Neutral Citation Number: [2014] EWHC 3488 (Fam)

No. FD12P02790

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

Royal Courts of Justice

Date: Thursday, 16th October 2014

Before:

MR JUSTICE HOLMAN

(Sitting throughout in public)

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AA

Applicant/Father

v

TT

Respondent/Mother

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MR M. JARMAN (counsel) appeared on behalf of the Applicant Father.

MR E. BENNETT (counsel), generously acting free of charge, appeared on behalf of the Respondent Mother.

MR M. GRATION (counsel) appeared on behalf of the Guardian.

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J U D G M E N T

MR JUSTICE HOLMAN:

1 I have heard this whole case in public, and now give this essentially *ex tempore* judgment also in public. I direct that no report of this case in the media or elsewhere may name the children concerned, nor their parents, nor identify the address where they live or any of the schools which they attend.

2 This is an application by a father for the recognition and enforcement, pursuant to the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children done at Luxemburg on 20th May 1980, of a custody order made in Turkey on 26th November 2013. That convention has the force of law in the United Kingdom to the extent provided for in section 12 of the Child Abduction and Custody Act 1985 and Schedule 2 to that Act. Article 7 of the Convention provides that:

> "A decision relating to custody given in a Contracting State shall be recognised and, where it is enforceable in the State of origin, made enforceable in every other Contracting State."

3 Article 7 is, however, qualified by Articles 9 and 10 of the Convention (in the form in which those articles are incorporated into the law of England and Wales). The focus of the present hearing has been upon whether one or more of

the "defences" in Article 10 should apply, such that I should exercise the discretion under that article to refuse recognition and enforcement.

4 The essential background facts to this case are as follows. The mother is of English origin and a British citizen from birth. The father is of Turkish origin and a Turkish citizen from birth. They first met in 1998 when the mother was on holiday in Turkey. A relationship developed between them and in September 2000 the mother travelled to Turkey and there married the father.

5 The following year, the parents decided to move, at any rate for a period, to live in England. In November 2001, they travelled to England and began living at the home and address of the mother's parents in Greater London. I mention that that is a home in which her parents were living even before the mother was born. It is, she says, the address at which her parents have lived for over 40 years and has been her parental home address throughout her life. As the father was to live at that very address for over a year, he himself knows the house perfectly well, and also knows its precise address and whereabouts perfectly well.

6 In April 2002 their eldest child, a daughter, was born here in England. She is now, therefore, aged about 12 and a half. In December 2002 the parents and their daughter moved out of the mother's parents' address to accommodation of their own nearby. In 2005 the father became a British citizen, so he now has

dual citizenship. At some time, the mother obtained Turkish citizenship, so she also now has dual British and Turkish citizenship.

7 In June 2005 their second child, a son, was born here in England, so he is now aged about nine and a quarter. In May 2007 their third and last child, also a son, was born here in England, so he is aged about seven and a quarter.

8 In September 2009 the parents and their three children moved to live in Turkey. Sadly, the relationship between them broke down. I mention that each makes very considerable allegations of violent and aggressive behaviour against the other. So far as I am aware, there has never been any determination or adjudication as to the truth or otherwise of any of those allegations, whether by a court here or in Turkey.

9 In September 2011 there was a divorce between the parties in Turkey. Initially, the father was granted sole custody of the children, and access rights were granted to the mother. At that stage, however, both parents were still physically residing in the family home. The mother moved out during November 2011, and shortly after that the father agreed to her actually caring for the children.

10 There were proceedings before the courts in Turkey in early 2012; and in January 2012 the mother was formally granted custody of the children on an

interim emergency basis. That later became a more final order for custody to the mother in June 2012.

11 In early September 2012 the mother married her second husband, another Turkish gentleman, who was living in Turkey. She has told me that she married him for love, and hoped and intended that they would make a lasting home together in an enduring marriage. However, on 25th September 2012 the mother at short notice left Turkey with her three children and brought them here to England. She did not have the prior consent of the father, nor give him any warning or notification of what she was about to do. She says that she was driven to do it because of his aggression and violence, to which I have briefly referred.

12 It is a fact that, throughout the entire period from 25th September 2012 to date, namely now over two years, these children have lived continuously here in England in the home of the mother's parents, being the same home in which, about 11 years earlier, the father himself had lived for a year. The mother at once obtained places for the children in appropriate schools, and they have been continuously educated at age appropriate levels in the English state system ever since. The mother herself has made some return visits to Turkey, to which I will refer more fully later in this judgment. However, she, too, has essentially lived continuously in England, residing in the home of her parents, ever since September 2012.

13 As he was fully entitled to do, and indeed justified in doing, the father very promptly commenced sets of proceedings, both in Turkey and in England. On 15th October 2012 (i.e. within three weeks of the removal of the children) he started proceedings for the custody of the children in Turkey, which became the same proceedings within which the custody order was made in November 2013, which he now seeks reciprocally to enforce. On 20th December 2012 he issued an application here in England for the return of his children to Turkey, pursuant to the Hague Convention on the civil aspects of international child abduction.

14 I will return later to the course of the proceedings in Turkey, but it is convenient next to refer to the outcome of his application here for the summary return of the children to Turkey, pursuant to the Hague Convention. That application was listed for final hearing with two days allowed on the 10th and 11th April 2013. Coincidentally, it came before me for hearing. I do stress that the fact that I am hearing this case this week is a complete coincidence. It was indeed only at a late stage last week that the case that I had been scheduled to hear this week had to be postponed for some reason, and so this case has ended up before me again. I doubt whether the listing staff had the slightest knowledge or recollection that I had previously dealt with the Hague Convention proceedings in relation to this family, which were under a different case number.

15 The most simple and most vivid and accurate way in which I can refer in the present judgment to the final outcome of those proceedings is to incorporate into

this judgment the transcript of the judgment which I gave in those proceedings on 11th April 2013.

Mr Justice Holman:

1. I have been a family lawyer for over 40 years and a full-time judge for over 18 years. Despite that long experience, there are still from time to time cases which surprise me. This particular case is both an unusual case and one in which, during the course of yesterday afternoon, I was indeed very surprised.

2. The essential background can be summarised very shortly. The mother was born and brought up in England and is, and always has been, a British subject. The father was born and brought up in Turkey and is, and always has been, a citizen of Turkey. The parents met in 1998 and married in September 2000. The following year they moved from Turkey to live in England, where they were to live for several years. In due course, the father applied for and obtained British citizenship. At some point also the mother applied for and obtained Turkish citizenship. So, the upshot is that each of these parents is now a citizen of both Turkey and the United Kingdom.

3. From their marriage they have three children, namely, N, who is eleven today; Y, who is seven; and M, who is five. All those children were actually born in England and they, like their parents, have dual British and Turkish citizenship. In 2009, the family moved to live in Turkey, where they remained. Sadly, their marriage broke down and there was a divorce between the parents, in Turkey, in September 2011.

4. Concurrently with the divorce proceedings, there have also been some quite protracted proceedings in Turkey in relation to the children. It is not necessary, for the purposes of this short record of the events of the last two days, to go into all the details of those proceedings. The upshot was that by an order made in Turkey on 25th May 2012, and perfected on 12th June 2012, effect was given to an agreement between the parents that the mother should have the custody of the three children, and that they should have regular and frequent periods of contact with their father. The periods of contact included every weekend, from Saturday morning until Sunday evening; the first week of the half term holiday (which I understand is a reference to January in each year); during parts of certain religious holidays; and for the two months of July and August in every year.

5. On 25th September 2012 the mother travelled from Turkey to England with the three children. It is fully accepted by her that she did that without the consent or agreement of the father, and indeed without prior notice to him. It follows from that short narrative that these children were plainly habitually resident in Turkey prior to that removal, and that that removal was a wrongful removal within the meaning of, and for the purposes of, the Hague Convention on the civil aspects of international child abduction, and the mother has never suggested otherwise.

6. The father, relatively promptly, initiated a process through the central authorities for the return of his children to Turkey forthwith, pursuant to the Convention. The proceedings were formally issued in this court on 20th December 2012. It is not necessary to make detailed reference to the procedural history between them and

now, except to mention that concurrently with the progress of these proceedings here in England, there have also been further hearings before the courts of Turkey.

7. Within these proceedings here, the mother has alleged that during the course of the marriage, and indeed also since the divorce, the father has resorted to very considerable aggression and violence towards not only her, but also, on occasions, the children. The allegations made by the mother are helpfully summarised in a document headed "Schedule of Findings sought by the Mother against the Father", which was prepared pursuant to one of the directions made in these proceedings.

8. The father strongly denies all the more serious allegations and says that the alleged incidents simply did not occur. If (I stress, if) they did occur, then clearly they amounted on occasions to severe physical violence. The allegations include an allegation that on more than one occasion the father raped the mother.

9. Initially the mother suggested that the elder children might in fact object to a return to Turkey forthwith, pursuant to the Convention. As a result, arrangements were made for the two elder children to be seen and "interviewed" by an independent official, Ms Toni Jolly, of CAFCASS High Court Team. She reported by a report dated 19th March 2013, which, I mention, has since been officially translated into the Turkish language. That report is available for anyone with a proper interest in this matter to read (including, if appropriate, any court dealing with this family in Turkey). It is sufficient for the purposes of this short record to observe that the eldest child, N, herself alleged to Ms Jolly that on many occasions her father was indeed physically violent, or in other ways cruel or unkind, to her (for instance by shutting her out for long periods in the garden). That again is, substantially, resolutely denied by the father.

10. What also emerged from that report, however, is that, far from objecting to a return to Turkey, the eldest child, N, and so far as it was possible to ascertain his wishes and feelings, the second child, Y, positively wish to return to live in Turkey, if they can do so in circumstances of security and safety. Further, the mother herself has remarried a Turkish gentleman, Mr O, (who is in the courtroom as I speak). He lives in Turkey. He would not be able to come to live long term in England, and so far as I am aware, has no wish to do so. Accordingly, the mother herself very strongly desires to return to live in Turkey, if she felt able to do so in circumstances of security and safety.

11. This is, therefore, already a very unusual case, for, on the one hand, the father seeks an order for the return of his children to Turkey forthwith, pursuant to the Convention; and on the other hand, both the mother herself and the three children (assuming the youngest to be part of a sibling group with the elder two) all strongly desire to return to live in Turkey. But the mother, nevertheless, opposes the application for a return forthwith, in reliance upon Article 13(b) of the Convention. She says that without adequate safeguards or protective measures, there is a grave risk that the return of the children would expose the children to physical or psychological harm or otherwise place them in an intolerable situation.

12. The source of that risk is, patently, the allegations that she and N have made about very considerable violence towards them, from the father. So it was that in advance of this hearing, the mother, who although she acts in person has been enormously assisted by an experienced barrister, Miss Ruth Kirby, who has generously acted

free of charge, prepared a document in which she set out certain agreements or assurances that she sought from the father, prior to her actual return. As is very well established, the reach of a court returning children under the Convention is essentially limited to the relatively short period until there can be a proper on-notice hearing between the parties, before an appropriate court, in the state to which the children are returning. It was within that context and timeframe that the mother and Miss Kirby, on her behalf, were essentially seeking the protective measures.

13. The father has travelled from Turkey and attended this hearing. Yesterday morning, when the case began, there was a considerable period during which there were discussions and negotiations outside the courtroom. I thought it was encouraging and promising when we assembled in the courtroom and it appeared that a number of the protective measures requested by the mother were agreed to. There was, however, an area of difficulty around the resumption of contact, or access, between the children and the father. He has not actually seen the children at all now for over six months, apart, I think, from one period when he visited a little while ago. The mother had understandable concern at the prospect that, immediately after returning to Turkey, she might have immediately to make the children available for a period of unsupervised staying access, or contact, with the father, over the very first weekend after their return. That prospect is an anxious one, because N has clearly said to Ms Jolly that she is scared of her father and does not want contact with him. In those circumstances, it is not easy to see how a caring mother could simply hand over that child, or any of the children, immediately to stay in an unsupervised way with their father, without preparatory work to repair the undoubted damage in relationships within this family and to prepare the children in a child-focused way for a resumption of a loving relationship with their father.

14. These difficulties were the subject of further discussion in the courtroom, after which we broke off again. It was my fervent hope, and frankly my expectation, that the father would give further careful consideration to these issues, discuss them further with the mother and indeed with Ms Jolly, who represents the interests of the children in these proceedings, and that slowly a sensible, child-focused agreement would have evolved. But when we resumed yesterday afternoon, I was presented with, frankly, a total turn around by and on behalf of the father. His most experienced advocate, Miss Jacqueline Renton, had drafted an order (which is substantially the basis of the order which I now make), which involved his total withdrawal of these proceedings, but recorded that he still intends to pursue a claim for custody of these children before the courts of Turkey.

15. I was, frankly, astonished at that development during yesterday afternoon and I tried hard in the courtroom to explain why. It seems to me that it has created between these parents a situation of complete stalemate. The mother had, so far, made very plain that she will not feel able to return voluntarily to Turkey with (and possibly even without) the children, without some clear protective measures in place. There was an opportunity in these proceedings to negotiate protective measures and, failing an agreed outcome, for me to rule upon what, if any, minimum protective measures were necessary. Instead, the father has simply totally withdrawn these proceedings and, therefore, any continuing involvement of the English court.

16. He says that he intends to drive forward with a claim for custody of the children in Turkey. It is not easy to see how the custody of these children, who are being very well cared for by their mother, could now be transferred to the father, particularly when the eldest child so resolutely says that she is frightened of him and does not even wish to see him. Further, and other than the Hague Convention itself, there is no reciprocal enforcement convention between this state and the state of Turkey, as for example there is by a regulation between all the member states of the European Union. So, there is no automatic reciprocal enforcement here of any order that the courts in Turkey may think it appropriate to make. The position seems to be, as I have said, one of complete stalemate. The mother badly wishes to return to Turkey. The children wish to return to Turkey; but the mother simply will not voluntarily do so without a proper protective framework. There was, within these proceedings, an opportunity to consider, and ultimately for the court to rule upon, a protective framework, but that opportunity has now been completely removed by the decision of the father to withdraw these proceedings altogether.

17. My impression is that the mother simply will not return voluntarily to Turkey, nor return the children voluntarily to Turkey, without protective measures. The result of the father now withdrawing this application is that the mother is under no legal obligation whatsoever, from this court, to return either herself or the children to Turkey. As I have repeatedly said, she is completely free to travel to Turkey, alone or with the children, today, tomorrow or at any time of her choosing, but she is under absolutely no compulsion to do so, whether under the Hague Convention or otherwise.

18. So remarkable was that turn around that I discussed it at length within the courtroom yesterday and, at the suggestion of Miss Renton, deliberately adjourned this hearing until today, so that the father would have a due opportunity, overnight, to receive and consider any legal advice and to consider and reconsider whether he continued to seek the outcome suggested yesterday afternoon. When we resumed in court today, I was told straight away, and it has remained his position throughout the morning, that the father does indeed wish completely to withdraw these proceedings. In the end, these are private law proceedings, on an application issued by him. If he wishes and instructs his lawyers to withdraw his application, that is his own choice; and I am satisfied now, having adjourned overnight, that it is his free choice, after a due opportunity for consideration.

19. For those reasons, I will indeed make the order that I have been requested to make, with various additions that have been discussed in court this morning. I wish to stress that this is not the outcome which I foresaw, and certainly not the outcome which I desired. It is indeed little short of bizarre that we have the paradox that the father travelled here to obtain the return of his children to Turkey; the mother wishes to return to live in Turkey; the children would like to live in Turkey; and yet the opportunity for creating a framework in which the mother and children felt safe and secure to do so has now been removed from this court. For those reasons, I will make an order in the terms already discussed.

16 I must confess at once, which I readily, albeit somewhat shamefacedly, do, that there was a fundamental error in paragraph 16 of that judgment, where I said:

> "Further, and other than the Hague Convention itself, there is no reciprocal enforcement convention between this state and the state of Turkey, as for example there is by a regulation between all the member states of the European Union. So, there is no automatic reciprocal enforcement here of any order that the courts in Turkey may think it appropriate to make."

17 When I said that, I had, of course, completely overlooked the relatively underused European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration on Custody of Children, which I am now invited to apply. The reason, frankly, why I overlooked it is that, in relation to all member states of the European Union (which Turkey is not), that European Convention has since been completely overtaken and superseded for all practical purposes by the EU regulation known as Brussels II and Brussels II Revised. What I had, frankly, forgotten was that the European Convention done at Luxembourg on 20th May 1980 is not an instrument of the European Union, but, rather, of the Council of Europe, of which Turkey is a member state.

18 I think it is not possible that I could or would have left the passage which I have just quoted in that *ex tempore* judgment if, at the time, any of the very

experienced counsel who were appearing on that occasion for each of the father, the mother and the children's guardian had in any way at all drawn my attention to the error. It may be (I do not know) that counsel acting on behalf of the father, who had stressed that he would be pursuing an application for custody before the courts of Turkey, had the existence of that convention and the possibility of reciprocal enforcement in mind. But that seems to me very unlikely, for I feel confident that, if she had, she would, out of duty to the court, have drawn my attention to my obvious error and apparent lack of grasp of the overall forensic situation that was developing.

20 At all events, the father's application under the Hague Convention came to a complete end that day for the reasons and in the circumstances that I described in that judgment. As there were no other extant proceedings before this court at or around that time, there was, of course, no continuing framework within which I or the court could make or impose any orders as to contact. The order of 11th April 2013 does record some very limited agreements that day between the mother and the father, first, as to a single occasion of two hours of contact later that day; and second, as to twice weekly Skype contact after the father returned to Turkey.

22 Since that hearing in April 2013, 18 months have passed, which is a very significant period in the lives of children of these ages. The children never did return to Turkey, despite their desire at that time to do so. They have remained

seamlessly living here, and are very well settled in schools here and in the grandparents' home here, where they are daily looked after and cared for by their mother, albeit with assistance from her parents, as she also has a fulltime job.

23 The father has had just one occasion of direct face to face contact with his children, namely for the two hours that I have mentioned on 11th April 2013. He and the mother went together with the children to a bowling alley near Heathrow. The father has shown me during this hearing a number of photographs on his iPad of that occasion. They certainly depict the children having a happy time, as one would expect, playing in a bowling alley, playing on various games there, and enjoying a children's food menu. On the superficial evidence of photographs, the children seemed happy and at ease in the company of their father. But, of course, throughout the whole occasion the mother was right there beside him and them and able, therefore, to be a reassuring presence.

24 The father then returned to Turkey. He has not, so far as I am aware, visited England at all between then and now, although, of course, he is completely free to come and go as he pleases, being a British citizen. He has not, in fact, made any requests to the mother for any direct contact between himself and the children.

25 Skype contact has taken place. The father says that, in various ways, that has been very unsatisfactory, and that the amount of time that he is able to interact with the children by Skype has been limited. I have not at this hearing investigated those issues about the Skype contact in any detail, and say nothing further about it in this judgment.

26 As he had said he would on the 10th and 11th April 2013, the father pressed on with his application for custody in Turkey. A number of hearings took place before the appropriate Turkish court, namely on 19th March, 14th May, 2nd July, 10th October and 26th November 2013. The father was present at them all.

27 The mother was personally present at the hearing on 19th March 2013. At that hearing on 19th March 2013, she gave, as the address at which she was residing, an address called Yeni Mahalle … Kestel, Bursa. That, in fact, was the address of accommodation that she had been renting before she came to England in late September 2012, and which she had since vacated and from which she had removed her possessions. In the record of the hearing on 19th March 2013, now at bundle D:A3, she is recorded as saying the following:

> "I hereby reject the brought case. The applicant and I are divorced. … I was granted custody as a result of the case held by your court under number … In the days when personal contact is established between the father and children, once they are back to my place my children used to tell

me that they were beaten by their father. I wanted to report to the police, but they did not listen. So, in an effort to protect my children, I took them to the UK, where my family lives, on September 25th, 2012; after which the applicant filed a complaint claiming that I had abducted the children. … Our child abduction case in UK is still ongoing with a hearing scheduled for this Thursday, and the final hearing scheduled for April 11th. I am still living in Turkey, at the address that I specified, I am unemployed, I remarried and moved to my husband's address, I do not know my new address at this point, I will find it out and ensure its submission to the file, my husband is a sports trainer and a security guard, I came to Turkey to attend this hearing, my children stayed in the UK, their passports were confiscated as they are prohibited from leaving the country due to the child abduction lawsuit and they are still living with my mother and father in the UK."

28 Pausing there, there are a number of ambiguities in that passage. The mother is apparently saying that she was living "at the address that I specified". In fact, the address that she had specified was the address Yeni Mahalle in Kestel, Bursa. Even on her own evidence, she was not living at that address, but had moved to the address of her husband, which she said she did not know at that point. Further, she is reported as saying "I am still living in Turkey", although she is also reported as saying "I came to Turkey to attend this hearing".

29 The order made in her presence on 19th March 2013 included provisions (now at bundle page D:A4) as to the filing of evidence within a timetable; that the parties and their mutual children be interviewed (by) "psychologist in charge of our court"; and the date for the next hearing, namely 14th May 2013. So, when she left the court on 19th March 2013, the mother clearly knew that the next hearing would be there on 14th May 2013. The mother did not attend on 14th May 2013, nor any other of the later hearings. Instead, she personally attended again at the court on 3rd May 2013 and, as I understand it, briefly saw the judge in charge of the case.

30 On 3rd May 2013 the mother lodged with the court two documents which had been prepared by her Turkish lawyer and typed by the lawyer or some typist within the office of the lawyer, although actually signed by the mother. The first of these documents is at bundle page D:B53. As part of the heading, it says:

> "Subject: Submission of the decision of the UK High Court of Justice and my request not to pursue the case."

Within the body of the document, it says:

> " 3. Furthermore, as it can be seen from the annexed decision of the UK High Court of Justice, the case has been concluded, 'the applicant father

has withdrawn his application to have the mutual children immediately returned to Turkey within the context of aforementioned Convention', and the High Court of Justice ordered that the mutual children stay in the UK."

31 Pausing there, it is not, in fact, accurate to say that the High Court of Justice, namely myself, "ordered that the mutual children stay in the UK". What I actually did, as indeed I made very clear in the judgment, was simply to permit the complete withdrawal by the father of his application under the Hague Convention for the summary return of the children to Turkey. As I said at paragraph 17 of that judgment:

> "As I have repeatedly said, she is completely free to travel to Turkey, alone or with the children, today, tomorrow or at any time of her choosing, but she is under absolutely no compulsion to do so, whether under the Hague Convention or otherwise."

So it was, in fact, a significant misunderstanding by the mother and/or her Turkish lawyer that the English court had "ordered that the mutual children stay in the UK."

32 Continuing now with her document of 3rd May 2013:

"4. Based on all such decisions, I am of the opinion that the case brought by the applicant on the basis of 'child abduction' is devoid of essence and no longer remains within the scope of the Turkish judicial system.

As the Turkish courts no longer have jurisdiction over the mutual children, I would like to respectfully notify your honourable court that I will not follow the case, and I respectfully request that the case, which is now devoid of essence, be dismissed."

I mention that, in the official translation at bundle page D:B53, the word in the penultimate line is not "follow", but "pursue", but the mother asserted, and the most excellent Turkish interpreter who has been present throughout this hearing agreed, that the Turkish word "*takip*" is better translated as "follow" than "pursue".

33 So, by that document, the mother was informing the court, and, I assume, through the court, the father and his lawyers, that her position was that this whole matter had effectively been concluded by the outcome of the father's application under the Hague Convention, and that she was not intending further to engage in the Turkish litigation which she asked should now be dismissed, being "devoid of essence".

34 The other document which the mother signed and lodged that day is at bundle page D:B55, headed "Subject: Notification of my address of residence". Just pausing there, it should be emphasised that this was not notification, as such, of the children's address of residence, but of her own address of residence. The document then continued:

> "As I will from now on be living in the UK due to the fact that I have moved to the UK together with the mutual children, and the UK High Court of Justice has ordered that we stay in the UK [thereby repeating the same misunderstanding], my address has changed as follows: …"

35 She then set out a precise address of her parents in Greater London, England, giving the number of the house, the street, the locality and the postcode. The actual number of her parents' house in the street concerned is, and always has been, as the father has always known perfectly well, number 78. Erroneously, the document lodged with the Turkish court gave the number 75. The actual postcode of the address, as the father also knows perfectly well, begins with the letter U; that is, U for uniform. Erroneously, the document lodged with the Turkish court began the postcode with the first letter V; that is, V for victor. But, in all other respects, the postcode is correct.

36 The mother has said during this hearing that she herself wrote the address down in handwriting on a piece of paper, and that the typist must have misread her

handwriting and mistaken 78 for 75 and U for V. She accepts that she signed the typed up version which contains the error, but says that she did not notice the error as she was doing so. It seems to me that I must accept that evidence of the mother. This was simply a mistake, and in no sense an attempt by the mother or her lawyer on her behalf to mislead the Turkish court as to the precise address at which she and the children were living. That seems to me all the more to be the case as the father knew perfectly well, from first to last, the precise address and postcode, and any attempt to mislead the Turkish court would have obviously very rapidly foundered upon the father saying that, in truth, the address was number 78, not number 75.

37 In any event, nothing has flowed from that erroneous address, since the father himself says that none of the subsequent court documents were sent to the English address, whether using number 75 or number 78, or a postcode beginning with the letter V or the letter U. He says that, rather, they were sent to the mother's lawyer in Turkey, to whom she had undoubtedly given a formal power of attorney, but who, however, did not respond or react to them in any way and did not forward them to the mother.

38 The mother's movements in the period between 25th September 2012 and the present are set out in a document prepared during the course of this hearing headed "Chronology, 24th September 2012 to 13th October 2014". According to that document, she has lived continuously in England at her parents' address in

the whole period between 25th November 2012 and the present, save for the following. She was in Turkey between 17th October and 17th November 2012, a period of 31 days. She was in Turkey between 17th December and 31st December 2012, a period of 15 days. She was in Turkey between 13th March and 20th March 2013, a period of eight days. She was in Turkey between 29th April and 5th May 2013, a period of seven days. She has never set foot in Turkey since she left for the last time on 5th May 2013. Additionally, she (but not the children) spent two weeks in Ireland during October 2013, a period of about 13 or 14 days.

39 It follows from that data and chronology that, in the whole period of about 420 days between 25th September 2012 and the Turkish judgment and order on 26th November 2013, the mother had spent about 61 days in Turkey and additionally the 13 or 14 days in October 2013 in Ireland.

40 The mother, perfectly openly, admits and agrees that, on each of the occasions when she was in Turkey, totalling 61 days in all, she did stay and sleep at the home of her then second husband. She was, at the time, apparently happily married to him, and very naturally stayed with him on those visits to Turkey. But she says, and I accept, that the purpose and main focus of each of the visits to Turkey was to sort out her affairs there, and, in particular, to engage with both the civil court and authorities in the custody proceedings, and also the criminal prosecutor in certain criminal proceedings that the father had caused to be

brought against her for child abduction. So, during her first visit, from mid-October to mid-November 2012, in the immediate aftermath of the abduction, she was closing down her rented accommodation, removing her possessions, seeing the Turkish prosecutor, and generally attending to her affairs there.

41 Again, she says that during the fortnight that she spent in Turkey over Christmas, she was again, in part, attending to her affairs there. In the period of eight days during March 2013, she was, of course, attending the hearing on 19th March 2013, to which I have referred, and she came straight back to England the next day. In the period of seven days from late April to early May 2013, she was seeing her lawyer in Turkey and preparing the documents to which I have referred, and attending the court on 3rd May 2013 briefly to see the judge and lodge the documents, after which she came straight back on 5th May 2013. There is an air of finality about her document dated 3rd May 2013, and that was indeed the very last time that she visited Turkey, since when, as she had said in her "notification of my address of residence":

> "I will from now on be living in the UK due to the fact that I have moved to the UK, together with the mutual children …"

42 So far as her marriage was concerned, the mother says, and I also accept, that she came to realise after the outcome of the hearing of the application under the Hague Convention on the 10th and 11th April 2013 (after which she had hoped to

return to live in Turkey) that there was, in fact, no future in that marriage. She said during the course of her evidence that if there had been a safe environment for her, she would have returned to live in Turkey with her children and with her new husband there. She said that, had they been able to return safely to Turkey, she would have done so. However, she said that, because of the breakdown in negotiations at court in April 2013, she felt unable to return in safety to Turkey, and so, after then, she and her new husband began arguing. He did not wish or was not able to move to live here in England. She felt quite unable to return to live in Turkey in safety with her children. She said that, during her visit to Turkey in late April/early May 2013, she and her husband were arguing about their future. By June 2013 she knew that that marriage was all over, and they have subsequently divorced.

44 At the hearings in Turkey on 14th May and 2nd July 2013, two witnesses gave evidence to the effect that the mother had remarried, had left the children with their grandparents in England, and was herself living with her current husband in Turkey. On 14th May 2013, the witness, Cevdet Olmez, said, as recorded in the document now at bundle page D:A7:

> "… She took the children to the UK, where her own family lives, and left them there, with their grandmother. She herself is living with her current husband in Turkey, the children are not staying with their mother, they are

staying with their grandmother in the UK. The father cannot see the children, and therefore requests to be granted their custody."

Another witness on that particular date, Muharrem Turkmen, gave short evidence which is recorded, but was very limited in nature and adds nothing.

45 At the hearing on 2nd July 2013, another witness, Abdullah Ozeser, gave evidence, which is now recorded at bundle page D:A11, that:

"The respondent mother took the children to the UK and left them with her mother. The respondent herself then returned to Turkey. She still lives in Turkey, Kestel. She got married to someone else. She does not take care of her children, the children are taken care of by their grandmother. Therefore, the applicant requests grant of custody to him."

46 The father's own oral evidence was given at a later hearing on 10th October 2013. As recorded, now at bundle page D:A13, he said:

"The respondent is married [to] a Turkish citizen. As her husband does not have a UK visa, they cannot go to the UK together, therefore the respondent lives in Bursa, Turkey, and the children are living in the UK with their grandmother."

47 The final hearing took place on, and the decision and judgment were given on, 26th November 2011, although the formal handed down written judgment bears the date of 23rd January 2014. That document is variously in the bundle, but including at page B:B24. In the preambles, the judgment gives the address of the mother as the address in Yeni Mahalle, Kestel, Bursa. This, as I have said, was, in fact, the property that the mother had rented before she ever came to England, and which she had long since vacated. It is curious that there is no reference in the judgment to the address that the mother had clearly notified to the court in the document, dated 3rd May 2013, even if in the mistaken form of house number 75 and postcode beginning with the letter V.

48 The judgment then recites the claim or allegation made by the father in his lawsuit as that:

> "… the defendant, after receiving the guardianship of the children, remarried and took the children to England and left the children in England, and she lived with her second husband in Bursa province of Turkey, and the children lived with their grandmother in England, and he could not see the children and requested and claimed that guardianship of the common children should be taken from the mother and given to him. …."

The preambles record that the attorney of the mother had:

"mentioned in the response petition thereof that they did not accept the lawsuit and that the plaintiff's allegations were not true, and requested a judgment for rejecting the case."

That must be a reference to some document filed many months earlier, for, so far as I am aware, the mother's attorney had not participated or played any role at all in the proceedings since March 2013.

49 The substance of the judgment itself is clearly set out on the second page of the document. It refers at the outset to the evidence that the court had heard, namely:

"The plaintiff's witnesses, Cevdet Olmez … and Abdullah Ozeser, mentioned that the parties divorced, guardianship of common children was lastly given to the mother and that the mother took the children to England and left to their grandmother and she later returned to Turkey and married another person in Turkey and she still lived with her new spouse and she did not look after the children, and that the plaintiff could not see his children."

So that, clearly, in the view of the Turkish court, was the essence or thrust of the evidence they had heard from the witnesses.

50 The actual reasoning and decision of the court is really contained in about ten lines, as follows:

> "The lawsuit is a lawsuit for change of guardianship. The defendant did not accept the lawsuit opened. It was concluded according to the plaintiff's statement personally listened by our court, witness statements and all the scope of the files that the parties are divorced, the guardianship of the common children was given to the mother, the defendant mother remarried on 12.09.2012, and currently lives at the address of Yeni Mahalle … Kestel, Bursa, with her spouse, and she sent the common children to the grandmother living in England on 25.09.2012 and the defendant was not looking after the children, the father could not see the children and this situation had nature of misuse of guardianship rights and therefore it was decided to accept the case.
>
> JUDGMENT: According to the reasons described above it was judged:
>
> (i) to approve the case,
>
> (ii) to take the guardianship of the common children … from the mother … and give it to the father …"

The judgment then went on to make provision for contact between the children and their mother on alternate weekends, obviously, in the context, in Turkey.

51 That reasoning is fundamentally grounded on a conclusion as to the facts which I am sure (I use that word deliberately in its technical sense as to the standard of proof) is mistaken. I am sure that she was not currently living at the stated address (Yeni Mahalle) or any other address in Turkey. I am sure that she was not living with her second husband anywhere, whether in Turkey or anywhere else. She did not "send" the children to England in September 2012. She brought them here. I am sure that, in the whole period between September 2012 and November 2013, she was indeed "looking after the children" herself, except for the periods I have described when she was in Turkey (or for one fortnight in Ireland), during which she left them in the safe and appropriate care of their grandparents.

52 The evidential basis for those conclusions, of which I am sure, is a combination of (i) the sworn oral testimony of the mother which, on this issue, I unreservedly accept and believe; (ii) a series of her bank statements which show very frequent and often daily transactions at shops and other places in England throughout the whole period, except those periods when she herself says she was in Turkey or Ireland; (iii) evidence that she has been in fulltime employment in England by a branch of McDonald's near her parents' home since June 2013; and (iv) the entry and exit stamps in her passports.

53 I need not further describe or elaborate the evidence, since, by the end of the hearing, the father himself said that he now believes or accepts that the true facts were as she states; and his counsel, Mr Mark Jarman, expressly told me that he did not seek to argue against the conclusion that I could be sure that the mother had only been in Turkey between the stated dates, and had not been in Turkey at all since 5th May 2013.

54 I express that I am sure about those conclusions, because I am sure. Further, it is, of course, a serious matter to conclude that a foreign court has (entirely unwittingly) made a serious error of fact and, if the evidence warrants it, such a conclusion is more appropriately expressed to the higher standard of proof.

55 Article 9(3) of the European Convention provides as follows: "9 … (3) In no circumstances may the foreign decision be reviewed as to its substance." In the case of *Re A (Foreign Access Order: Enforcement)* [1996] 1FLR 561, the Court of Appeal clearly treated that provision (albeit that it appears within Article 9) as applying to the convention generally and not merely to consideration of any "defence" under Article 9.

56 In other words, although the provision appears within Article 9, its effect is freestanding. In the later case of *Re G (Foreign Contact Order: Enforcement)* [2003] EWCA Civ 1607, [2004] 1FLR 378, Lord Justice Thorpe referred, at

paragraph 18, to the earlier case of *Re A* and the judgment of Lord Justice Leggatt and said:

> "That citation demonstrates that this court regarded Article 9(3) as being a freestanding provision."

57 Those authorities are binding upon me and, therefore, I unhesitatingly treat the embargo under Article 9(3) as applying to, and bearing down upon, my entire consideration of this case. I cannot, in any aspect of my consideration of my approach to, or decision in, this case, review the Turkish decision as to its substance.

58 Mr Jarman submits that for me to take into account the true facts, which I have just described and of which I am sure, rather than the incorrect facts as mistakenly found by the Turkish court, amounts to reviewing the foreign decision as to its substance. I do not agree.

59 I wish to stress that I neither make, nor imply, nor have, any criticism whatsoever of the Turkish court in relation to its findings of fact. The mother had disengaged from participation in the proceedings, although, at the time of doing so, she had clearly stated (see the document at bundle page D:B55 quoted above) that she would from now on be living in the United Kingdom, together with the children, at the stated (albeit with the inaccurate number 75) address in

England. The Turkish court had heard clear evidence from two witnesses and also the father, all to the effect that the mother was living in Turkey with her second husband, and the children were in England being looked after by their grandparents. So the conclusion of the Turkish court on the evidence before it is entirely understandable. The truth, however, is fundamentally different.

61 I do not attempt to paraphrase in any way whatsoever the words "in no circumstances may the foreign decision be reviewed as to its substance". There is, however, a distinction between "review as to the substance", and discerning that the foreign decision is fundamentally founded on a completely mistaken essential fact or facts.

62 Take an example I put during the course of argument. Suppose a foreign decision (or indeed a domestic decision) is based, in good faith and on the basis of the evidence, on the proposition that a parent is dead. Unsurprisingly, custody might be awarded to the other surviving parent. The supposed dead parent then appears and shows that he/she was, in fact, looking after the children all the time. It is so obvious that the whole case requires to be reconsidered that to do so is not to review the decision "as to its substance". Rather, it is to recognise that the whole decision is fundamentally founded on a completely mistaken essential fact or facts, to the point that it turns out that (unwittingly) the foreign court was not engaging with the matrix of the case at all.

63 The situation in the present case is not as extreme as that hypothetical example, but it is, in reality, little different. The effective case of the father, and the effective finding of the Turkish court, was that the mother had chosen to live with her new husband in Turkey and had abandoned the children to her parents in England and was not looking after them. If those were indeed the facts, it is very understandable that the Turkish court might conclude that the children should be living with the other parent. The true facts are utterly different.

64 The father suggested during his evidence to me that it was sufficient reason alone for the change of custody that he was not seeing the children. Whilst I readily accept that a complete breakdown in contact may, under Turkish law, as it also can here, lead to a change in custody, that is clearly not the sole or narrow basis upon which the Turkish decision in this case is based. Rather, the Turkish court held that the whole "situation had the nature of misuse of guardianship rights". The perceived "situation" was the combination that the mother was living with her spouse in Turkey; the children had been sent to the grandmother in England; the mother was not looking after the children; and also that the father could not see his children. For these reasons, I am very clear that I must consider this application on the basis of the true essential facts of which I am sure, and am not precluded from doing so by the provisions of Article 9(3).

66 I am not willing to base any decision in this case on paragraphs (c) or (d) of Article 10(1). Paragraph (c) is not in point, since the Turkish proceedings were

originally instituted on 15th October 2012, only about three weeks after the removal, and it is speculative at best whether the children were habitually resident in England (the state addressed) as early as that date, so as to trigger Article 10(1)(c)(ii). On any view Article 10(1)(c)(i) is not in point.

67 It was suggested by Mr Edward Bennett on behalf of the mother and Mr Michael Gration on behalf of the children's guardian that reliance might be placed upon Article 10(1)(d). This particular argument depends upon the content of a without notice order made by Mrs. Justice Theis on the application of the mother acting in person on 24th March 2014. That order recites as follows:

> "And upon the court having been informed by the mother that the father has told the children during the course of a Skype conversation on Sunday, 23rd March 2013, that he has obtained sole custody orders for all three children in Turkey and that he will be taking the necessary steps to enforce those orders…."

68 The mother says that it was only as a result of that reported conversation between the father and the children on Skype that she first had any knowledge of the order made nearly four months earlier on 26th November 2013. Paragraph 1 of the substantive order of Mrs. Justice Theis provided: "(1) The children [who are named] shall live with their mother …". I am not willing to rely on

that paragraph of that order for the purposes of any defence (which is discretionary) under Article 10(1)(d).

69 It would raise an interesting question as to the meaning of the words "before the submission of the request for recognition or enforcement" where they appear in Article 10(1)(d). Do they refer to the actual commencement of the proceedings in court for recognition and enforcement (which in this case was in July 2014, after the Theis order), or to some earlier date when the formal application or request was received by the central authority (which in this case was in February 2014, before the Theis order)?

70 I express no view (which would be entirely obiter) for, even if the gateway facts under Article 10(1)(d) are satisfied, I would not be willing in this case to exercise a discretion under Article 10 on the basis alone of the order of 24th March 2014. The order does not seem to me to justify such an outcome, because (i) it was made without notice; (ii) it did not fix any return date and was not, for a long time, served upon the father; and (iii) paragraph 1 arguably went further than the circumstances justified on a without notice hearing. It would have been sufficient to impose a very temporary prohibition on removal of the children from England or the care of their mother until the situation had been further investigated and the father had had an opportunity to be heard at an early on notice hearing.

71 So far as is material, therefore, Article 10 (as incorporated into the law of England and Wales) provides as follows:

> "Article 10
>
> (1) Recognition and enforcement may also be refused on any of the following grounds:
>
> (a) if it is found that the effects of the decision are manifestly incompatible with the fundamental principles of the law relating to the family and children in the State addressed;
>
> (b) if it is found that by reason of a change in the circumstances including the passage of time but not including a mere change in the residence of the child after an improper removal, the effects of the original decision are manifestly no longer in accordance with the welfare of the child; …"

72 In the case of *W v. W* [2005] EWHC 1811 (Fam), at paragraph 50, Mr Justice Singer, after reviewing earlier authorities, stated certain succinct propositions, which all counsel in this case agree are still correct propositions of law as to the application of the convention; in particular, in the context of Article 10(1)(b). I will accordingly quote them and direct myself by reference to them. He said:

"50 From these sources I derive the following principles which arise if this is a case to which the European Convention applies:

- F must demonstrate a change of circumstances.

- The passage of time may itself constitute such a change.

- In the light of these changes he must establish that enforcement of the order is manifestly no longer in accordance with the children's welfare.

- The use of the word 'manifestly' connotes a very high degree of disparity between the order's effects if now enforced and the child's current welfare interests, and that disparity must be wrought by the changed circumstances.

- Whether or not such manifest disparity exists is to be tested against the immediate enforcement of the order, without delay, review or alteration. [That phrase 'without delay, review or alteration' is clearly a direct quote from the judgment of Mr Justice Charles in *T v. R (Abduction: Forum Conveniens)* [2012] 2FLR 544 at paragraph 128 on page 571].

- Art 10 is to be construed and applied stringently. The burden is on F to establish these factors cogently, and they are likely only to arise in exceptional cases.

- The children's views are to be ascertained where practicable. They may inform but clearly do not determine the outcome.

- In no circumstances may the foreign decision be reviewed as to its substance.

- In any event a finding that an art 10(1)(b) situation is established does not inevitably lead to a refusal of enforcement. The court has a discretion and at this point policy considerations of the Convention's objectives re-enter the balance to inform the exercise of that discretion."

Of course, in its application to the facts of the present case, where Mr Justice Singer used the letter F for father, I use the letter M for mother, the burden being plainly upon her.

73 These children are now aged 12, 9 and 7. They have lived continuously in England in a very settled single environment in the home of their grandparents

for over two years, since late September 2012. They have now been interviewed three times; first, in Turkey in 2012 in connection with the proceedings there. The "Expert psychologist" and "Social Services expert" jointly reported on 24th January 2012 (see the bundle in the former proceedings under the Hague Convention at page B65) that:

> "It is concluded that the children's behaviour and psychological state has been adversely affected by violent behaviour, and they display behavioural problems such as nail biting, bedwetting and disobedience to authority. It is concluded that they have an emotional closeness to their mother and that they are frightened of their father. … It has been observed that the emotional bond between the children and the plaintiff is strong and that, for the duration of the case, it is for the children's own good that they lived with their mother."

74 The children were interviewed again during the course of the proceedings here under the Hague Convention in March 2013 by a CAFCASS officer, Ms. Toni Jolly. The essence of her report is summarised in paragraphs 9 and 10 of my judgment in April 2013 (see above). The spokesperson at that stage was the eldest child. She made very plain then that she preferred to live in Turkey, but only if she could do so safely with her mother. She made many allegations against her father, and was clearly frightened of him and resistant to living with him.

75 The children have been seen again by Ms. Jolly in late September 2014 in the context of the present proceedings. It is crystal clear from her report that none of the children now wish to live in Turkey at all. All three have adopted English first names for daily usage. They now all use English as their first language, and the youngest said he only knows two words of Turkish. They all clearly expressed fear of their father. The elder son, now aged nine, said that going back to Turkey would be horrible and his father is horrible. The youngest child, now aged seven, referred to his father as "the beast" and as "horrible".

76 At paragraph 51 of her report, Ms. Jolly said:

> "[The three children] came to this country two years ago. It seems to me the children are settled here, in that they have been living in the same area for a reasonable period of time. They live 'normal' lives, whereby they are registered with a health agency, participate in social activities through their family, religious affiliation, and a network of friendships. All the children have an excellent attendance record at school. The information I have seen from the schools points to them all doing well and achieving appropriate academic milestones. [The three children] participate in school life, with the benefit that entails of an outlet for engaging in educational and social opportunities."

77 During the course of her oral evidence to me, Ms. Jolly said that the situation this time was very different from March 2013. They were all fully engaged with her. She got a good sense of their wishes and feelings. All three children are quite opposed to going into their father's custody. They expressed their views strongly when they spoke about their father. The youngest child said he would only go with his mother. He was quite clear that he wanted to be with his mother. The children made a number of allegations against their father. The clear view of Ms. Jolly is that the children are fully integrated here and in their schools here. Particularly in relation to their English language skills, they are more settled here. They are happy here. She would say they are well settled here. From their perspective, it would be disruptive to go back to Turkey now.

78 During the course of his final submissions on behalf of Ms. Jolly, who is the children's guardian in these proceedings, Mr Gration said that, in the opinion of Ms. Jolly, a move to the custody of the father or even to Turkey "could not be countenanced".

79 In my view, the facts and circumstances of this case clearly fall within each of paragraphs (a) and (b) of Article 10(1). As to paragraph (a), it is a fundamental principle of the law relating to the family and children in this state that decisions relating to children should be based, so far as possible, on correct facts as to the fundamentals of the case. I am not here referring to correct facts as to disputed allegations of behaviour or similar matters (where findings based on a balance

of probability may often lack objective reliability or truth). But it is fundamental to our law that if, in truth, a parent is living in England and actually caring for her children here, a decision is not made and implemented which is based on a mistaken proposition that she is living in Turkey and has effectively abandoned her children to their grandparents here.

80 The effects of the decision, if implemented, would be to remove the children from their mother, who is caring for them well, and from the environment in which they have been living for over two years and in which they are so settled, on an utterly mistaken foundation or premise as to the true facts. That, in my view, is manifestly incompatible with the fundamental principles of our law.

81 Since the reality of this case is that the Turkish decision is based on that fundamental error, I, for my part, prefer to base my decision on paragraph (a), which is the gateway under Article 10 which best reflects the fact of the error. But, in any event, paragraph (b) is, in my view, also satisfied in this case. The "original decision" is that of the Turkish court, now almost a year ago, on 26th November 2013. If, artificially, the circumstances are assumed at that date to be those found by the Turkish court, namely that the children were living in England with their grandparents and were not being cared for by their mother, who was living with her husband in Turkey and had effectively abandoned them, then all that has changed. They are living with their mother here in

England and have been, even on that artificial assumption, ever since late November 2013.

82 Further, there is the major change that, earlier in 2013, the children were expressing a desire to live in Turkey. Now, they very strongly express a desire not to do so. Those actual and hypothetical assumed changes are such that it is now manifestly no longer in accordance with the welfare of these children that they should now move abruptly or rapidly, as the Turkish decision requires, from their settled environment with their mother here to living in Turkey with their father, whom they fear and whom they currently do not even wish to see.

83 Further, the father has remarried and now lives with his new wife and their two month old baby. The new wife and these children have never, ever met each other, and the new wife has never, so far as I am aware, been assessed by anybody. It is manifestly no longer in accordance with the welfare of these children to move them, abruptly or rapidly, from the care of their mother, with whom they have effectively always lived and who is caring for them well, to so uncertain an alternative with no objectively justifiable reason.

84 In my view, therefore, the gateway exists for the overall exercise of the discretion under Article 10 whether or not to refuse recognition and enforcement. As Mr Justice Singer said in the last bullet-point in *W v. W* in the passage I have quoted above:

"In any event a finding that an art 10(1)(b) situation is established does not inevitably lead to a refusal of enforcement. The court has a discretion and at this point policy considerations of the Convention's objectives re-enter the balance to inform the exercise of that discretion."

85 In order to appreciate the policy objectives of the convention, one looks to the preamble to it. It begins:

"The member States of the Council of Europe, signatory hereto,

Recognising that in the member States of the Council of Europe the welfare of the child is of overriding importance in reaching decisions concerning his custody;

Considering that the making of arrangements to ensure that decisions concerning the custody of a child can be more widely recognised and enforced will provide greater protection of the welfare of children;

…

Convinced of the desirability of making arrangements for this purpose answering to different needs and different circumstances;

Desiring to establish legal co-operation between their authorities,

Have agreed as follows: …"

86 It is clearly undesirable that there should be a proliferation of litigation in different states with regard to the same children; and ordinarily highly desirable that, once a decision has been made after due process in one member state, it should be readily and rapidly enforceable in another. But the overriding consideration in the preamble to the convention and throughout Article 10 is the welfare of the child or children concerned.

87 In my view, to recognise and enforce this decision now, without delay, review or alteration, would be utterly contrary to the welfare of each of these children to the point of being inhuman. I agree with the guardian that no court and no person, with the welfare and interests of these children in the forefront, could conceivably countenance that they are abruptly or rapidly uprooted now from an environment in which they have been settled and are thriving, and in which they wish to remain, and in which they are well cared for by their mother, to a very uncertain and unpredictable, and, frankly, unassessed future with a parent whom they have not even seen for 18 months and of whom, for reasons which they gave, they are frightened. That would be to sacrifice the welfare of these particular children on the altar of reciprocity or "greater protection of the

welfare of children" generally, and cannot be done. Nor, in my view, does the European Convention require it to be done.

88 Eighteen months ago, in April 2013, I expressed surprise and regret at the turn of events when the opportunity for a negotiated or an adjudicated outcome was lost. I deeply, deeply regret that these children have not now seen their father face to face for 18 months, nor he them. I deeply regret that, in the meantime, the father has expended so much futile effort and damaging delay, first, in pursuing his proceedings in Turkey, and now, for almost a year, in pursuing these proceedings for enforcement.

89 What really matters in this case is repairing the damage. I earnestly hope that real efforts can now be deployed in re-establishing a relationship between these children and their father, and enabling mutually beneficial contact to take place between them. I do not in any way disguise that I sincerely hope that the day will come when these children, who are half Turkish, are able happily and safely to visit Turkey and spend time with their father there.

90 But the outcome of the present proceedings is that the application for recognition and enforcement of the Turkish decision and order made on 26th November 2013 is dismissed.

91 I conclude this judgment by recording my sincere thanks, on behalf of both the mother and this state, to Mr Edward Bennett and his instructing solicitors,

Freemans, for generously acting “pro bono”, that is, entirely free of charge. It would have been quite impossible for this mother to represent herself in this technical and complex matter, but legal aid was not available to her and she could not afford to pay for legal representation. Mr Bennett has selflessly given up a full week of his professional, working time for no financial renummeration at all. In effect, he has subsidised this state.