from a purely child welfare perspective, the parents would wish to delay consideration by this court of the earliest possible reunification of their family and I applied the well-known maxim that delay is inimical to the welfare of children.

10. By 10 December, I had been able to adjust my diary to bring forward the final hearing by four weeks to 21-23 January 2025. Unfortunately, those representing the parents submitted forcefully that their clients' case could not be adequately prepared in time for that earlier date and so I was left with little alternative but to maintain the original listing.

11. However, it also became apparent at that hearing that three legal issues would require determination: (i) The basis for the court's jurisdiction; (ii) Whether Kent should be given permission to make the application pursuant to s100(4) *Children Act* 1989; and (iii) Whether any order to reunify the family in France can be implemented pending the determination of the children's asylum applications. It seemed to me that points (i) and (ii) were preliminary issues that should be heard on the January dates, and therefore also it would be convenient to hear the third legal issue at the same time, even though potentially it only arises at the implementation stage after any welfare decision has been made.

12. At the pre-hearing review on 15 January 2025, the basis of the court's jurisdiction was agreed between the parties and the parents abandoned (rightly, in my judgment) their objection to Kent being permitted to make the application, but that still left the third issue on which the parents disagreed with all other parties. Given the potential for the point to have wider significance, I was persuaded to hear full argument at this hearing and have done so.

13. I note that there is still not a firm commitment by France to permit the children to return to their parents' care. A letter sent on behalf of the SSHD to the parties on the first day of this hearing states that the children could travel to France with a letter issued by the Home Office provided that the 'welfare process currently underway between [Kent] and [the French local child welfare authority]' is completed. If, by that, it is meant the completion of a welfare assessment being undertaken in France, I am told that could take up to 3 months. Kent has requested that the local welfare assessment be expedited, and a response is awaited. As the Court of Appeal observed in *SSHD v EK and Ors* at paragraphs 39, 42, 57 and 61, the parents also have their own role to play in ensuring expedition.

14. Meantime, the SSHD is yet to determine the children's claims for asylum, and a timescale for when that may happen was not provided at this hearing, despite my request. I note that the expedited process that is supposed to be engaged for children subject to applications under the 1980 *Hague Convention* envisages determination of such claims within 30 days. Arguably, these children's claims require the same treatment.

The parties' positions

15. In *G v G* [2021] UKSC 9, [2021] 2 WLR 705, that part of the Supreme Court's judgment that is relevant to the question that I must determine is summarised in the headnote as follows:

> "(2) That, since the factual findings made by a court in proceedings under the Hague Convention were neither made by the determining authority for the purposes of Council Directive 2005/85 nor pursuant to a process which complied with the examination procedure in that Directive, they did not bring to an end the protection against refoulement which article 7 of the Directive conferred on an applicant for asylum; that, therefore, where there were parallel applications for asylum and under the Hague Convention, the protection conferred by article 7 of the Directive continued until the Secretary of State, as determining authority, had determined the asylum application; that, further, the obligation in article 7 bound the state in its entirety so as to preclude any emanation of the state, including the High Court, from implementing a return order so as to require an asylum applicant to leave the United Kingdom before the Secretary of State had determined their asylum application; that, moreover, an asylum applicant could also rely on paragraph 329 of the Immigration Rules to prevent their removal from the United Kingdom pursuant to a return order; and that, accordingly, a return order under article 12 of the Hague Convention which had been made in respect of a child who had applied for asylum, or was to be treated as having applied for asylum, could not be implemented until the child's asylum application had been determined by the Secretary of State (post, judgment of Lord Stephens JSC, paras 128—134)."

16. A number of matters are uncontroversial before me. First, the prohibition said to exist by the Supreme Court in respect of implementing return orders pursuant to the 1980 *Hague Convention* also applies to return orders under the High Court's inherent jurisdiction. Therefore, if the decision in *G v G* remains good law, the preliminary issue which I must decide is answered by binding authority.

17. Second, the welfare assessment can and should be undertaken by me in exercise of the inherent jurisdiction in any event, even if just to inform the immigration law decision making process and to await its outcome before considering implementation.

18. Third, it is well settled that the SSHD has sole responsibility in matters of asylum and immigration and all decisions relating to claims for asylum fall within her exclusive powers. The family court cannot trespass on the SSHD's function in that regard. When making a return order, however, the Family Division is exercising a different power to safeguard a child's welfare by promoting their best interests or complying with the obligations under the 1980 *Hague Convention*. (See paragraphs 163 and 164 of the judgment in the Supreme Court in *G v G.*)

19. Finally, Council Directive 2005/85 (the procedures directive) no longer applies in the United Kingdom and the domestic statute and *Immigration Rules* have subsequently been amended (see *R (on the application of AAA (Syria) and others) v Secretary of State for the Home Department* [2023] UKSC 42, [2023] 1 WLR 4433 @ [147]-[148]).

20. This latter point of consensus leads Kent and the SSHD to argue, with the support of the children's guardian, that because the reasoning of the Supreme Court was founded on the application of the procedures directive and old rules that no longer apply, I am free to determine afresh whether the prohibition on the High Court implementing a return order pending resolution of a child's asylum claim still holds. They submit that it does not.

21. On behalf of the parents, it is submitted to the contrary that the decision in *G v G* has its foundations in the broader principle of non-refoulement and therefore, despite the procedures directive no longer having effect in the UK, the High Court is still bound by *G v G* not to implement a return order pending determination by the SSHD of a child's asylum claim.

22. In maintaining the contention that the Supreme Court's reasoning in reaching the conclusion at paragraph 135 of *G v G* went beyond the impact of article 7 of the procedures directive, heavy reliance was placed on behalf of the parents on paragraph 148 of that decision which states:

> "...To give proper effect to article 21 of the Qualification Directive the protection in section 78 of the 2002 Act cannot be limited to removal in accordance with the Immigration Acts. Rather, by virtue of article 21 it also prevents implementation of a return order under the 1980 Hague Convention of a child pending determination of an in-country appeal."

23. Further, I was reminded on their behalf of the effect given to the principle of non-refoulement in domestic law, in particular by reference to the Supreme Court judgment in *AAA (Syria)* at paragraphs 27 and 28. Furthermore, it was emphasised that asylum claims of unaccompanied children must be treated with particular care (see rule 350 *Immigration Rules*).

Legal framework

24. Article 33 of the 1951 *Geneva Convention* provides, under the heading "Prohibition of expulsion or return ('refoulement')":

> "1. No contracting state shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

25. The boundaries to article 33(1) were considered by the Court of Appeal in *G v G* [2020] EWCA Civ 1185, [2021] 2 WLR 705 at paragraph 56:

> "It is to be noted that the scope of the prohibition in article 33 is narrow: it prohibits the act of refoulement. Because article 1A defines "refugee" in terms of well-founded fear of persecution in the country of nationality, the question generally posed by article 33 is whether removal of an individual from a state will return (or risk the return of) that person to the country of nationality where he or she will risk persecution. If the person faces no such risk in his or her country of nationality, removal to that country is not prohibited."

26. Further, in relation to Article 33, in the Court of Appeal in *R (AAA (Syria) and others v Secretary of State for the Home Department* [2023] EWCA Civ 745, [2023] 1 WLR 3103, Lord Justice Underhill VP stated:

> "[316] The starting point…is that it is in my view settled law that the Refugee Convention does not prohibit a receiving state from declining to entertain an asylum claim where it can and will remove the claimant to another non-persecutory state.
>
> "[319] The straightforward question, so far as the Convention is concerned, is whether the third country is safe for the applicant in the sense that there is no real risk of their being refouled (directly or indirectly) ... if the asylum-seeker will not face persecution or refoulement in the country to which they are returned they will have received the protection which the Convention is intended to afford them."

27. This international obligation is reflected in domestic immigration law in section 77, *Nationality, Immigration and Asylum Act* 2002 (as amended) which provides:

> "(1) While a person's claim for asylum is pending he may not be –
>
> (a) removed from the United Kingdom in accordance with a provision of the Immigration Acts, or
>
> (b) required to leave the United Kingdom in accordance with a provision of the Immigration Acts.
>
> (2) In this section –
>
> (a) 'claim for asylum' means a claim by a person that it would be contrary to the United Kingdom's obligations under the Refugee Convention to remove him from or require him to leave the United Kingdom, and
>
> (b) a person's claim is pending until he is given notice of the Secretary of State's decision on it.
>
> (2A) This section does not prevent a person being removed to, or being required to leave to go to, a State falling within subsection (2B).
>
> (2B) A State falls within this subsection if –

(a) it is a place where a person's life and liberty are not threatened by reason of the person's race, religion, nationality, membership of a particular social group or political opinion,
(b) it is a place from which a person will not be removed elsewhere other than in accordance with the Refugee Convention,
(c) it is a place –
(i) to which a person can be removed without their Convention rights under Article 3 (no torture or inhuman or degrading treatment or punishment) being contravened, and
(ii) from which a person will not be sent to another State in contravention of the person's Convention rights, and
(iii) the person is not a national or citizen of the State.

(2C) For the purposes of this section –
(a) any State to which Part 2 or 3 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 for the time being applies –
(i) is to be presumed to be a State falling within subsection (2B)(a) and (b), and
(ii) is, unless the contrary is shown by a person to be the case in their particular circumstances, is presumed to be a State falling within subsection (2B) (c) (i) and (ii);
(b) any State to which Part 4 of that Schedule for the time being applies is to be presumed to be a State falling within subsection (2B)(a) and (b);
(c) a reference to anything being done in accordance with the Refugee Convention is a reference to the thing being in accordance with the principles of the Convention, whether or not by a signatory to it;
(d) 'State' includes any territory outside of the United Kingdom.

(3) In this section, 'Convention rights' means the rights identified as Convention rights by section 1 of the Human Rights Act 1998 (whether or not in relation to a State that is a party to the Convention); and 'the Refugee Convention" means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.
(4) Nothing in this section shall prevent any of the following while a claim for asylum is pending –
(a) the giving of direction for the claimant's removal from the United Kingdom,
(b) the making of a deportation order in respect of the claimant, or
(c) the taking of any other interim or preparatory action.
(5) Section 15 of the Immigration and Asylum Act 1999 (c.33) (protection from removal or deportation) shall cease to have effect."

28. Subsections 77(2A)–(2C) were inserted by section 87(1) of, and schedule 4 paragraph 1 to, the *Nationality and Borders Act* 2022, which came into force on 28 June 2022, i.e. after the judgment of the Supreme Court in *G v G* was handed down. They create an exemption to section 77, permitting the removal of an asylum claimant to a safe third country of which the individual concerned is not a national or citizen. I note here that France falls within the definition of a presumptive safe country under section 77(2C)(a).

29. Article 7 of the procedures directive, as considered by the Supreme Court in *G v G,* reads:

> Right to remain in the Member State pending the examination of the application
> 1. Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. This right to remain shall not constitute an entitlement to a residence permit.
> 2. Member States can make an exception only where, in accordance with Articles 32 and 34, a subsequent application will not be further examined or where they will surrender or extradite, as appropriate, a person either to another Member State pursuant to obligations in accordance with a European arrest warrant (1) or otherwise, or to a third country, or to international criminal courts or tribunals.

30. When the Supreme Court came to its judgment in *G v G*, paragraph 329 of the *Immigration Rules* read:

> "Until an asylum application has been determined by the Secretary of State or the Secretary of State has issued a certificate under Part 2, 3, 4 or 5 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants etc) Act 2004 no action will be taken to require the departure of the asylum applicant or their dependants from the United Kingdom."

31. The relevant rules now read quite differently:

> "328. All asylum applications will be determined by the Secretary of State in accordance with the Refugee Convention and the Immigration Rules. Every asylum application made by a person at a port or airport in the United Kingdom will be referred by the Immigration Officer for determination by the Secretary of State in accordance with these Rules.
> 329. For so long as an asylum applicant cannot be removed from or required to leave the UK because section 77 of the Nationality, Immigration and Asylum Act 2002 applies, any dependants who meet the definition under paragraph 349 must also not be removed from or required to leave the UK."

Analysis

32. If I may summarise the situation when the issue of implementing a return order made by the High Court came before the Supreme Court in 2021, the UK's approach to the general principle of non-refoulement under article 33(1) of the 1951 *Geneva Convention* was dictated by article 7 of the procedures directive that provided, in effect, for a blanket ban on removing an asylum claimant from the UK to any other State, even a safe third country, until the SSHD "had made a decision in accordance with the procedures at first instance set out in Chapter III" of the procedures directive, i.e. primarily the determination of the claim (see *G v G* (SC) paras 124 and 130). This approach was confirmed in the old rule 329 of the *Immigration Rules* preventing removal until determination of the asylum claim or the issuing of a relevant certificate (see *G v G* (SC) para 131). Article 7 and old rule 329 gave claimants enhanced protection beyond that strictly required by the *Geneva Convention*.

33. This is in contrast to the current situation, where confirmation of the limit of the carefully calibrated article 33(1) protection has come, for example, in judgments of the Supreme Court and Court of Appeal (see paragraphs 25 and 26 above) and the UK's changed approach, having exited the European Union, is embodied in the amended section 77 of the 2002 Act and amended rules 328 and 329 of the *Immigration Rules*. The combined effect is that removal from the UK to a safe third country, pending the determination by the SSHD of an asylum claim, is now more widely permitted in domestic immigration law.

34. In my judgment, the reasoning of the Supreme Court at paragraphs 124 to 133 of *G v G* that led directly to the conclusion at paragraph 134 that "until a request for international protection is determined by the Secretary of State a return order ... cannot be implemented" is plainly based on the positive obligations and restrictions then imposed by article 7 of the procedures directive and the old rule 329 of the *Immigration Rules* to which I have referred, and which no longer exist. The enhanced protection for claimants provided by article 7 of the procedures directive no longer applies and no other provision imposes a positive duty on the State to allow an asylum claimant to remain here pending determination of their claim. Therefore, the whole basis of the Supreme Court's conclusion falls away.

35. Contrary to the submissions on behalf of the parents, in my judgment this conclusion cannot be undermined by the reasoning in the subsequent paragraph 148 of *G v G* that addresses the separate effect of article 21 of the qualification directive on section 78 of the 2002 Act. Article 21 does no more than require compliance with the general non-refoulement principle as defined by article 33(1) of the 1951 *Geneva Convention*, the present limit of which I have noted at paragraph 33 above.

36. It is now also clear that, in the absence of article 7 and the old rule 329, the prohibition on removal of an asylum claimant as set out in section 77(1) of the 2002 Act is limited to being "in accordance with a provision of the Immigration Acts". And in any event, as I have outlined above, now that the law has changed, s77(2A) of the 2002 Act permits more widely the removal of a claimant to a safe third country pending determination of an asylum claim.

37. Support for my analysis can be found in the reasoning of Dame Siobhan Keegan LCJ in the judgment of the Court of Appeal of Northern Ireland, *In the matter of AB (A Minor)* [2023] NICA 37 at paragraphs 51 to 57, that although not binding on me and not resulting from full argument, nevertheless deserves the utmost respect. It led to the following conclusion:

> [58] Article 7 was at the core of Lord Stephens' analysis of the obligation extending to all emanations of the state. The dicta at para 113 of *G v G* is of particular importance in highlighting that the safeguards within the immigration process do not extend beyond that, and, in particular, do not fetter a judge considering an application under the Hague Convention.

38. Paragraph 113 of the Supreme Court judgment in *G v G* to which Keegan LCJ refers includes the following:

> "An issue arises in this appeal as to whether section 77 of the 2002 Act does not apply to 1980 Hague Convention proceedings [as a result of the insertion

> in the section of the words "in accordance with a provision of the Immigration Acts"] or whether by virtue of article 7 of the Procedures Directive applicants for asylum are protected from the implementation of a return order in the 1980 Hague Convention proceedings until the determining authority, that is the Secretary of State, has made a decision."

39. Further support for this analysis can be found in the judgment of Mrs Justice Gwynneth Knowles in *Re A and Others (Care Proceedings: 1996 Hague Convention: Habitual Residence)* [2024] EWFC 110 where it was said at paragraph 69:

> "I find myself drawn to the analysis in *AB* which recognises a different reality now applying to the determination of asylum claims from that which Lord Stephens considered in *G v G* in early 2021... Though I have not heard detailed argument on the point, *AB* is authority for the proposition that, as appears from the Supreme Court's decision in *R (AAA)*, the *Procedures Directive* is no longer part of retained EU law in this jurisdiction. Thus, the reliance by Lord Stephens on article 7 of that Directive may no longer be sustainable as a matter of statute. Further, the amendments to section 77 of the *Nationality, Immigration and Asylum Act* 2002 which came into effect from 28 June 2022 and the amended paragraph 329 of the *Immigration Rule*s operate together to rescind the positive obligations flowing from article 7 of the *Procedures Directive* which played so significant a role in Lord Stephen's decision...."

And at paragraph 71:

> "...I am provisionally of the view that the operation of immigration and asylum law does not prevent this court from implementing a welfare decision which might result in the return of these children to Austria before their application for asylum in this jurisdiction has been determined..."

40. A reason for only taking a provisional view was the absence of submissions on behalf of the SSHD. When the same case returned for the welfare decision in *Re A and Others (Care Proceedings: Inherent Jurisdiction: Order for Return to Austria)* [2024] EWFC 178, Gwynneth Knowles J said:

> 45. In my earlier judgment, I indicated a provisional view that the operation of immigration and asylum law did not prevent this court from implementing a welfare decision which might result in the return of these children to Austria before their application for asylum in this jurisdiction had been determined. In that context, the Secretary of State agreed with my reasoning on the following basis.
>
> 46. Since *G v G* [2021] UKSC 9, the legislative landscape had changed, not only due to the effect of the Immigration and Social Security Coordination (EU Withdrawal) Act 2020 on the relevant provisions of the Procedures Directive which can be treated as having been repealed, but also in relation to section 77 of the Nationality, Immigration and Asylum Act 2002. Section 77 has since been amended by the Nationality and Borders Act 2022, in relation to claims made after 28 June 2022, to the effect that removal to a safe third country can occur, pending the determination of an individual's asylum claim.

> Arguably, Austria fell within the definition [of a safe third country] ... If the children's return to Austria was sanctioned by the court, this could take place prior to a decision on the asylum claim.

41. Judgment in *A v B and others* [2024] EWHC 1626 (Fam), [2024] 4 WLR 76, was handed down after the first but before the second of Gwynneth Knowles J's judgments in *Re A*. At paragraph 87, Sir Andrew McFarlane P said:

> "Although we recognise the force in what is said by Knowles J ... we have heard no submissions from the Secretary of State as to whether the statutory framework post-Brexit has an impact upon the protection from refoulement whilst a claim for asylum remains outstanding before the Secretary of State and on appeal to the Tribunals. There is no need to decide the issue in the present case, and we do not do so. It is, however, in our judgment, a matter that warrants full argument in an appropriate case."

Conclusion

42. I have received full argument, including on behalf of the SSHD, and I respectfully agree with the analysis and reasoning of Keegan LCJ and Gwynneth Knowles J. For the reasons that they and I have given above, I have concluded that the operation of immigration and asylum law no longer prevents the High Court from implementing a decision to return a child to another State before their asylum claim here has been determined by the SSHD, provided that the general principle of non-refoulement is upheld. That general principle permits return to either the country of nationality, if there is no risk of persecution, or a safe third country. In exercise of its 1980 *Hague Convention* or inherent welfare jurisdiction, the High Court can make those determinations of risk and safety when considering holistically, as it must, whether to order a return.

ENDS