Neutral Citation Number: [2019] EWHC 105 (Fam)

Case No: ZC17P00595

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/01/2019

Before :

MR JUSTICE MOSTYN

- -

Between :

RJ	**Applicant**
- and -	
GANNA TIGIPKO	**1ST Respondent**
- and -	
SERGIY TIGIPKO	**2nd Respondent**
- and -	
VAICHESLAV BAIKOVSKYI	**3rd Respondent**
- and -	
SJ & VJ **(by their Children's Guardian SARAH BROOKS)**	**4th & 5th Respondents**
- and -	
ASSOCIATED NEWSPAPERS LTD **TIMES NEWSPAPERS LTD** **BRITISH BROADCASTING CORPORATION**	**Interested Parties**

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- -

Adam Wolanski, Ruth Kirby and Michael Edwards
(instructed by **Sears Tooth**) for the **Applicant**

Lord Pannick QC, Deborah Eaton QC, Alexander Cameron QC, Jessica Boyd and Stephen Jarmain (instructed by **Charles Russell Speechlys LLP**) for the **1st Respondent**

Richard Kovalevsky QC, Mark Jarman and Greg Callus
(instructed by **Stewarts**) for the **2nd Respondent**

The **3rd Respondent** did not appear and was not represented

Samantha King QC and Michael Gration
(instructed by **Goodman Ray**) for the **4th & 5th Respondents**

Gervase de Wilde (instructed by **RPC**) for the **Interested Parties**

Hearing dates: 14-15 January 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE MOSTYN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on the terms set out in paragraph 60 of it. All persons, including representatives of the media, must ensure that these terms are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice Mostyn:

1. On 27 April 2018 I handed down my judgment on the mother's application for permission to relocate the parties' two daughters, then aged 5 and 2, to live with her permanently in the Ukraine. I refused her application and directed that the children should live primarily with her in London but spending ample time with their father. The judgment is available in anonymised form on Bailii[1]. It sets out the history up to that point. Following the hand-down of the judgment I acceded to an application by the mother to be allowed to take the children temporarily to the Ukraine from 2 – 27 May 2018 so that from there, and in that period, she might sort out the visa situation of her newly born son, then not even two months old.

2. The mother immediately applied for permission to appeal my main decision, and the father likewise sought to appeal my secondary one. The Court of Appeal heard the applications on 8 May 2018. The mother was refused permission to appeal. The father was granted permission and his appeal was allowed. Peter Jackson LJ was of the view that notwithstanding that Ukraine was a Hague Convention country, then without safeguards and security, enforcement of the return of the children - should the mother retain them there - might prove to be protracted[2]. As will be seen, that foresight has proved to be highly accurate.

3. The father states that prior to the appeal hearing the maternal grandfather, the second respondent, ("MGF") requested that they meet up. That duly occurred on the very evening of the appeal hearing. The father says, and I accept, that MGF sought to persuade the father to agree that the children could live in the Ukraine but could give no guarantees that the children would be able to travel to England were that to be agreed. On being told by the father that, therefore, it would not be agreed MGF said that it was "not over". This was clearly a threat.

4. Following the appeal, the parties engaged in mediation with His Honour Michael Horowitz QC and reached an agreement concerning the allocation of the children's summer holiday. The mother wished to take them to Ukraine for a month. The father's stance was that he wished there to be in place a mirror order in the Ukrainian court before the children travelled there. The mother resisted this saying through her solicitors on 7 June 2018 that she "has no intention of retaining the children in Ukraine" and in any event that the process of obtaining such an order would take "several months" and was therefore likely to be redundant for the purposes of a summer holiday.

5. A term of the agreement was that the mother's new husband, Slava, the third respondent, would provide his consent to his baby son living in London with the mother in accordance with the terms of his (the baby's) visa (which was valid until 12 December 2018). That consent was provided in a notarised letter by Slava dated 2 July 2018. On 6 July 2018 Slava himself was granted a visa to visit this country valid until 6 January 2019.

6. The agreement was incorporated in a consent order made by Mr Justice Newton on 13 July 2018. The consent order is very detailed. It provided that a joint letter would be signed by the parties and their lawyers and sent to the Ukrainian Court to ask for

[1] http://www.bailii.org/ew/cases/EWFC/HCJ/2018/26.html
[2] The Court of Appeal judgment is not on Bailii

recognition in the Ukraine of the substantive child arrangements order. In relation to the immediate summer holiday arrangements, it was provided that the mother would have permission to take the children to the Ukraine for the purposes of a summer holiday from 13 July to 16 August 2018. It was further provided that the children would have a holiday with their father in Sardinia from Thursday, 16 August to Friday, 31 August 2018. It was provided that the children would be collected from the mother's address in Kiev by their nanny, VV, on Thursday, 16 August at least three hours in advance of their intended flight and that the mother would ensure that the children were ready for collection. It was provided that the mother would provide VV, at the collection of the children, with the necessary consent form signed by her for the purposes of transporting the children to Sardinia. And it was provided that the children would be returned to the mother in London by the father no later than 16:00 BST on Friday, 31 August 2018.

7. In view of concerns about the mother's conduct the father required, and the mother agreed, that she should put up the sum of £1 million as security for the father's legal costs and the incidental expenses of legal proceedings in the event that the mother failed to make the children available to him for the holiday contact. That money was to be paid into the client account of her solicitors, Charles Russell Speechlys. It was provided that, upon confirmation that the children had been collected from the mother by VV, the security fund would be released back to the mother. It was further provided that if the children were not made available to the father by the mother on 16 August 2018, her solicitors shall, by 10:00 BST on Friday, 17 August, give irrevocable instructions to transfer the security fund to Sears Tooth.

8. Paragraph 4(e) of the order provided that, in the event that the children were not made available to the father or had not returned to England and Wales by 16 August for reasons beyond the mother's control, then there would be alternative arrangements as follows: the mother would immediately notify this to the father and to her solicitors; her solicitors, Charles Russell, would immediately notify those circumstances to the father's solicitors, Sears Tooth; and the mother would provide documentary evidence to the father in support of that modification and of the new arrangements for her to comply as soon as practicable with her obligation to make the children available to be with the father for the summer holiday with him or to return the children to England and Wales. Further, the security fund should not be immediately transferred to Sears Tooth Solicitors and should remain in Charles Russell's account, subject to the written agreement of Sears Tooth to release the security fund to the mother or further order of the court. But, in the event that the father was not satisfied by the mother's evidence in support, he would return the matter to court and apply for the immediate transfer of the security fund to Sears Tooth for the purposes of funding the legal proceedings as I have described. Then there are further arrangements, which are not applicable, if the event in question is the illness of one of the children.

9. On that basis, the monies were transferred to Charles Russell and the children left to spend their holiday with their mother on 13 July. The father last physically saw his daughters on that day. Since then his contact with them has been confined to some limited Skype sessions.

10. On 15 August 2018, the day before the children were to be returned in accordance with the orders of 13 July, the mother texted the father in the evening and said:

> "Hi. My farther (sic) has just called me and informed that he had applied to the court in Kyiv for injunctive relief against me, so that the girls cannot leave Ukraine. He has not provided an injunction from the court to me, but insists that it was granted by the court and is in force, and I cannot let the girls travel. Tomorrow morning, I will authorize someone to visit the court and check the court's record to see if exists an injunction. Since there is a possibility that it does exist and I do not wish to be from in breach thereof, I will not deliver the girls to VV tomorrow morning. I will let you know as soon as I can. My lawyers have just e mailed yours regarding this."

11. That information was is confirmed by an email at 19:51 on that same day, from Miranda Fisher at Charles Russell to Sears Tooth:

> "We have been contacted by our client in the last hour with urgent information. She instructs that her father telephoned her this evening to inform her that he has applied for injunctive relief against her to prevent the children, S and V, from leaving Ukraine. Our client's father has not as yet provided our client with any documentation, but informed her this order had been granted by the Ukrainian Court today and the children will not be able to leave Ukraine tomorrow.
>
> Our client's Ukrainian lawyer will be attending Court tomorrow to establish whether such an injunction exists. Until this has been established, our client will not hand over the children to VV. She is concerned about the existence of such an order and a scene at the airport when the children try to board the aeroplane. She asks that VV is put on standby by tomorrow to collect the children whilst her lawyer establishes the position.
>
> Our client is informing your client directly of these developments."

12. In a communication, again late on 15 August 2018, Sears Tooth were informed that not only had there been an application made to the court in Kiev by the mother's husband, Slava, which had been dismissed, but there was also a further application by the mother's father which was, as then, undetermined.

13. Researches made on behalf of the father of the Ukrainian judicial database revealed that on 7 August 2018 Slava had made an application, seemingly about the baby, against the mother; this was "returned" to him (i.e. summarily dismissed without a hearing) on 13 August. On 10 August he had a made a further application which was in turn summarily dismissed without a hearing on 14 August. Beyond these spare details nothing more is known about these applications.

14. The application by the mother's father, as referred to in her text and in the letter from her solicitors, was made on 14 August 2018 and named the mother, the father and Slava as respondents. It sought to prevent the girls and the baby from leaving Ukraine. It referred to my order of 27 April 2018 and said that I had dismissed the mother's

relocation application for "unclear reasons". It asserted that were the children to leave the Ukraine it would make "my communication with grandchildren and their upbringing impossible", without mentioning that his own son is at boarding school here and that he has a visa allowing him to visit this country. On any view it was a thoroughly misleading application. It was returned to him on 16 August 2018 and no injunction was ever granted on the application while it existed.

15. On 17 August 2018, by which time the mother was in breach of the order of 13 July, her solicitors wrote:

> "Our instructions are as follows:
>
> 1. On Wednesday evening (15 August), our client was informed by her father that there was an injunction in place which he had applied for and obtained from the Ukrainian court preventing her from leaving the country with the children. We wrote to your (sic, semble you) immediately upon receiving that information and our client informed your client directly.
>
> 2. Yesterday (16 August), our client's Ukrainian lawyer attended court to ascertain whether or not any such injunction was in place. They were told that the application for the injunction is currently with a judge for consideration. They will attend court today again to make further investigations as to the status of this injunction.
>
> 3. Our client's Ukrainian lawyer is unclear how it would be possible for your client's Ukrainian lawyer to establish the status of any application made by our client's father or Slava in circumstances where we understand that [the father] would have to be the other party to such an application and, at the very least, they would need a Power of Attorney from [the father] as well. Please explain.
>
> 4. The children are with their mother. They are safe and well. Your client spoke to them yesterday by way of a call on WhatsApp.
>
> Our client has no wish to breach any order of the English court but these are circumstances beyond her control which are specifically provided for at paragraph 4(e) of the order dated 13 July 2018. Our client immediately notified us and your client of the circumstances and our client's Ukrainian lawyer is endeavouring to obtain from the court documentation in respect of the injunction referred to above.
>
> Any such documents and further information will be provided to you as soon as possible and in the meantime, we would ask your client to be patient in these difficult circumstances. The children are being well looked after by their mother, your client has

> spoken to them and he will be kept updated as and when more information is available.
>
> VV's only function is to transport the children to your client and our client will not be handing the children to her until this matter is resolved. There is no reason for her to do so and the children should remain with their mother who is their primary carer.
>
> In the event that you make any court application, it must be on notice to us."

On any view this was a singularly unfortunate letter to have written given that at no time was an injunction in place and that by the time it was written the maternal grandfather's application had been struck out.

16. On 17 August 2018 MGF made two further applications to the court in Ukraine to similar effect as his application of 14 August, but on 21 August 2018 it was stated to Mr Justice Moor that he was intending to withdraw them and I believe that he has done so.

17. On 17 August 2018 I ordered that the children should be immediately delivered by the mother to her own mother in Kiev so that they could be handed to VV to travel with her to Sardinia for their holiday with their father. I ordered that MGF, who I joined to the proceedings, should be restrained from trying to prevent the children either being delivered to the maternal grandmother or from leaving Ukraine. Further, I ordered that the £1m security fund be released to the father's solicitors.

18. The report of the Guardian reveals that in the latter part of 2017 (I deduce) the mother asked the principal of the kindergarten in Kiev to keep open the girls' places for September 2018 and that in the summer of 2018 she paid the fees there for the autumn term.

19. There is no doubt in my mind that the mother, in concert with MGF and her husband Slava, has made the fateful decision to defy the authority of this court and to retain the girls in the Ukraine indefinitely. She has made this decision notwithstanding that the consequence has been that she forfeits the £1m security and that she faces the possibility of criminal proceedings as well as contempt proceedings. Moreover, she does so in the knowledge that she will face proceedings in the Ukraine for recognition and enforcement of the orders of this court under the 1996 Hague Convention.

20. The reason that the mother gives for this gross act of defiance is set out in her witness statement where she says:

> "Slava is of the view… that [the baby's] best interests are served by him being raised in Ukraine. Inevitably these proceedings have put him on alert to the possibility of being separated from his baby. I therefore cannot bring [the baby] to London. I am clear that the best interests of the children can only be served by then been kept together, and me caring for them together. At the moment that has to be in Kiev."

It is noteworthy that, yet again, Slava declines to give evidence about his stance to this court but leaves it to the mother to relay his case on a hearsay basis. I cannot accept indirect evidence from Slava of this nature for reasons that are obvious. The supposed stance of Slava is of course at complete variance with his signed and notarised letter of 2 July 2018, on the basis of which the father agreed to allow the girls to go to Ukraine for a summer holiday.

21. Since my order of 17 August 2018 there have been further return orders made by Mr Justice Moor on 21 August 2018, and by Mr Nicholas Goodwin QC on 24 August 2018. On the latter occasion the girls were made wards of court.

22. On 26 September 2018 the father made the application on which I now give judgment namely that the provisions of section 12 of the Administration of Justice Act 1960 and, inferentially, section 97(2) of the Children Act 1989, be relaxed to permit certain information to be released into the public domain. It was not proposed that the girls be actually named but the information proposed to be released would certainly be capable of identifying them, hence the inferential application under section 97(4) of the 1989 Act.

23. The application notice stated:

> "Both the mother's and [MGF's] requests for disclosure of documentation and resistance to any case summary are indicative of their concerns of being charged with criminal offences and of being publicly named. In particular [MGF] has played an active role in conspiring to convert the course of justice with the mother. Given he is the former Vice-President of the Ukraine and he is a prominent businessman, he is an influential public figure who is obviously highly sensitive to any suggestion that there might be publicity surrounding his breach of an English High Court order.
>
> In light of the continuous breaches of the mother by failing to return the children to the jurisdiction, the court is asked to grant permission to remove the usual restrictions on release of information within family proceedings to the press, so as to encourage her to do so. It is not proposed that the mother's, Slava's or the children's names are released at this stage, but only [MGF's] name."

24. The matter came before me on 2 October 2018. I was satisfied that the application gave rise to potentially complex legal issues. By that stage the father had enlarged his reasons for seeking to relax the publicity prohibitions to allege that the judicial system in Ukraine was not only extremely inefficient, with cases taking years to wend their way through three levels of appeal, but was also riven by corruption.

25. Further, given that the application related to wards of court I was in no doubt that the children should be joined to the publicity application acting by and through a children's Guardian.

26. In my judgment I stated:

> "…there is no dispute that Sarah Brooks is completely independent and has the requisite experience. So she will be appointed guardian. So the children will be appointed parties -- I suppose they will be fourth and fifth respondents -- to the father's application dated 26 September 2018 and she will instruct solicitors from a designated children's panel and her costs will be paid from the £1 million which has been transferred to the father under my previous order. She will provide a report to the court as a guardian of the children and as their advocate will advance her submission in relation to the publicity proposal. As she has been appointed, the court will take advantage of that status to require her to travel to the Ukraine as soon as she reasonably can, and I am told it will be within seven weeks, to interview the children and to determine their wishes and feelings in the circumstances of their retention in the Ukraine. At aged five and three, I do not suppose their wishes and feelings will be very maturely expressed, but it is important that they should be ascertained, not least because these children are and shall remain wards of court."

27. Earlier in my judgment I recorded my strong disapproval of the course of conduct of the mother. I said:

> "The mother, having been unsuccessful before me and in the Court of Appeal, has engaged in self-help and one of our oldest extant statutes, the *Statute of Marlborough* 1267 prohibits self-help as a means of redress. So I do not want anything that I say that follows to be interpreted as any kind of watering down of my very firm condemnation of the conduct of the mother, which will, as I said during the course of the hearing, ultimately prove to be futile because I have no doubt her objective of being able to retain these children in the Ukraine throughout their minorities will fail. It may take some time, but fail it will I am quite certain of it, because the Ukraine is a co-signatory with this country to both the 1996 and 1980 Hague Conventions. I am sure that for the Ukraine the principle of comity is as important as it is in this country and that the judicial and administrative authorities of the Ukraine will ultimately return these children to the land of their habitual residence for them to live under the child arrangements that I decreed as being appropriate on 27 April of this year."

28. The father made his application in the Ukraine under the 1996 Hague Convention on 6 December 2018. He sought to enforce the return order made by Mr Goodwin QC on 24 August 2018 rather than my substantive order of 27 April 2018. I was told that this choice was made following legal advice in the Ukraine. Slava had been joined to the proceedings here by the time of the hearing before Mr Goodwin, but he had not participated in the hearing despite having been notified by email.

29. The father's application was returned to him without a hearing (i.e summarily dismissed) the court judging that he had not demonstrated that the email address given

for Slava actually was his email address. This was despite the Ukrainian court having been provided with a copy of the letter from the mother's solicitors dated 22 August 2018 which stated Slava's email address. This was not a promising start to the proceedings.

30. At this point I refer to some rather heated criticism of the father made to me on behalf of the mother by Ms Eaton QC, which I have to say I found perplexing. She argued that the father was to be criticised for having made the "tactical" decision to proceed in the Ukraine under the 1996 Hague Convention rather than the 1980 Hague Convention. Had he proceeded under the 1980 Convention then defences would be made available to the mother under article 13 namely that a separation of the girls from their half-brother would risk exposing them to a grave risk of psychological harm or otherwise place them in an intolerable situation. Apparently, to choose a path which deprives the mother of that defence is something for which the father is to be criticised. I cannot disagree more strongly. I have stated in a number of decisions that the arrival of the reciprocal enforcement of orders regime in both the Council Regulation (EC) No 2201/2003 of 27 November 2003 ("B2R") and the 1996 Convention has the effect of rendering the 1980 Convention obsolescent (see, for example, *E v E (Secretary of State for the Home Department intervening)* [2018] Fam 24, at [13]). Plainly, the father is not to be criticised for choosing a path under the more modern treaty to seek to enforce my substantive order. I would go so far as to say that the criticism is absurd.

31. Member States were permitted by the EU to sign the 1996 Convention in 2003 but there was a significant delay in the EU authorising the Member States to ratify it due to a dispute between Spain and the UK in relation to the operation of the 1996 Convention and other treaties in Gibraltar. The EU Member States were finally authorised to ratify it in 2008 with the aim of it coming into force in 2010.

32. The European Communities (Definition of Treaties) (1996 Hague Convention on Protection of Children etc.) Order 2010 (SI 2010 No. 232) stated in Article 2 that the 1996 Convention "is to be regarded as one of the EU Treaties as defined in section 1(2) of the European Communities Act 1972". Pursuant to the power to make regulations in section 2(2) of that Act the Government made the Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 (SI 2010 No. 1898) to "facilitate" ratification, which eventually happened in July 2012. It came into force here on 1 November 2012. It can thus be seen that it is part of our domestic law as well as being within the material scope of EU law.

33. Ukraine ratified the Convention on 3 April 2007 and it came into force in that country on 1 February 2008.

34. The recognition and enforcement provisions of B2R are modelled on the 1996 Convention. See *SP v EB & Anor* [2014] EWHC 3964 (Fam) at [7], for some of the history of these measures. Ms Kirby has argued that there is a higher standard of competence and probity to be assumed when considering the application by an EU state of the recognition and enforcement provisions of B2R than when considering the application by a non-EU state of the corresponding provisions of the 1996 Convention. I completely disagree. In my judgment the probity and competence of an EU state operating B2R and a non-EU state operating the 1996 Convention are to be judged equally.

35. In *Re N (Children)* [2016] UKSC 15 [2017] AC 167 at [4] Lady Hale stated about B2R:

> "It goes without saying that the provisions of the Regulation are based upon mutual respect and trust between the member states. It is not for the courts of this or any other country to question the "competence, diligence, resources or efficacy of either the child protection services or the courts" of another state (see *In re M (Brussels II Revised: Article 15)* [2014] EWCA Civ 152; [2014] 2 FLR 1372, para 54(v), per Munby P). As the Practice Guide for the application of the Brussels IIa Regulation puts it, the assessment of whether a transfer would be in the best interests of the child "should be based on the principle of mutual trust and on the assumption that the courts of all member states are in principle competent to deal with a case" (p 35, para 3.3.3). This principle goes both ways. Just as we must respect and trust the competence of other member states, so must they respect and trust ours."

36. This is not to say that an argument based on inefficiency or corruption in an EU or 1996 state is impossible or that evidence about it is inadmissible. In *R (NS (Afghanistan) v Secretary of State for the Home Departments (Amnesty International Ltd intervening)* [2013] QB 102 the Court of Justice of the European Union held that the obligation on Member States to comply with EU law did not mean that there was a conclusive presumption they did so in fact. If there was material available which gave rise to substantial grounds for believing that fundamental rights would be breached the court could not ignore that.

37. The next preliminary matter is whether in adjudicating the father's application I apply the paramountcy test set out in section 1(1) of the Children Act 1989. This will be the case if I am "determining a question with respect to the upbringing" of the girls. In this regard I fully agree with Lord Pannick QC and Ms King QC that the question I am confronting squarely concerns the upbringing of the girls. I am being asked to allow publicity as a coercive measure – to "encourage" the mother and MGF to comply with my substantive determination that it is in the best interests of these children that they live in London under the primary care of their mother but with very substantial secondary care from their father. I just do not understand how it can be said that this is not a question with respect to their upbringing.

38. In his book *A Commentary on the United Nations Convention on the Rights of the Child*, Professor Michael Freeman wrote:

> "The word 'paramount' emphasises that the child's best interests are determinative: they determine the course of action to take. If a child's best interests are paramount, it is difficult to see any other consideration being seriously taken into account. The child's best interests would be more than just the top item in a list: they would come close to being the only consideration. How close, of course, would be ultimately dependent on the values of the decision-maker."

Lord Simon of Glaisdale put it rather more shortly when speaking in the House of Lords on the Family Law Bill on 22 February 1996:

> "If I were asked to define it, I would be obliged, I think, to say that 'first' and 'paramount' is really a pleonasm. A first consideration is a consideration which is more important than any other. A paramount consideration is a consideration which is more important than all others"

39. I have been urged by Mr Wolanski and by Mr de Wilde to give an alternative decision if I were wrong in my primary conclusion that the issue I am deciding concerns the upbringing of the girls. In that event their interests would be the, or possibly a, primary consideration. I have heard some interesting argument about how that less weighted interest should be balanced against other factors. However, I have concluded that I must have faith in my primary conclusion. I therefore decline to rule on the interesting legal debate as to the balance between freedom of expression and the interests of the children where they are the (or, a) primary consideration.

40. In my judgment the decision that I make must be based exclusively on my evaluation of what is in the best interests of these girls.

41. Before I turn to that core question there is a further preliminary point I should deal with. Lord Pannick's back-up argument is that no publicity should be allowed until the father's 1996 application has run its course in the Ukraine and has failed.

42. There is some support for that argument in an obiter dictum in the judgment of Lord Justice Thorpe in the money-case of *Lykiardopulo v Lykiardopulo* [2010] EWCA Civ 1315, [2011] 1 FLR 1427. In that case publicity was allowed on account of the iniquitous behaviour of the respondent and his family. At [71] – [72] Lord Justice Thorpe said:

> "Although in her judgment the judge put aside any consideration of publication as an aid to enforcement (it being a bolt that had been shot) it would be naïve not to see it as the driving force of this expensive satellite litigation. The judge spoke her mind on 16th March and I cannot believe that the wife would have fought so hard for a public judgment had the husband's proposals for instalment payments been acceptable.
>
> Should public judgment or the threat of public judgment be used as an aid to enforcement? I think not. There are statutory and other remedies both for enforcement within the jurisdiction, enforcement within Europe and enforcement worldwide. For European enforcement I recognise a distinction is drawn between maintenance orders and orders encompassing the property consequences of divorce. Nevertheless, the question of publication should, in my judgment, be kept quite separate from questions of enforcement."

43. I must admit to struggling to grasp the logic of these observations. It seems to me that to seek publicity as an aid to enforcement, where the respondent is in defiant breach of

the obligation to pay, is a much more readily comprehensible reason for lifting secrecy than the desire "to bring shame to the offender and solace to the offended" (see [40]).

44. I do not see these remarks as being an obstacle to my making the order sought on the facts of this case provided that I am satisfied that it is in the best interests of these girls.

45. I formed the preliminary view during the hearing that if I were to authorise the lifting of secrecy I would defer it until the conclusion of the first instance hearing of the father's application in the Ukraine under the 1996 Convention. The evidence demonstrates that such a first instance hearing is likely to be concluded relatively quickly, within perhaps six weeks or two months. It is the availability of appeals which would substantially prolong the process, as explained above. However, I have been persuaded by Ms King QC that if I am satisfied that publicity is in the interests of these children then I should authorise it to take place virtually immediately. Her reasoning is that any further delay in the resolution of the circumstances of the children will be highly damaging. Ms King QC states that if I am satisfied that publicity is in the interests of the children the maximum deferral should be one week to give the mother one final chance to comply with the orders of this court.

46. I agree with Ms King QC.

47. I thus turn to the core question.

48. Before setting out the respective arguments I refer to the thorough and insightful report of the Guardian dated 4 January 2019. In it she records a very worrying demonisation of the father in the mind of the elder child. In paragraph 71 she records this:

> "She again told me that Papa is bad as he makes Mama cry; she said out of Mama and Papa she loved Mama best. She said Papa pretends to be good but he is bad. I wondered why she thought that. She said 'he tries to trap us'. I wondered aloud about this (but I was not able to ascertain any more details). [She] was very matter-of-fact in the way she spoke – there was no evidence of any stress."

This is mirrored by comments made by the elder daughter to a psychologist to whom the mother unilaterally took the children in November 2018 notwithstanding that they were wards of this court and she had no permission to do so. In the report dated 19 November 2018 it is stated:

> "In her parents' conflict [S] takes the side of her mother. In respect of her father, the girl either avoids talking about him or is strongly negative: '*he deceived us. He said he was good, but he is bad.*' She fears that dad wants to '*take us from mommy forever'"* (italics in original)

49. In paragraph 84 of her report the Guardian concludes:

> "As previously stated [the girls] are becoming increasingly isolated from their father and other significant family members. Separation from a parent has profound consequences for children

> at whatever age or developmental stage they have reached. In this case the evidence is that they had a secure relationship with their father and the fact is that this relationship was abruptly fractured."

50. The mother says that there is nothing to prevent the father travelling to the Ukraine to have contact with the girls. However, the father says that he is not prepared to do so as he considers that he would be at risk of false accusations being made against him which could imperil his liberty. It is true that he made similar allegations in the relocation proceedings which I dismissed in my judgment of 27 April 2018. The situation now is very different. The mother has shown herself to have no respect whatever for the rule of law and MGF has been shown to have easily made untrue and misleading applications to the Ukrainian court. In my judgment the father's caution is entirely understandable.

51. Mr Wolanski and Ms Kirby on behalf of the father argue that the lifting of secrecy may very well have the effect of coercing the mother and her father to comply with the orders of this court and to return the girls to London to be brought up here by both of their parents. They do not argue that it is more likely than not that such a consequence will eventuate. Given the scale of the harm that is being suffered by the children, as explained graphically by the Guardian in her report, they argue by analogy with *Re S-B (Children)* [2009] UKSC 17 [2010] 1 AC 678 that even a modest likelihood of coercing compliance will suffice. In that case at [9] Lady Hale stated:

> "Predictions about future facts need only be based upon a degree of likelihood that they will happen which is sufficient to justify preventive action. This will depend upon the nature and gravity of the harm: a lesser degree of likelihood that the child will be killed will justify immediate preventive action than the degree of likelihood that the child will not be sent to school."

52. Lord Pannick QC argues that publicity is completely pointless in this case and will only damage the interests of the children. There is no evidence, he says, that the mother, or MGF, will yield to the pressure of publicity. On the contrary the picture that has been painted of the mother is of a woman who is highly ruthless and manipulative and who is not going to succumb to the transient and ephemeral pressure of a few days' publicity. It was certainly a novel experience for me to have the vices of a litigant prayed in aid by her advocate. The consequence of publicity will be to create a digital footprint which will endure forever to the children's disadvantage.

53. Ms King QC supported the application for publicity on behalf of the children. I place great weight on her submissions which derive from instructions given to her by the Guardian. As explained above, she has stated that the mother and MGF should be given one last chance to comply and that the order for the lifting of publicity should therefore be deferred for a week. However, in principle she is satisfied that there is a reasonable likelihood that publicity will supply a coercive element which may have the consequence of bringing the mother and MGF to heel.

54. In her submissions Ms King QC emphasised that her stance was intrinsic to the Guardian's analysis. She said that the girls are suffering profound, long lasting harm and are in an acutely harmful situation. Any further delay would compound that harm.

She has listened to Lord Pannick's argument that the measure will be pointless, but the Guardian is not naïve. She sees the mother as manipulative, conniving and a strong character evincing no sign of contrition. Not to take this course would be the counsel of despair. That she has brought a phalanx of some of the country's most distinguished lawyers to defend her position is indicative of the concern that she is truly feeling at the prospect of publicity. If she were truly unconcerned at the prospect of publicity she would have shrugged her shoulders and said: 'publish and be damned'.

55. Ms King QC further argues that it is not necessary for me to decide whether or not the Ukrainian judicial system is inefficient or corrupt, since there is no objection that can be raised in principle, on the facts of this case, to the coercive measure of publicity running in tandem with an application by the father under the 1996 Convention.

56. I have considered the matter very carefully and have concluded that Ms King QC's arguments are faultless.

57. Specifically, I agree that it is not necessary for me to decide whether or not the Ukrainian judicial system is inefficient or corrupt although my view of the evidence is that it does not come anywhere near the standard that is necessary to cross for such a decision to be reached. Generally speaking, the starting point and the usual finishing point should be that the judicial and administrative standards of an EU or 1996 state are as good as ours.

58. Fundamentally, my decision is this: there is a reasonable prospect, if publicity is allowed, that its effect will be to make the mother and MGF see sense and to agree, in advance of what seems to me to be an inevitable outcome of 1996 proceedings in the Ukraine, to the return of the girls to the land of their habitual residence to live in London under the care of both of their parents. I have already rejected above the argument of the mother that her new husband is raising an authentic impediment to this step being taken. It is my judgment that publicity is positively in the interests of these children on the specific facts of this case.

59. I also agree, although it is irrelevant to the decision which I have reached, that there is a strong public interest in far more press reporting of the scourge of international child abduction. Child abduction is a heinous practice, and there are in force, as explained above, international agreements to seek to prevent it. Yet public awareness is curiously very limited. It is strongly in the public interest that much greater awareness is generated about this dreadful phenomenon. I echo the words of the Lord Chief Justice, Lord Judge, in *R v Kayani* [2011] EWCA Crim 2871, [2012] 1 WLR 1927 at [54]:

> "The abduction of children from a loving parent is an offence of unspeakable cruelty to the loving parent and to the child or children, whatever they may later think of the parent from whom they have been estranged as a result of the abduction. It is a cruel offence even if the criminal responsible for it is the other parent."

60. My decision is that seven days after the promulgation of this judgment, or upon the later determination of an application for permission to appeal by the Court of Appeal, the press may report it in the form in which it has been prepared. Thus, the mother, her new husband, and MGF may be named and their photographs may be published. The children, including the baby, may not be named, and neither may the father be named.

61. Finally, I deal with the application made by Mr Jarman that MGF be discharged as a party. This is, in my judgment, a hopeless application in circumstances where I am satisfied that MGF has acted in concert with the mother in the abduction of these children. The father indicated at the hearing that he intended to seek further relief against MGF (and Slava) and duly issued an application on 21 January 2019; but that is not the reason for my refusal of the application. It is based on his deep complicity, of which I am fully satisfied.

62. That concludes this judgment.