



Neutral Citation Number: [2023] EWFC 15

Case No: ZE22P01627

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/02/2023

Before:

THE HONOURABLE MR JUSTICE MACDONALD

Between:

AM and GM

Applicants

- and -

KL and VL

Respondents

The Applicants appeared in person

Savannah Laurent (instructed by **Richard Slade & Company**) for the **Respondents**

Hearing dates: 6 February 2023

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. In this matter I am concerned with the question of whether this court has jurisdiction in respect of the subject children, each of whom all parties accept are habitually resident in this jurisdiction for the purposes of Art 5 of the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (hereafter ‘the 1996 Hague Convention’). If this court does have jurisdiction pursuant to the terms of that Convention, a further question arises as to whether this court should exercise that jurisdiction. These twin questions arise in circumstances where a court in the jurisdiction of the Hellenic Republic is purporting to exercise jurisdiction in respect of the children, notwithstanding that neither child is habitually resident in the jurisdiction of Greece for the purposes of Art 5 of the 1996 Hague Convention. Both the United Kingdom and the Hellenic Republic are Contracting States to the 1996 Hague Convention.
2. The subject children are A, born in July 2019 and now aged 3 years old, and B, born in March 2021 and now aged nearly 2 years old. Both children were born in England. The parents of the children, who reside with the children in this jurisdiction, are AM and GM. The maternal grandparents of the children, who reside in Greece, are KL and VL. The applications before this court comprise the following, in order of issue:
 - i) An application by the parents of the children for a child arrangements order pursuant to Part II of the Children Act 1989.
 - ii) An application by the parents of the children for a prohibited steps order pursuant to Part II of the Children Act 1989.
 - iii) An application by the maternal grandparents pursuant to Art 8 of the Convention for this court to transfer its jurisdiction to the Greek court.
 - iv) An application by the maternal grandparents, in the alternative, pursuant to s.10(1)(a)(ii) of the Children Act 1989 for permission to apply for a child arrangements order under Part II of the Children Act 1989.
3. The applications made by the parents were issued in October 2022. As I have noted, at the present time there are also proceedings on foot in respect of the children in Greece. On 14 September 2021, the maternal grandparents made an on notice application to the Greek court for interim relief, which application was heard on 15 November 2021 by a Judge sitting in the Hellenic Court of First Instance in Athens, with a subsequent decision granting interim contact being handed down on 23 May 2022. Indirect contact commenced on 5 June 2022. Whilst it initially appeared that the Greek court had limited itself to exercising an interim jurisdiction and that proceedings had come to an end with the decision on 23 May 2022, this court has now been informed that there is a final hearing of the maternal grandparents’ substantive application listed before the Greek court on 20 February 2023.
4. At the outset of this hearing, counsel on behalf of the maternal grandparents indicated to the court that, in circumstances where they accept that each child is habitually

resident in the jurisdiction of England and Wales, the maternal grandparents further accept that this court has substantive jurisdiction in respect of the children pursuant to the terms of Art 5 of the 1996 Hague Convention. The corollary of this concession is that the maternal grandparents recognise that the Greek court is operating outside the scope of that Convention and, accordingly, does not have jurisdiction in respect of the children absent a transfer of jurisdiction by this court under the terms of Art 8 of the 1996 Hague Convention. In the circumstances, Ms Laurent's submissions concentrated on the application by the maternal grandparents pursuant to Art 8 for an order transferring jurisdiction to the Greek court. That application is resisted by the parents, who contend that this court should retain and exercise its established jurisdiction.

BACKGROUND

5. For the purposes of determining the question of jurisdiction, it is not necessary to descend into detail concerning the background of this matter. This is a case in which there is plainly a high level of family conflict between the maternal grandparents and the parents.
6. The mother was born on 31 October 1993. The maternal grandparents contend that they became estranged from the mother in or about October 2014. The parents married on 23 August 2015. The maternal grandparents assert that there has been no contact between them and the mother since 8 October 2015. As I have noted, A was born in July 2019 and B was born in March 2021. Both children were born in England and speak only English. The children are British Citizens and also hold Greek citizenship. They have each resided with the parents in England since their birth. They are registered with doctors in this jurisdiction and attend nursery provision in this jurisdiction.
7. The maternal grandparents contend that following the birth of the children, all attempts to secure contact with the children were unsuccessful. As I have noted, on 14 September 2021 the maternal grandparents made an on notice application to the Greek court for interim relief, which application was heard on 15 November 2021 by the Judge in the Hellenic Court of First Instance in Athens. The court has the benefit of a translated copy of the learned Judge's subsequent judgment, handed down on 23 May 2022.
8. The translation of judgment of the Greek Judge sets out the basis on which the learned Judge concluded that the Greek court has jurisdiction over the children. The learned Judge considered in the course of her judgment the impact on the Greek jurisdictional position of Council Regulation EC 2201/2003 (hereafter BIIa), which remains in force in Greece but not in the United Kingdom following the UK's departure from the European Union. It would not appear however, that the learned Judge was referred during the course of argument to the 1996 Hague Convention, which remains in force between the Hellenic Republic and the United Kingdom, and there is no reference to that international instrument in the Greek judgment. Indeed, the learned Judge appears to have proceeded on the basis that there was no international convention regulating the question of jurisdiction in this case. Within this context, the learned Judge identified a concurrent Greek domestic jurisdiction as follows:

“In this case, Greek citizenship functions as an independent jurisdictional basis in the sense that it establishes, though concurrently and not exclusively, the international jurisdiction of the Greek courts even when the parents or the child do not have, nor did they have residence or residency in Greece. However, especially in the case of interim measures, the place of execution of the interim measures - and as such is considered not only the place of forced execution, but also of voluntary compliance according to substantive law - establishes a special jurisdiction and at the same time constitutes a corresponding basis of international jurisdiction for the application of interim measures, since it is not specifically regulated by an international convention, it is in principle accepted for reasons of public order to prevent unavoidable damage to the applicant or for another urgent and special reason, taking into account the admissibility and the possibility of executing the interim measures abroad.”

9. Having concluded that the Greek court had jurisdiction in respect of the children, the learned Judge made what in this jurisdiction would be characterised as a child arrangements order, requiring the parents to make the children available for indirect contact with the maternal grandparents every two weeks for fifteen minutes and direct contact on one occasion each time the children are in Greece. The Greek court further placed the parents under a liability to pay a €150 fine for each occasion contact was obstructed.
10. In October 2022, the parents issued their application in this jurisdiction under Part II of the Children Act 1989 for a child arrangements order and a prohibited steps order. Those applications came initially before HHJ Purkiss sitting at the East London Family Court. In light of the jurisdictional issues raised by the case, and following discussion, HHJ Purkiss re-allocated the matter to me and listed the case for a directions hearing before this court on 17 November 2022.
11. In circumstances where both the United Kingdom and the Hellenic Republic are Contracting States to the 1996 Hague Convention, and where it appeared to this court that the children were habitually resident in this jurisdiction for the purposes of Art 5 of the Convention, on 17 November 2022 this court sought to clarify the basis on which the Greek court was exercising jurisdiction in respect of the children by giving a direction for judicial liaison through the Hague Judicial Network. Whilst it transpired that the Hellenic Republic does not at this time have a nominated Hague Network Judge, another Greek Judge kindly agreed to assist by passing the following questions posed by this court to the Judge dealing with the matter in the Court of First Instance in Athens:
 - i) Whether the understanding of this court that the Court of First Instance in Athens has exercised a concurrent interim jurisdiction in respect of the children based on urgency and has granted interim relief is correct.
 - ii) The current stage reached in the proceedings before the Court of First Instance in Athens in case number 70203/7595/14-9-29021.
 - iii) Whether the matter has been listed for a further hearing and, if so, the date and purposes of that hearing.

- iv) The anticipated timescale for the determination of the proceedings in case number 70203/7595/14-9-29021.
12. On 16 January 2023 this court was provided with the answers to the questions posed by the order of 17 November 2022. This court is extremely grateful to the Greek Judge for facilitating judicial liaison in this case. With respect to the nature of the jurisdiction being exercised by the Court of First Instance in Athens, the reply was as follows:
- “The international jurisdiction of the Court of First Instance of Athens to order interim measures regulating visiting rights was not based on the presence of the children in Greece. The Court ruled that Greek citizenship functions in this case as an independent jurisdictional basis in the sense that it establishes, however concurrent and not exclusive, international jurisdiction of the Greek courts even when the parents or the child do not have residence in Greece. It also mentions that an additional jurisdictional basis is the fact that Greece will be the place of (voluntary) execution of the injunctive measures. It is mentioned in the Judgement that regardless of the fact that the international jurisdiction of the Greek courts to take injunctive measures, since it is not specifically regulated by an international convention, is in principle accepted for reasons of public order to prevent unavoidable damage to the applicant or for another urgent and specialized reason, taking into account in particular the admissibility and the possibility of enforcement of injunctive measures abroad. As correctly noted in the Order both the United Kingdom and the Hellenic Republic are signatories to the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Relation to Parental Responsibility and measures to protect children. Nevertheless, it is still supported by part of the jurisprudence and literature that a concurrent basis of jurisdiction can be established due to the Greek citizenship and the place of execution of the interim measures”
13. The Greek Judge was also able to confirm that under article 695 of the Greek Code of Civil Procedure, a request for interim measures does not create pending litigation, and any further hearing would concern the “main action”. The Greek Judge was not however able to confirm whether such an action had been filed in this case. As I have noted above however, it is now clear from information provided to the court at this hearing that there is a “main action” with respect to the question of contact between the maternal grandparents and the children, which is listed for final hearing on 20 February 2023.

THE LAW

Jurisdiction

14. The Hellenic Republic signed the 1996 Hague Convention on 1 April 2003 and ratified the Convention on 1 June 2012. The United Kingdom likewise signed the Convention on 1 April 2003 and ratified it on 1 June 2012. The 1996 Hague Convention is incorporated into domestic law in this jurisdiction by the Civil Jurisdiction and Judges Act 1982, as amended by the Private International Law (Implementation of Agreements) Act 2020. Within this context, notwithstanding the

departure of the United Kingdom from the European Union on 31 December 2021, the jurisdictional position with respect to children as between the United Kingdom and the Hellenic Republic is governed by the 1996 Hague Convention, to which both States are Contracting States.

15. As made clear in the Explanatory Report on the 1996 Hague Convention by Paul Lagarde, the 1996 Convention determines the Contracting State whose authorities have jurisdiction to take protective measures in respect of a child or children. The preamble to the 1996 Hague Convention articulates one of the aims of the Convention as being the avoidance of conflicts between the legal systems of the Contracting States in respect of jurisdiction, applicable law, recognition and enforcement of measures for the protection of children. Within this context, Art 1 of the 1996 Hague Convention provides as follows:

“Article 1

(1) The objects of the present Convention are -

- a) to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child;
- b) to determine which law is to be applied by such authorities in exercising their jurisdiction;
- c) to determine the law applicable to parental responsibility;
- d) to provide for the recognition and enforcement of such measures of protection in all Contracting States;
- e) to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention.

(2) For the purposes of this Convention, the term ‘parental responsibility’ includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child.”

16. The scope of the 1996 Hague Convention is set out, *inter alia*, in Art 3, which describes the measures to which the Convention relates:

“Article 3

The measures referred to in Article 1 may deal in particular with -

- a) the attribution, exercise, termination or restriction of parental responsibility, as well as its delegation;
- b) rights of custody, including rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence,

as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence;

c) guardianship, curatorship and analogous institutions;

d) the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;

e) the placement of the child in a foster family or in institutional care, or the provision of care by kafala or an analogous institution;

f) the supervision by a public authority of the care of a child by any person having charge of the child;

g) the administration, conservation or disposal of the child's property.”

17. Chapter II of the 1996 Hague Convention sets out the bases on which a Contracting State to the Convention can have jurisdiction in respect of the child or children. The primary connecting factor establishing jurisdiction under the 1996 Hague Convention is that of habitual residence for the purposes of Art 5 of the Convention:

“Article 5

(1) The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.

(2) Subject to Article 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.”

18. The aim of Art 5 of the 1996 Hague Convention is described in the Explanatory Report at [37] as being intended to centralise jurisdiction in the authorities of the State of the child's habitual residence and avoid all competition of authorities having concurrent jurisdiction. Within this context, the Explanatory Report makes clear at [38] that Art 5 entrusts to the authorities of the Contracting State of the habitual residence of the child the principal jurisdiction to take measures of protection of the child's person and property.
19. Habitual residence is a question of fact. The meaning of the term habitual residence is shaped in the light of the best interests of the child, in particular on the criterion of proximity. Proximity in this context means the practical connection between the child and the country concerned. The Practical Handbook on the Operation of the 1996 Hague Child Protection Convention paragraph 4.5 makes clear that habitual residence is an autonomous concept and should be interpreted in light of the objectives of the 1996 Hague Convention rather than under domestic law constraints. In the context of Council Regulation (EC) 2201/2003, in *Area of Freedom, Security and Justice* (C-532/01) [2009] 2 FLR 1 the Court of Justice of the European Union held, in a case expressly referred to in the Practical Handbook on the Operation of the 1996 Hague Child Protection Convention, that for habitual residence to be established the situation of the child or children must reflect some degree of integration in a social and family environment.

20. As made clear by the passage from the learned Greek Judge’s judgment describing the purported jurisdiction of the Greek court set out above, reliance was also placed by the learned Judge on the concept of urgency as one of the foundations for jurisdiction. A little later in the judgment, the learned Judge again referred to a principle that “in urgent cases, it is possible to regulate the communication of the minor child with his/her next of kin through the process of interim measures.” In this context, in cases of urgency Art 11 of the 1996 Hague Convention provides an exception to the general rule of jurisdiction set out in Art 5 as follows, but *only* in circumstances where the child or children are *present* in the Contracting State exercising the urgent jurisdiction:

“Article 11

- (1) In all cases of urgency, the authorities of any Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take any necessary measures of protection.
- (2) The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken the measures required by the situation.
- (3) The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in each Contracting State as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.”

21. Finally, the need for Contracting States to the 1996 Hague Convention to operate within the jurisdictional confines of the Convention is emphasised by the terms of Art 23 concerning recognition and enforcement of measures of protection, which provide as follows:

“Article 23

- (1) The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.
- (2) Recognition may however be refused -
 - a) if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II;
 - b) if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State;
 - c) on the request of any person claiming that the measure infringes his or her parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard;

- d) if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child;
- e) if the measure is incompatible with a later measure taken in the non-Contracting State of the habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested State;
- f) if the procedure provided in Article 33 has not been complied with.”

22. Ms Laurent was right to point out during the course of her submissions that Art 23 contains a discretion, by its use of the term “may be refused”. However, the significance of Art 23 is that it emphasises again the fact that Contracting States to the 1996 Hague Convention have an obligation to exercise jurisdiction in respect of children *only* in accordance with the terms of the Convention. This point is further emphasised in the Explanatory Report on the 1996 Hague Convention at [84] as follows:

“[84] The rules of jurisdiction contained in Chapter II, which have been analysed above, form a complete and closed system which applies as an integral whole in Contracting States when the child has his or her habitual residence on the territory of one of them. In particular, a Contracting State is not authorised to exercise jurisdiction over one of these children if such jurisdiction is not provided for in the Convention.”

Transfer of Jurisdiction

23. Art 8 of the 1996 Hague Convention provides a mechanism whereby a Contracting State with substantive jurisdiction under Art 5, based on the child’s or children’s habitual residence, can transfer that jurisdiction to another Contracting State. The Practical Handbook on the Operation of the 1996 Hague Child Protection Convention paragraph 4.3 notes that Art 8 provides a further route by which a Contracting State may acquire jurisdiction in respect of the child. Art 8 of the 1996 Hague Convention provides as follows:

“Article 8

(1) By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or 6, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, may either

- request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or
- suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State.

(2) The Contracting States whose authorities may be addressed as provided in the preceding paragraph are

- a) a State of which the child is a national,

- b) a State in which property of the child is located,
- c) a State whose authorities are seized of an application for divorce or legal separation of the child's parents, or for annulment of their marriage,
- d) a State with which the child has a substantial connection.

(3) The authorities concerned may proceed to an exchange of views.

(4) The authority addressed as provided in paragraph 1 may assume jurisdiction, in place of the authority having jurisdiction under Article 5 or 6, if it considers that this is in the child's best interests.”

24. The test for transfer under Art 8(1) is whether the other Contracting State is *better* placed to assess the best interests of the child. Where the Contracting State with jurisdiction is better placed to assess the best interests of the child, or where the Contracting States are equally well placed to assess the best interests, the Art 8(1) test will not be made out and jurisdiction will remain with Contracting State having jurisdiction.

25. The Practical Handbook on the Operation of the 1996 Hague Child Protection Convention at paragraph 5.9 makes clear that a transfer under Art 8 may only be effected when three conditions are satisfied. First, that there is a connection between the child and the Contracting State to whose authorities it is permissible to transfer jurisdiction. Art 8(2) provides an exhaustive list of the factors capable of demonstrating such a connection. Second, the transfer must be in the child's best interests. Third, both Contracting States must agree to the transfer of jurisdiction. With respect to the best interests criteria, the Practical Handbook further observes as follows:

“The authority making the request that jurisdiction be transferred must consider that this will allow for a better assessment of the child's best interests. The authority asked to assume or cede jurisdiction can only do so if it believes this is in the child's best interests.”

26. Art 8(1) of the 1996 Hague Convention states expressly that the power to transfer jurisdiction under Art 8 is to be applied by way of an exception and, accordingly, represents an exception to the general rule of jurisdiction set out in Art 5. Further, the wording of Art 8(1) makes clear that even where the court concludes that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, the court with jurisdiction retains a discretion as to whether to effect that transfer and is not obliged to do so.

27. There would appear to be no prior domestic authorities that deal expressly with the terms of Art 8(1) of the 1996 Hague Convention and their application. However, in *Child and Family Agency v D (R intervening)* (ECJ) [2017] 2 WLR 949 the Court of Justice of the European Union (CJEU) held that, in the context of the similarly (but not identically) worded provision in Art 15(1) of Council Regulation (EC) 2201/2003), the court having jurisdiction must determine whether the transfer of the case to the other court is such as to provide genuine and specific added value with

respect to the decision to be taken in relation to the child, as compared to the case remaining before the court having jurisdiction. In the later case of *EP v FO (Case C-530/18)* [2019] ILPr 32 at [30], the CJEU further observed in the context of the similarly worded provision of Art 15(1) of Council Regulation (EC) 2201/2003) that:

“The court of a Member State that normally has jurisdiction to deal with a given case must, if it is to be able to request a transfer to a court of another Member State, be capable of rebutting the strong presumption in favour of maintaining its own jurisdiction, on the basis of that Regulation (judgment of 27 October 2016, *Child and Family Agency v D (C-428/15)* [2017] ILPr 5, [49]).”

28. In deciding whether to transfer jurisdiction, both the domestic authorities and the European authorities make clear that it is not appropriate to engage in comparisons between the respective laws and legal systems of the two jurisdictions in question, and I make clear that I have not done so in this case. In *Re N (Children)* [2016] UKSC 15 at [4], the Supreme Court observed in the context of Art 15 of Council Regulation (EC) 2201/2003 that 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. In the first domestic decision concerning transfer of jurisdiction under *Art 9* of the 1996 Hague Convention, Baker J (as he then was) reflected those sentiments in *Re M & L (Children)* [2016] EWHC 2535 (Fam):

“[33] In my judgment, the English and Norwegian courts are equally competent in general terms to determine issues about children. Each court operates in a sophisticated and advanced legal system manned by experienced judges who are manifestly capable of making decisions in this type of case. Although there are some differences in the respective processes, and each court has advantages which the other does not, overall there is no substantial difference. Comparisons are odious. As Mostyn J observed in *Re T* [2013] EWHC 521 (Fam) at paragraph 37, the court

‘should not descend to some kind of divisive value judgment about the laws and procedures of our European neighbours’

and as Sir James Munby P added in *Re E* (supra) at paragraph 20:

‘beneath all the apparent differences in language and legal system, family judges around the world are daily engaged on very much the same task, using very much the same tools and apply the same insights and approaches as those we are familiar with’.”

DISCUSSION

29. I am satisfied that by reference to the terms of the 1996 Hague Convention, to which both the United Kingdom and the Hellenic Republic are Contracting States, this court has substantive jurisdiction in respect of the subject children for the purposes of Art 5 of the Convention on the basis of the children’s habitual residence in the jurisdiction of England and Wales. In these circumstances, the Greek court does not have jurisdiction in respect of the children. I am further satisfied that it is not appropriate in this case, exceptionally, to transfer jurisdiction to the Greek court under Art 8 of

the Convention. Finally, I am satisfied that the maternal grandparents should be granted permission pursuant to s.10(1)(a)(ii) of the Children Act 1989 to apply for a child arrangements order in this jurisdiction. My reasons for so deciding are as follows.

Jurisdiction

30. As I have noted, at the outset of the hearing the maternal grandparents accepted that this court has jurisdiction in respect of the children pursuant to the terms of Art 5 of the 1996 Hague Convention based on the children's habitual residence. Once again, the corollary of this concession is that the maternal grandparents recognise that the Greek court is exercising jurisdiction outside the scope of the Convention and, accordingly, does not have jurisdiction in respect of the children absent a transfer of jurisdiction by this court under the terms of Art 8 of the Convention in circumstances where both the United Kingdom and the Hellenic Republic are Contracting States to the 1996 Hague Convention.
31. The concession made by the maternal grandparents as to jurisdiction was plainly the correct, and indeed only, course open to them on the facts of the case. Having regard to the test set out in *Area of Freedom, Security and Justice* (C-532/01) it cannot seriously be disputed that, as a matter of fact, the children are habitually resident in this jurisdiction for the purposes of Art 5. In these circumstances, whilst the jurisdictional formulation propounded in the learned Greek Judge's judgment is interesting and whilst I am fully respectful of the Greek legal system, the only conclusion as to jurisdiction open under the 1996 Hague Convention, to which both the United Kingdom and the Hellenic Republic are Contracting States, is that this court has substantive jurisdiction in respect of the children, based on the fact of their habitual residence.
32. By reference to the terms of the Convention, the foregoing position is not changed by the Greek court purporting to exercise a "concurrent and not exclusive" domestic jurisdiction in respect of the children as described in the learned Judge's judgment of 23 May 2022, whether urgent or otherwise. The exercise of the Greek court's jurisdiction in May 2022 cannot fall within the terms of Art 11 of the 1996 Hague Convention as the children were not present in the jurisdiction of the Hellenic Republic. The terms of Art 5 of the 1996 Hague Convention are clear with respect to the general rule of jurisdiction. It is the judicial or administrative authorities of the Contracting State of the habitual residence of the children that have jurisdiction to take measures directed to the protection of the children's person or property as further defined by Art 3, which includes rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence. In circumstances where the children are habitually resident in this jurisdiction, Art 5 is conclusive of the question of jurisdiction in this case and confers exclusive jurisdiction in respect of the children on this court.

Transfer of Jurisdiction

33. In this case, each child has Greek nationality and therefore satisfies the requirement for a connection between the children and the other Contracting State in this case for

the purposes of Art 8(2)(a). However, I do not consider that the Greek court is better placed to assess the children's best interests in this case and do not consider a transfer of jurisdiction to be in the children's best interests.

34. Central to the general rule of jurisdiction under Art 5 of the 1996 Convention that the Contracting State of the children's habitual residence has jurisdiction to determine questions in respect of the children's welfare is the idea that, ordinarily, it is in children's best interests for questions concerning their welfare to be decided in the place where the children are integrated into a family and social environment. The aim is that the court of the Contracting State with which the children have the closest connection will be the one to determine their best interests. The reason for this is self-evident. The authorities in the country of the children's habitual residence are closer to, and will ordinarily have a greater understanding of, the children and their social and family environment. They are therefore, ordinarily, better able to assess fully the children's situation and welfare needs when reaching decisions about the children's best interests.
35. It is in this context that Art 8(1) of the 1996 Hague Convention requires that it be demonstrated that, by way of exception to the general jurisdictional rule, another Contracting State is better placed to assess the best interests of the child before a transfer of jurisdiction can take place and that such a transfer is in the children's best interests.
36. In this case, both children were born in England, have each resided here with their parents for the entirety of their respective lives and speak only English. The children are British citizens, albeit they also hold Greek citizenship. They are registered with doctors in this jurisdiction and attend nursery provision in this jurisdiction. Each child's day-to-day family and social life is centred in this jurisdiction. Within this context, as conceded by the maternal grandparents, both children are habitually resident in this jurisdiction. The corollary of this is that the vast majority of the evidence relevant to an assessment by a court of each child's best interests is located in this jurisdiction. In this context, the court in this jurisdiction has far easier access to the evidence required to inform the assessment of the children's best interests and is placed far more advantageously to consider, for example, the impact on children's physical, emotional and educational needs of given contact regime in the context of their daily lives and routines. Having regard to the rationale underpinning this primary basis for jurisdiction under Art 5 of the 1996 Hague Convention, namely that it is in a children's best interests for questions concerning their welfare to be decided in the place where the children are integrated into a family and social environment, in these circumstances I am satisfied that there is a strong presumption in favour of this court maintaining the jurisdiction in respect of the children conferred on it by Art 5 of the 1996 Hague Convention.
37. In seeking to demonstrate that, in the foregoing context, it is nonetheless the case that the Greek court is "better placed" to assess the best interests of the children, on behalf of the maternal grandparents Ms Laurent submitted that the children have dual British and Greek citizenship, the Greek court has been purporting to exercise jurisdiction in respect of the children since 15 November 2021, all of the parties have engaged in and have legal representation in the proceedings in Greece, all of the parties speak Greek whereas only the parents speak English and, in light of the modest nature of the orders

sought by the maternal grandparents, extensive evidence as to welfare will not need to be gathered from this jurisdiction.

38. The terms of Art 8 of the 1996 Hague Convention demonstrate that the Greek citizenship of the children will not be sufficient by itself to justify a transfer of jurisdiction. As set out above, Art 8 requires that in addition to that connecting factor under Art 8(2)(a), which in this case is the children's Greek nationality, the court must be satisfied that the Greek court is better placed to assess the children's best interests and that transfer is in the children's best interests. Having regard to the fact that it is habitual residence that is the connecting factor conferring jurisdiction, and to the rationale underpinning this primary basis for jurisdiction under Art 5 of the 1996 Hague Convention, nationality is not capable on its own of demonstrating that another Contracting State is better placed to assess a child's best interests for the purpose of Art 8.
39. Whilst it is the case that the Greek court has been purporting to exercise jurisdiction since November 2021, the involvement of the Greek court since that date has, on the face of the evidence currently before the court, been limited to a single contested interim hearing and the making of interim orders with respect to indirect contact and limited direct contact. The maternal grandparents did not seek to assert that the Greek court has commissioned welfare assessments or expert assessments in respect of the children. The children have not been spoken to within the context of the proceedings by welfare professionals as part of the assessment of their best interests. It is not apparent from the judgment of the learned Greek judge that extensive findings of fact have been made in the interim proceedings in Greece and nor did the maternal grandparents seek to suggest there have been.
40. Further, whilst the Greek court has been exercising jurisdiction since 21 November 2021, for the reasons I have set out above it has been exercising jurisdiction outside the scope of the 1996 Hague Convention. In those circumstances, the interim orders made by the Greek court to date are, *prima facie*, unenforceable under Art 23(2)(a) of the 1996 Hague Convention in the jurisdiction in which the children live, subject to the discretion conferred on the court in the enforcing jurisdiction by Art 23. More widely, to transfer jurisdiction to the authorities of a Contracting State that have been exercising jurisdiction outside the scope of the 1996 Hague Convention simply because that has been occurring for a period of time would risk endorsing a course of action that cuts directly across the cardinal aims of the 1996 Hague Convention. Such an outcome would result in the children losing the benefits of their habitual residence, in so far as they relate to the assessment of their best interests, simply because the court in the other Contracting State has chosen to proceed outside the scope of the Convention to which both Contracting States are party.
41. In the foregoing circumstances, I am not satisfied that the fact that the Greek court has been exercising jurisdiction outside of the scope of the 1996 Hague Convention since November 2021 supports a conclusion in this case that the Greek court is better placed to assess the best interests of the children.
42. Ms Laurent's submission that all of the parties have engaged in the proceedings in Greece, and have legal representation in those proceedings, also falls to be evaluated in light of the points made in the preceding three paragraphs. Further, the maternal grandparents have demonstrated themselves willing and able to instruct lawyers in

this jurisdiction and they appear by specialist counsel at this hearing. They have complied with the direction of this court to file evidence. The maternal grandparents having already filed an extensive statement of evidence, ranging across the entire history of the case notwithstanding that the direction for that statement was limited by the court to the question of habitual residence. Any evidence filed in Greek court to date can be disclosed into these proceedings. Whilst I acknowledge that all of the parties speak Greek but only the parents speak English, as has been the case at this hearing, provision for an interpreter can be made for the maternal grandparents by the court.

43. Finally, whilst Ms Laurent submits that the nature of the issues between the parties means that the evidence required from this jurisdiction is limited, it remains the case that the majority, if not all, of the evidence relevant to an assessment of the children's best interests is located in this jurisdiction, by virtue of the fact that the children have each resided here with their parents for the entirety of their respective lives and each child's day-to-day family and social life is centred almost exclusively on this jurisdiction. Whilst it may well be that the Greek court could make an order for disclosure of records concerning the children were it to become necessary to do so in the assessment of their best interests, that exercise would be complicated by disclosure of the children's records having to be sought in a foreign jurisdiction by way of a foreign court order. That complication would not arise if this court maintains its jurisdiction under Art 5 of the 1996 Convention.
44. By the application of the maternal grandparents under Art 8 of the 1996 Hague Convention, this court is being asked to transfer its jurisdiction under Art 5 of the Convention to a State in which the children are not habitually resident. In the circumstances set out above, I am not satisfied that in this case, exceptionally, the Greek court is better placed to assess the best interests of the children. It cannot be said in the circumstances to which I have referred that transfer of jurisdiction will, in the words of the CJEU in *Child and Family Agency v D (R intervening)*, provide genuine and specific added value with respect to the decision to be taken in relation to the children compared to this court retaining jurisdiction. I am satisfied that it is not in either child's best interests to transfer jurisdiction in respect of the children to a Contracting State in which the children are not habitually resident.
45. In the circumstances, I decline to accede to the application of the maternal grandparents pursuant to Art 8 of the 1996 Hague Convention to transfer jurisdiction in respect of the children to the Greek court and dismiss that application.

Permission to apply for a Child Arrangements Order

46. With respect to the application by the maternal grandparents under s. 10(1)(a)(ii) for permission to issue an application pursuant to s.8 of the Children Act 1989 for a child arrangements order in respect of the children, it follows from the conclusions set out above that in order for them to pursue their case in respect of the children that application requires to be granted. With respect to the factors set out in s.10(9) of the 1989 Act, the application is made by the maternal grandparents of the children and the application they seek to make under s.8 of the Children Act 1989 mirrors the application they have made before the Greek court. In circumstances where there is already ongoing litigation in respect of the children, and this application will simply replace the application currently on foot in the Greek court, I am satisfied that the

proposed application will not of itself disrupt the children's lives to such an extent that they would be harmed by it. The fact that the court grants permission to make the application does not create a presumption in favour of the substantive order (see *Re A (Section 8 Order: Grandparent Application)* [1995] 2 FLR 153).

CONCLUSION

47. As noted above, the provisions of the 1996 Hague Convention are designed to avoid conflicts between the legal systems of the Contracting States in respect of jurisdiction by delineating clearly, by reference to a legal framework agreed by all Contracting States, which Contracting State has jurisdiction.
48. For the reasons I have given in this judgment, by reference to the terms of the Convention to which both the Hellenic Republic and the United Kingdom are party, I am satisfied that it is this court that has jurisdiction in respect of the children. Although the Greek court has purported to exercise what it considers to be a concurrent domestic jurisdiction in respect of the children, and whilst I am of course fully respectful of the Greek legal system and the Greek court, in circumstances where the children are habitually resident in England and Wales the continued exercise of that jurisdiction by the Greek court is outside the scope of the 1996 Hague Convention. For the reasons I have given, it is not appropriate in this case to transfer the jurisdiction that this court has in respect of the children under the Convention to the court in Greece.
49. In the circumstances, I find that this court has jurisdiction in respect of the children pursuant to Art 5 of the 1996 Hague Convention. I dismiss the application of the maternal grandparents for transfer of that jurisdiction to the Greek court pursuant to Art 8 of the 1996 Hague Convention. I grant the permission to the maternal grandparents to make an application in these proceedings for a child arrangements order in respect of the children. I further direct that the parties notify the court of the outcome of the hearing listed on 20 February 2023. This court will thereafter consider whether this case needs to remain before a judge of High Court level sitting in the Family Court or can be re-allocated to HHJ Purkiss for hearing of the applications before the court.
50. That is my judgment.