



**FIL-QORTI CIVILI  
(SEZZJONI TAL-FAMILJA)**

**L-ONOR. IMHALLEF ANTHONY VELLA**

**Seduta ta' nhar it-Tlieta 25 ta' Mejju 2021.**

**Rikors nru: 397/2020 AGV**

**Chief Executive Officer of the Social Care  
Standards Authority**

**Vs**

**ABC**

**Application of the Chief Executive Officer of the Social Care Standards  
Authority humbly submits as follows:-**

1. That this Court application is being made in terms of the Child Abduction and Custody Act (Chapter 410 of the Laws of Malta) by which the Convention on the Civil Aspects of International Child Abduction signed on the 25<sup>th</sup> October, 1980 was ratified.

2. That this application concerns the child DEF born on the 28<sup>th</sup> May, 2009 in Lutsk, Volyn Region, Ukraine. As indicated in the child's birth certificate (here annexed and marked as dok. DK 1) GHI is the father, a Ukrainian citizen.
  
3. That the facts as explained by the Central Authority in Ukraine through the application (Application by the Ukrainian Central Authority annexed and marked Dok. DK 2) and confirmed by the father's sworn statements (Affidavit of GI, annexed and marked as Dok. DK 3) are the following:-
  - a) That the parents of the minor GHI and ABC, both Ukrainian citizens, got married on the 28<sup>th</sup> March, 2009 and that they took up residence in the town of Dubno, in the house of Maksym's parents, when the minor D was born on the 28<sup>th</sup> May, 2009.
  
  - b) That on the insistence of the mother A, in December, 2015, the family moved to Lutsk where the minor started attending school. The father together with the child often visited Dubno for the weekend. During one of these visits the mother did not turn up as agreed and a report to the police has been lodged. She telephoned some days after to say that she was in Italy. G, the father together with the minor, took up residence again in Dubno where D started attending school. A spent a few days with the family for the new year 2019 and then disappeared again. When she phoned, she told her son that she was in Malta. The mother used to phone her son every now and then, but she never made any remittance for maintenance.

c) In May, 2019, when the mother returned to Ukraine, the mother had the minor released from the school he was attending in Dubno (Affidavit of Primary School Teacher JK , annexed and marked Doc. DK 4) before the end of the scholastic year and took him with her to Lutsk. She did this without any consultation, let alone the consent of the father. The father did his best to maintain normality in the life of the child by keeping in contact with his son by means of texting on “Viber” and occasionally by taking him for weekends to Dubno where the father still resided.

(d) Failing all attempts on the part of the father to save the marriage, on the 11<sup>th</sup> July, 2019 the marriage between G and A was dissolved by decree of the Court of the City of Dubno and District in the Region of Rivne. ABC did not make an appearance for the hearing (decree issued by the Court of Dubno and District: annexed and marked Dok. DK5).

(e) On the 3<sup>rd</sup> November, 2020, LI the minor’s grandfather met the child in Lutsk and agreed with him that the child pays them a visit in Dubno for the weekend. This was the last time that the father and grandparents saw the child and every contact with the minor stopped from the 8<sup>th</sup> November, 2019 (Affidavit of LI, grandfather of the minor, annexed and marked Doc. DK6). An attendance certificate issued by the secondary school no.5 of Lutsk indicates that the minor stopped attending school as from the 8<sup>th</sup> November, 2019) (School attendance certificate, annexed and marked Doc. DK7).

(f) It then transpired that the mother, ABC, on the 16<sup>th</sup> August, 2019 without the consent of the father, filed an application with the Officer of

Children's Services of Lutsk City Council for the permission to take the minor abroad. Through Decision No. 577-1 of the 18<sup>th</sup> September, 2019, the Executive Committee acceded to the request conditionally to the re-entry of the child into the Ukraine not later than 30 days later and to inform the office for Children's Services not later than 30 days after the return of the child to Ukraine (vide Resolution of the Executive Committee of the City Council of Lutsk, annexed and marked Doc. DK 8).

(g) According to information provided to the father by the Ukrainian Borderline of the State of Ukraine on the 29<sup>th</sup> November, 2019 it results that the minor D crossed the Ukrainian border. On the 8<sup>th</sup> November, 2019 at 8.51 pm from the Boryspil-D airport on a Kiev-Malta flight. (Attestation of the Ukraine Frontier Authority, annexed and marked Dok. DK 9).

(h) Provided that minor D has been found in Malta without his father's consent and Malta is a country signatory to the 1980 Hague Convention on Abduction. GHI immediately preceded with submitting an application through the Central Authority of Ukraine requesting the return of the minor D from Malta to his habitual residence in the Ukraine.

4. That in the light of the above, the child was removed from the Ukraine and is being unlawfully detained in Malta by the defendant ABC born on the 8<sup>th</sup> March, 1984, holder of identity card number 0213977 A, residing at Vinesmar, Flat 2, Triq il-Konversjoni, San Pawl il-Bahar, Malta, when the habitual residence of the same child is in Lutsk, Ukraine.

5. That such a removal or retention on the part of the mother is within the scope of Article 3 of the Hague Convention, which specifies that such removal or retention is deemed to be wrongful where there is a breach of rights of custody attributed to a person (the father) under the law of the State in which the child was habitually resident immediately before the removal or the retention and at the time of removal or retention, those rights were actually exercised.
  
6. That Article 5 of the same convention defines “rights of custody” as the rights relating to the care of the person of the child, and in particular, the right to determine the child’s place or residence. According to the applicable law of Ukraine, and as it will be proved during court proceedings, it appears that the father has custody rights in relation to the minor as required by the referred convention since the Family Code in the Ukraine in the second paragraph of Article 160, the place of residence of a minor of age 10 or over shall be determined with the consent of both parents together with that of the minor. Removal or retention of a minor occurs when one parent does not have the consent of the other parent when determining the place of residence of the minor (Extract from the Family Code of Ukraine, English translation, annexed and marked Doc. DK 10).
  
7. That the provision in the Family Code of Ukraine (Paragraph 5 of Article 157) regarding decisions of the Court or the Office of Children’s Services, is only intended for temporary departures from the country of one month duration or more with the specific purpose of providing a relaxation holiday for the minor. Such decision is to be notified by means of registered mail by the parent who is granted the permission to the other parent, which is the mother ABC failed to do. (Extract from the Family Code of Ukraine, English translation, annexed and marked Doc. DK 11).

8. That the conditional permission of the Office of Children's Services conceded that the minor D travels to Malta on the 8<sup>th</sup> November, 2019, to be returned to the Ukraine by the mother A within a month, which effectively the mother failed to do since the minor D is still in Malta together with his mother A.
9. That GI , the child's father has applied with the Central Authority of the United States of America for the return of the minor D as per Article 8 of the Hague Convention, and as subsequent article provides, the Central Authority of Ukraine had sent the application signed by Mr. GHI on the 20<sup>th</sup> November, 2019 directly to the Central Authority of Malta, since Malta is that State where the child is currently present and the Malta Central Authority will assist in the return of the said minor back to Ukraine.
10. That the Central Authority of Malta has been authorised by the child's father, GHI to proceed against the mother in Malta and to do what is permissible under Maltese law in order to return the child to Ukraine (Authorisation in terms of Article 28 of the Convention, annexed and marked Doc. DK 12).
11. That Article 12 of the Convention provides that, where a child has been wrongfully removed or retained in accordance with Article 3 and that the date of the commencement of proceedings before the judicial or administrative authority of the Contracting State in which the child is present for a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority shall order the return of the child forthwith.

12. That the applicant, the Chief Executive Officer, took all the necessary measures to attain the child's voluntary return to Ukraine as provided for in Article 7© and 10 of the same Convention, but the defendant refused to return the child voluntarily.

13. That a Warrant of Prohibitory Injunction has been filed and upheld by the Honourable Civil Court (Family Section) on the 15<sup>th</sup> October, 2020, to restrain any person from taking the minor D outside Malta.

Therefore and in view of the above, the applicant humbly pleads the Honourable Court to:-

1. Order the return of the child DEF to Lutsk, Ukraine, immediately.
  - a. Concurrently provide directives in the interest of the child, including a notice to the authorities concerned, to safeguard the child from being unlawfully removed from Malta to another country, which could make the return of the child to his habitual residence significantly more difficult and this would be in explicit breach of the Convention on the Civil Aspects of International Child Abduction.
2. Give the necessary instructions to the competent authorities, including, the Police, the Court Marshalls, the Child Protection Agency and the Registrar of the Courts, in order to make the practical arrangements necessary for the safe return of the child.

And this under any other provision that this Honourable Court considers appropriate and timely under these circumstances.

With costs.

**Having seen the Response of ABC who humbly pleads:-**

1. As regards the premises and claims as set out, the applicants categorically reject them as unfounded and inverting both in fact and in law and for this reason wish to state the following facts:-
2. That the facts as explained and confirmed by GI are not at all truthful and will all be disputed by the Respondent, by clarifying and asserting that, first of all, he himself was the main and absolute cause for the breaking of the marriage between them and ABC and this for various serious and gross reasons which exposed the personality and the intrinsic, real problems connected with him as a person and even as a father, as will be amply proved in the details of this case.
3. That ABC has always worked hard for the welfare and the supreme interest of the child, D who, in a few months, will turn twelve years old. She has always had factual and absolute custody of the child, except for the period between the 19<sup>th</sup> January, 2019 and the 26<sup>th</sup> April, 2019, during which time the respondent left Ukraine to come to Malta to support her son who, during this period, was living with his paternal grandparents in the Ukrainian town of Dubno, as his father had threatened his mother, the



respondent, taking the child from the possession and custody of the respondent's parents.

4. That ABC had to be separated for a while from her son as explained in order to be able to support him financially since the father has long failed to pay maintenance. Infact, before she left Ukraine to work in Malta, ABC faced major financial problems and had to rely on the support offered to her and her son by her parents and that was why she left D with her mother inside the city of Lutsk for the aforementioned period of time between the 19<sup>th</sup> January, 2019 and the 26<sup>th</sup> of April, 2019. During this time that the mother was in Malta and the child was in Lutsk with his maternal grandmother, GI threatened the respondent mother to give him the child so that he could live with him and his paternal grandparents in the city of Dubno.
5. That when the respondent was separated from her son in order to support him financially, ABC entered into Malta and applied for a work permit with Identity Malta Agency so that she could work as a secretary and translator of Italian and Russian. The residence permit was issued by the Identity Malta Agency on the 11<sup>th</sup> February, 2019.
6. That the respondent had to leave Malta and return to Ukraine in order to safeguard and protect her son, especially due to the fact that he was very sad in life inside the apartment with his paternal grandparents in Dubno. During the period that his mother was working in our country, D suffered grave and serious injuries as he was not allowed to speak to his mother, in a time when she would call him more than five times a day. At that time, D was sleeping in the same bed with his paternal grandparents because he

did not have a separate room for himself and, moreover, the child saw his father in the company of another woman in the same apartment.

7. That the ordinary residence of the child has always been with the mother, except for the period as mentioned above, during which the respondent came to work in Malta to provide financially for her son and this due to the fact that the father of the son never had an interest in him and never provided maintenance for his son. So much so that he had abandoned D and his mother about three years earlier.
8. That during this period when the mother was in Malta, between the 19<sup>th</sup> of January, 2019 and the 26<sup>th</sup> April, 2019, some people in Dubno burned the car of the father; one Porsche Cayenne parked at the child's paternal grandparents' apartment. This happened at around three in the morning as a warning and/or threat. This incident negatively affected the child as it caused him great fear. This incident of the burning of the father's car was also reported in the Ukrainian news and the Ukrainian Police said that a criminal procedure will be opened. Their theory was that the act of burning was possibly done because GI has debts to pay and that the threat was a direct result of this.
9. That later in summer of 2019, the house belonging to the father was also burned as a warning sign or a direct threat to the father. The incident was also reported in the Ukrainian news, where the Ukrainian Police also came up with their analysis that the act of burning was done as a revenge or rather as a clear and direct threat to the father.
10. That in his petition, the applicant confirmed that the exponent had contacted him in June 2019 in order to inform him of his intention to leave

Ukraine with the child and she did so in order to gain his permission and thus be able to enter Malta.

11. That the child DF never had any problems with his mother and always felt protected and loved by this same mother who always worked and acted in his interests as she always took very good care of him and he is happy and serene with her.

12. That, nowadays, the child is comfortable and safe in Malta, where he has established a good environment for himself and wants to engage in this lifestyle here, given the right and good way of life that has been shown and offered to him, as well as assured to him by his mother.

13. That D is attending the Middle School inside the Maria Regina College in Naxxar and is in the seventh year, while before the minor was attending the Primary School of San Gorg Preca in Msida.

14. That the child feels serene and lives his life in comfort and tranquillity in Malta and does not want to return to Ukraine; the country in which he had to go through a time of long and hard suffering, both from the emotionally as well psychologically. The child must stay with his mother because he has always been in her custody and has never encountered problems and/or issues with her. The applicant never interrupted the communication between the child and the father and it was the child who chose to refuse to contact his father on the basis of a number of grave and serious reasons which are depicted on the welfare and the quality of life of the child.

15. That the child does not want to go back inside Ukraine, as he is afraid that there he will again be in a dangerous environment, not at all serene. And,

so, the same child will feel comfortable living alone with his mother who has always cared for him in the best way and always had his interests in her heart. The child is afraid to return to Ukraine, given that the criminal record of the applicant, his father brought to his son's life a great deal of weight, fear and psychological damage.

16. That the minor does not want to communicate with the father and his paternal grandparents who caused him suffering and turbulence in his life due to the problems that this child had to face in Ukraine due to the father's criminal record and many other irregularities revolving around the father and the parents of the father.

17. That GI has several legal proceedings against him in Ukraine, given the grave and serious payments due by him to the Ukrainian Government in taxes, as well as grave and serious failure to pay maintenance to the respondent ABC for the child, D. The father is not a trustworthy person. Infact, he is declared as unemployed and therefore, he can in no way offer a proper and good life to his minor son. This will be amply proved and demonstrated to this Court. For example, GI is being sought by the Ukrainian authorities and government because of his poor financial situation as a Ukrainian citizen. However, the father cannot be found by the Ukrainian police and there is no information on where he is.

18. That the Court is requested to appoint a Child's Advocate to represent and hear the minor D who is the subject of this case so that, in the best interest of the said minor, he may give his testimony and a suitable Report may be drawn up on this case and on this matter that such a report should indicate with certainty that the child, in case he is ordered to return to his habitual residence, will be seriously and certainly exposed to the risk of serious

psychological and physical harm, apart from the fact that the same minor ends up being put in an extremely intolerable situation, as will be evident in the details of this procedure.

19. That this Court will surely appreciate that the dignity, integrity and moreover the absolute safety of the minor must not be affected in any way. So here, considering all the facts of the case, the purpose is not to strike a balance between the supreme and absolute interest of the child D and the order given by the Ukrainian Court regarding the return of D in Ukraine, but that the supreme interest of the minor must supersede and overcome any order of any authority trying to control the free movement of the minor himself.

20. That the minor must not have his free movement controlled for serious reasons imputable to a father which truly exist and whose efforts the minor himself does not wish for and nor should he even be returned to Ukraine. The respondent nevertheless took care to institute necessary and timely procedure within Ukraine in order to obtain the exclusive care and custody of the child D because the father is not worthy to be entrusted with the care and custody of his son and this for a number of very serious reasons that will be brought and will be tried before this Most Honourable Court to strengthen the position and version of the mother ABC.

21. That the respondent mother is strongly opposing and objecting the request of the Executive officer of the Social Welfare Standards Authority that D should be returned to Dubno in Ukraine immediately and this being on the basis of the defence contained in the Article 13 of the Convention on the Civil Aspects of International Child Abduction, which will be proved and

demonstrated by the evidence and evidentiary documents exhibited in the morals of this case.

22. That it is also stated in the current global period and circumstances of the Covid-19 pandemic, it is not at all opportune and wise for the child to travel in order to return to Ukraine, which is marked as a red zone and as such is an area in which the pandemic has struck hard.

23. That the respondent will present direct, objective and concrete evidence in the course of this judgement in order to confirm exactly all the facts that she is exposing in today's response.

24. That this reply was translated to the respondent in such a way that she could carefully understand its exact scope and content.

Save any ulterior exceptions which might be excepted in the course of this process.

Having seen all acts and documents.

## **FACTS**

1. Defendant met Plaintiff in 2008 and after a while she got pregnant. She admits that at the time she was not aware that he had recently broken up with his girlfriend and she ended up in hospital because of the terrible

beating Plaintiff had given her. Sometime later they found that his BMW had been burnt under his parents' house.

When they got married they lived with Plaintiff's parents for a while and they were there for a short while after she gave birth to D, because life had become unbearable and Plaintiff's mother had thrown them out of the house.

As a result, her parents bought them a one room apartment and they helped them to make repairs and to furnish it. Her husband opened a gym and was always at work, whereas she spent most of the time alone with their son.

She explains that things took a turn for the worse, when their son was two and half years old, as Plaintiff raised his hands over her and this started to happen more and more often, to the extent that she was feeling scared and threatened, but at the same time she was scared to speak because she wanted to save her marriage. Although she left many times, she was always hoping that he would change and they could start all over again.

Plaintiff owed a lot of money to her parents around 20 thousand dollars, which to date he has not paid as yet. Nonetheless, her parents had bought them land to build a house and with the money they received from the sale of the apartment they started to build and until then they moved with her mother. Meanwhile her son had settled well at school.

Her main concern was that after their son witnessed a quarrel between her and Plaintiff's parents, he remained traumatised and he used to

shiver at the slightest sound and this went on for more than half a year, at which point, Plaintiff decided to leave her for another woman M and during that time. She admits that she never gave up hope that he would return to them and when he split from M, she accepted him back once again and they went to live in a rented apartment, but it was a nightmare. He never took D to school, he did not give her money for food and he was not paying rent and he also started doing drugs. She had to end up selling things to pay the rent and she had ended up selling on the street market to earn a living. She didn't want to tell her parents so as not to worry them and meanwhile, she started to suffer a lot of stress and she ended up with a micro stroke.

She added that it did not take long for Plaintiff to start going around everywhere with M once again and once he started the relationship once again, she was not going to accept this life on account of her son. He ended up kicking her and their son out of the apartment and she ended up moving once again with her parents. She kept trying to work and then moved to a new apartment, until Plaintiff found where it was and started to threaten her. At that point, both her and her mother decided that it was safer for her to go and work abroad and her mother kept the child for her. It was at this point that Plaintiff abducted the minor and took him to another school and he did not allow him to communicate with either her or her parents.

She explains that she had returned to Ukraine and then came to Malta where she spent three months. This was a difficult period for her and her son, because no matter how much she tried to communicate with her son, she wasn't managing because Plaintiff and his parents were making it impossible. They were also preventing her parents from



seeing D. So, her parents went to spy on the house, and they were shocked when they saw the child. He didn't speak, he was afraid, and he had yellow teeth and looked very lethargic. Once her mother informed her all about this, she left Malta for Ukraine. She found out that Plaintiff was in another relationship with a woman Oksana and he left the child with his parents, who fed him with sleeping pills.

With the help of her parents, Defendant managed to take her son to Lutsk. At the time he was suffering from a serious condition called vegetative-vascular dystonia. She adds that he was full of fear, confused and cried constantly. Her son begged her not to allow him to return to his father and Plaintiff was not in contact for about six months. She had asked to be granted permission from the guardianship service to travel with her son and although they searched for him and tried to contact him, they did not receive a reply and they gave her permission for a period of 30 days within one year to travel abroad with my son.

They came to Malta and she admits breaking the law and not returning to Ukraine after 30 days. She says that they have settled very well in Malta and they are happy.

2. GI states that he was not aware that his child was travelling to Malta and he learnt that his son had left the Ukraine only after filing a request. He never received the conditional permission that was given to him to travel. He states that he had filed a request with the immigration service that there was a conditional permission granted for the child to be taken out of the Ukraine for a period of 30 days. After this he filed a police report and he was then informed that his child had been taken outside the Ukraine.

When Defendant left the Ukraine, he took care of the child and he used to visit his parental grandparents. They spent time all living together and his parents gave a helping hand with the child. He bought him a dog and a rabbit, and he used to carry out a lot of activities with him. When his mother returned, she would take him with her to Lutsk and this is where issues began to arise regarding access to his son. He admits that from birth until his son was taken away from him, he always maintained his son, made sure he was given an education and he also spent time with him. He found it difficult to communicate with his son, because all attempts were hindered by the Defendant. On her return she had promised that she would not be leaving the Ukraine again and that she was going to look after the child and give him free access. Initially she kept her word and then she started to threaten him that if he does not consent for the child to travel abroad, he would not see him again. This was around July/August, 2019.

He denies having any criminal records. He also confirms that there are no limitations to his right of access. There is pending a case before the Ukrainian Court to establish the residence of the child. He missed some hearing because of a sport related injury.

He explains that he is a sports coach of an international level and he works both as self-employed and with the Government.

Regarding maintenance he states that he always fully maintained his son until he was taken away from the Ukraine. He also denies having any issues with the Dubno authorities. He states that he is not aware that

he cannot leave the Ukraine and that he has a case pending for the banning of his driving licence, since he refused to take the test.

He confirms to being aware of Dr. Nigel Camilleri's report and that until his son was with him he was always in good health.

In relation to the arson carried out on the car, he denies that the child was present as he was residing in Kult. All he knows is because Defendant told him.

3. NOP, Defendant's mother explained that in summer 2017, her daughter had informed her that Plaintiff had locked her and their son in the flat for three days. She also admitted that he was violent with her and that was the reason why she always wore long dresses and long skirts. She kept this a secret from her, because she loved Plaintiff and feared him.

Because of these circumstances, she was forced to take Defendant and her son to live with her in Lutsk and after a while Plaintiff went there to apologize and he promised he would not act like that again. D was not very happy to return with his father.

She also states that they after a while, the couple moved back together in a rented flat, together with their son, but then a short while after Plaintiff informed Defendant that he did not love her any longer and he left.

She adds that Plaintiff did not involve himself in anything regarding his son, such as his education and his maintenance, so much so that there

was a time when Defendant had to go abroad to work, where she spent two months and meanwhile she took care of the minor child.

She explains that the minor was then abducted by his paternal grandparents and she used to have to travel to Dubno to see him. D was not happy to be living there and he was under negative influence. He was seeing a lot of quarrels and scandals. Infact, the husband of his paternal grandfather' wife burnt the car for them in the yard where they lived and so did the minor. Two weeks later the house was burnt down.

When they saw the fear that the minor child was living, in April, 2018 they took D to Lutsk. She admits also that Defendant was a witness to her husband's drug use and carrying of weapons. It was for this reason that Defendant and minor had to move to another country for protection.

4. QR, Defendant's father explains how in June 2016, Plaintiff had left Defendant for another woman and he started a new family. Meanwhile, the minor had started school and Defendant had to explain to her son that Plaintiff did not live with them any longer and that he was at work or abroad.

He confirmed the minor child's abduction by his paternal grandparents and how eventually Plaintiff asked so that the minor child lives with his grandparents for a while, so the minor lived with him for a while and he was transferred to the school of Dubno. Now, Defendant says she calls her son daily and has sent several toys, clothes and other necessities.

Further he states that being the grandfather and he took the child every weekday he bought him everything he liked. Although he was living with his paternal grandparents, he spent more time with them than with the Plaintiff. They did not even share the same room, as Plaintiff slept with his partner. So, in view of all this it was better for the child to live with Defendant or with his maternal grandparents. Due to his absence from his mother, the child became ill with vegetative-vascular dystonia and became more reserved, but he improved when his mother returned.

He confirms that Plaintiff led a dishonest life and had many debts. He also confirmed that his Porsche, as well as the residence where he lived were burnt down. Through Defendant he also found out the Plaintiff made use of drugs and weapons and he was also physically violent with Defendant and she kept this a secret from him. When he did have some suspicions, she did deny it.

He also added that during the marriage, Defendant sold their community apartment for US 18, 500, but Plaintiff kept the money and he also sold all the household stuff. He also admits giving them USD 21, 000 for the arrangement of a fitness centre, but once again Plaintiff did not bring any money from the centre and when they divorced, he did not even make compensation for his share.

In these circumstances, for her safety and the child's, leaving the country was the safest decision for the Defendant.

5. QSR, Defendant's brother explains that although he used to feel that his sister looked scared and constrained, he did not attribute it to her husband, because he seemed to be a good father and an affectionate

husband. However, as time went by, he had to change this opinion, and this was because he started to realise that he was physically violent with Defendant because it was difficult for her to hide her bruises.

Since they lived within a small community, people tried to make them aware of the fact that Plaintiff often deceived people and owed a lot of money. He also found out that Plaintiff was also unfaithful with a gym instructor he had employed at his gym "Victory Gym" All this left a great deal of stress on Defendant and the minor ended up suffering from psychiatric disorders.

He also confirmed the arson committed by this woman's husband on Plaintiff's Porsche and family home, where the minor child was living, although Plaintiff's family blame them.

It was for their safety that Defendant and her child had to leave and move abroad.

6. Dr. Nigel Camilleri, a psychiatrist confirms that he has assessed the minor child D, where he spoke to both the minor child and Defendant. He explains that the minor child was worried that he would have to go back to Ukraine because there he had a life-long history of observing physical abuse towards his mother. The minor child told him that for the first three years his father was present, but over the years, his father was less present, and he barely saw him at home. It results that he was also exposed to a number of traumatic experiences, use of alcohol and drugs by his father, his gambling habits that led to him accumulating debts, seeing arson committed on his father's property.

In Malta he is settled and is doing well at school and always concerned that for his mother. He recommends that D remains with his mother, but he requires psychotherapy to address his traumas and experiences.

The experiences that D passed through were not only on account of his father's physical abuse, but he also saw his paternal grandparents hit Defendant at least on two occasions. He recalls people turning up at their door, but his father always went out of the house to address the violence. Another trauma that he passed through was when his paternal grandfather took him from school and away from his mother, who was in Malta and she couldn't trace her child. The minor child also spoke to him about his fear of not being aware of where he was.

Dr. Camilleri confirms that D suffers from post-traumatic stress due to the successive traumas he had to encounter and his anxieties are all a result of this disorder. Returning the child to Ukraine would be sending back the child to a potential traumatic family situation and subjecting him to more abuse. For the child not to experience trauma, the father would have to reform, and everything would have to be put in place. In such a case the risk of future abuse would be avoided.

7. TUV, wife of I states that she had met him in April, 2018 and they have a child. They live in peace and harmony. She denies any violence in their family. For her, her husband is caring father and he leads a healthy life without any vices of alcohol and cigarettes.

In May 2018 she met D and she describes him as an active and well-mannered child. She spent a lot of time with him doing activities. She even accompanied his son to school too in September, 2018. She even

said that he called her mum sometimes. She states that her husband's family is a model family and her husband is not one to party and take women to their home.

She insists that Defendant sets the child against his father and she threatened him to allow her to take their son abroad, otherwise he would not see him again. She adds that at Dubno the child was loved and cared for and she denies that there were problems with drugs and abuse of alcohol, nor did people come to knock at their door.

In spring 2019, Defendant had gone to see her child as she had returned from abroad. Her mother had mentioned that Defendant was going stay put in Ukraine, but this did not turn out to be the truth since she travelled abroad quite a lot. Defendant's father only came to see his grandson three times over a period of a year and a half.

### **CONSIDERATIONS**

14. The whole case revolves around the Child Abduction and Custody Act (Chapter 410 of the Laws of Malta) by which the Convention on the Civil Aspects of International Child Abduction signed on the 25<sup>th</sup> October, 1980 was ratified.

Article 3 of the Hague Convention, stipulates that there is *“wrongful removal or wrongful retention where (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the state in which the child was habitually resident immediately before the removal or retention.; and (b) at the time of the removal or retention those rights were actually*



*exercised, either jointly or alone, or would have been so exercised but for the removal or retention.”* The same article continues as follows “*The rights of custody mentioned in sub-paragraph (a) above may arise in particular by operation of law, or by reason of an agreement having legal effect under the law of that State.*”

Article 5(a) of the Convention, then goes on to state that “*(a) rights of custody*” *shall include rights relating to the care of the person of the child, and in particular, the right to determine the child’s place of residence.*”

Therefore, fundamental for the plaintiff to succeed in his action, is for him to prove that at the moment of retention of the child here in Malta by Defendant [1] the minor was habitually resident in Ukraine; [2] that he had the care and custody of the child under Ukrainian law and he was exercising this right; [3] with the retention of the minor here in Malta, his rights have been violated.

If these three requisites are satisfied, then the Court is legally bound to order the return of the minor child to the Ukraine, unless one of the conditions contemplated under Article 13 of the said Convention is satisfied. Article 13 specifically protects the interests of the minors in such exceptional situations and circumstances, independently of all claims or questions raised by either parents about their respective authority on the same minor or the issue of habitual residence in one country or the other.

These circumstances are if the Defendant (mother) establishes that the person having the care of the person of the child, in this case the father, [1] was not actually exercising the custody rights at the time of removal or

retention or had consented to or had subsequently acquiesced in the removal or retention; or [2] there is a grave risk that his return would expose the child to physical or psychological harm; or [3] otherwise place the child in an intolerable situation.

However, the Defendant is also establishing her defence on the proviso of Article 13 wherein it is stated that the judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

There is no doubt that the minor child is in the care and custody of Defendant and this even more so where GI, in July 2019, before the proceedings before the Court in Ukraine, declared that he had given up his claim for care and custody of their son D against Defendant. Nevertheless, under Ukrainian law, GI still has rights of care over the child and he should give his consent for the child to be moved out of the Ukraine.

Another issue that needs to be resolved by this Court is what is the child's habitual residence, whether it is Ukraine or Malta. The Courts in the United Kingdom have gone as far as to state that a temporary residence for the purposes of education, business, work and or to be together with the family, can all lead to a change in the habitual residence of a person.

***“Kaz iehor interessanti huwa Re V (Abduction:Habitual Residence) deciz ukoll fl-Inghilterra fl-1995 fejn fil-kuntest ta’ familja li tghix Londra fix-xitwa u Corfu fis-sajf, gie osservat li din il-familja tkun, fix-***

*xitwa residenti Londra u fis-sajf f' Corfu, avvolja f'dan l-ahhar post ir-residenza kienet wahda ta' villegjatura. L-intenzjoni ta' residenza hija marbuta mal-iskop u mhux mehtieg zmien twil biex din tigi stabbilita.*

*Lanqas hu mehtieg li dak li jkun ikollu intenzjoni li jirrisjedi fil-pajjiz b'mod indefinit, izda hu bizzejjed il-hsieb ta' dak li jkun ilu jirrisjedi f'pajjiz ghall-perjodu ta' zmien apprezzabbli.”<sup>1</sup>*

Defendant explains that she had been working in Malta for a while and she had moved here because she had been receiving threats from her husband, when he found out where she was living with their son. She had decided to come to Malta to be able to maintain her son and meanwhile she left him with her mother, from whom the father managed to abduct the child and take him with him to Dubno.

It was only when Defendant's mother informed her that she was not happy with the way the child was being treated as despite the hindrances they were finding from the paternal grandparents to see the minor, they decided to spy on them. The minor child looked very lethargic and did not look well. It was for this reason that Defendant returned back to the Ukraine to take her child back. Her husband confirms that they had reached an agreement that Defendant takes the child back, on the condition that he be granted free access. At first, he admits that she followed the terms of the agreement, but then when she asked him to allow her to travel abroad with him and he was refusing to sign, it was at that point that Defendant

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<sup>1</sup> Direttur tad-Dipartiment ghal Standards fil-Harsien Socjali vs Michael Caruana – 15/2012 App. 3/08/2012

threatened him with not seeing the child. Defendant's husband confirmed in his petition that Defendant had contacted him in June, 2019 in order to inform him of her intention to leave Ukraine with their minor child, though he kept on objecting.

It was for this reason that Defendant made a request to the Lutsk City Council to be granted permission for temporary travel outside Ukraine and this was granted on the recommendations of the Service for Children on the 9<sup>th</sup> December, 2019<sup>2</sup> for a period of 30 days. Defendant admits that she broke the law and did not return back to the Ukraine, because she and her son had found stability here. Besides she also worked here and they settled in happily.

In her submissions, Defendant also reiterated that *“she was constrained to leave Ukraine (not to abduct) with the minor child, given the fact that the father was never endowed with the needed qualities of proper care and custody in order to raise the child and to provide for his maintenance, for his education and for his overall upbringing. Therefore, she had to take full responsibility of the child given such factual circumstances and for the child's overall interests she had to leave Ukraine in order to work, to provide for a decent living towards her son D, to provide for his personal and educational upbringing in a way that such minor feels safe and stable.”*<sup>3</sup>

Defendant had already been working in Malta for about three months, before she returned to take her son back. She never hid her intentions of taking her son with her abroad, although there were objections from the father's end. She did ultimately break the law because she never returned

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<sup>2</sup> Vide Dok. 8

<sup>3</sup> Vide Defendant's submissions.

to the Ukraine subsequent to the lapse of the 30 days given to her on authorisation of temporary travel abroad with the minor.

Although the Defendant had planned to work in another country so as to be able to help her son financially, she came alone to Malta and left her son with her mother, although eventually, the child was taken by Defendant's husband and his parents. Until then, the child attended school there, he attended different competitions and activities, all indicating that the minor child had a life there for at least 9 years of his life. It was only when Defendant's mother raised the alarm that after spying on the child and his paternal grandparents, she realised that he was not well, that she decided to go back to the Ukraine, with the intention of bringing him back to Malta. Her husband opposed and Defendant herself admits that she came to Malta after being authorised to do so but stayed here illegally after the lapse of 30 days.

All this leads the Court to conclude that the minor child was habitually resident in the Ukraine.

### **Article 13**

***“In most cases, the prompt return mechanism established by the Hague Convention is an effective means to deter and rectify international child abduction so as to protect children’s best interests. In order to preserve the integrity of this mechanism, courts in many jurisdictions have carefully avoided engaging in determination of the merits of underlying custody disputes. One result of such a cautious attitude is the extremely***

*narrow interpretation of Article 13 (b) “grave risk of harm” exception. While courts need to narrowly interpret this provision so that abducting parents do not have the opportunity to use it as a pretext to litigate the custody disputes, thereby undermining the prompt return mechanism, most courts have interpreted this exception in an extremely narrow manner, which makes it excessively difficult to use it to protect abducted children when their return would truly pose a grave risk of harm to them. The extremely narrow interpretation is based on the misunderstanding that the purpose of the Hague Convention is prompt return and Article 13(b) should be subject to this purpose. However, as a careful study of the text and drafting history of the convention demonstrates, the Convention’s purpose is to protect interests of the children and Article 13(b) should be interpreted in accord with this purpose.”<sup>4</sup>*

Respondent defended her case for the return of the minor child to Ukraine, since the child himself, is unwilling to return to his life there. The eleven year old child opened up with the ex parte psychiatrist Dr. Nigel Camilleri and how he fears returning to Ukraine, as his father would try to harm his mother, as he had done before. He also admitted that his father would use drugs, drink a lot and he has often seen his father in fights and in possession of weapons such as a gun. He has also seen instances where people knocked on their doors asking for money and he has also seen cars put on fire. He also is aware that his father is involved in gambling and has an amount of debts.

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<sup>4</sup> The Article 13(b) “Grave Risk of Harm” Exception of the Hague Convention on International Child Abduction: Its Application in a World of Terrorist Threats, Infectious Diseases and Civil Unrest

Dr. Nigel Camilleri concluded that the minor D has been exposed to a lifelong history of trauma from around the age of 5 or 6 stemming from physical and emotional abuse perpetrated by the father and the paternal grandparents. As a consequence, the minor shows possible symptoms of minor post traumatic stress disorder which include “*hyper vigilance, anxiety, irritability and also fears of returning back to the Ukraine.*” Since the minor appears to have settled in Malta, according to Dr. Camilleri, the risk of sending him back to the Ukraine will increase the chances of this trauma to become a complex post traumatic stress disorder. He concluded that “*the fact that D has been exposed to trauma in early years, when there is neurodevelopment taking place, could cause lifelong damage to D emotional regulation which can only be corrected by D living within a stable and consistent environment with one stable caregiver.*”

It is to be pointed out that no evidence was brought by Plaintiff to rebut Dr. Camilleri’s conclusions. When asked whether he was aware of this report, he confirmed so and replied that as far as he was aware, when the minor was with him in the Ukraine, he was fine.

Obviously, the court is not bound with the conclusions reached by the psychiatrist nor is it bound by the child’s views as these are not determinative. The Court of Session in Scotland in the case **P.W. vs A.L. or W.** reiterated as follows:- “*the final decision as to return must be the court’s own. A balancing exercise requires to be carried out, and one of the factors which are to be placed in the balance in favour or return is the spirit and clear purpose of the Convention,, which is to leave it to the court of habitual residence to resolve the parental dispute.*”<sup>5</sup>

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<sup>5</sup> Decide 12<sup>th</sup> June, 2003.

Defendant brought evidence that she was subjected to both physical and emotional abuse by the minor's father and she hid it for a while from her parents. At first she hoped that he would change, but she feels he failed her, because the more time passed he became more violent and aggressive, so much so that once he threatened her with a knife and she feared him even more. Her son also envisaged the scene where his paternal grandmother threw an old shoe in Defendant's face and this led to the traumatic experience that at present the minor suffers from. This abuse is confirmed by Defendant's family and corroborated her version. His term living with his father and his paternal grandparents and apart from Defendant according to Defendant led him to suffer from "vegetative vascular dystonia." However, evidence to corroborate this disorder was not brought forward.

The minor's father denies all this wrongdoing and went as far as to present a certificate that he has not criminal records. Throughout the time the child was with him, he maintained him, fed him and took him out regularly and involved him in extra-curricular activities. He also ensured that he got a good education.

Defendant rebuts these claims by corroborating her versions by bringing forward her direct family to testify. These all confirm that the minor child was subjected to illicit drugs and substances and often his father carried a gun. His gambling problems also led to several creditors running after the minor's father to seek settlement of his debts. These used to go and knock on the residence's door. Defendant's father corroborates this evidence



since he had lent money to his daughter's husband, but he had never repaid him, so much so that he had used the money he gave them around USD 21,000 to set up a gym and never passed on any money to Defendant.

In addition, there were proceedings instituted by Defendant in the Ukraine regarding payment of maintenance for the child and since July, 2019, her husband has failed to pay the maintenance due and to date is unemployed.

As to the incidents of arson, Defendant once again produced a number of photos that confirmed the arson on G's car (Porsche) and on his parents' residence. This was also news that ended up being reported on media. Once again, G did not bring any evidence to rebut these allegations, but on the contrary he admits that he and his family encountered arson attacks, but seems to be pointing his finger at Defendant, although no evidence of any criminal proceedings in her regard were brought forward.

In H (Children Abduction) decided by the Court of Appeal (United Kingdom) the Court interpreted the application of Article 13(b) of the Convention as follows:-

***“The threshold to be crossed when an article 13(b) defence is raised is a high one and difficult to surmount. Hence the courts in this country have always adopted a strict view of Article 13(b). The risk must be grave, and the harm must be serious. The courts are also anxious that the wrongdoer should not benefit from the wrong: that is, that the person removing the children should not be able to rely on the consequences of that removal to create a risk of harm or an intolerable situation on return. This is summed up, after a review of the authorities, in the words of Ward LJ in re C (Abduction: Grave Risk of Psychological Harm) {1999} 1 FLR 1145, 1154, cited by the judge in the present case:-***

*“There is, therefore, an established line of authority that the court should require clear and compelling evidence of the grave risk of harm or other intolerability which must be measured as substantial, not trivial, and of a severity which is much more than is inherent in the inevitable disruption, uncertainty and anxiety which follows an unwelcome return to the jurisdiction of the court of habitual residence.”*

*“It is important that a court considering an exception under Article 13(b) take into account any ameliorative measures (by the parents and by the authorities of the state having jurisdiction over the question of custody) that can reduce whatever risk might otherwise be associated with a child’s repatriation.”*

Plaintiff presented carious documentation to prove that there were no risks if the minor child is repatriated to the Ukraine. First and foremost, the Lutska Service on Children Issues confirmed that whilst the child attended the Lutsk Specialised School I-III in Lutsk there resulted *“no facts of avoidance or improper execution of parental duties or domestic violence.”*<sup>6</sup> Lutsk Specialised School I-III confirmed that the minor child attended the said school between 2016-2017 and both parents took an active part in the child’s learning process. The child was once again registered by the mother on the 6<sup>th</sup> May, 2019 on the application of the mother, but she pulled him out to further his studies abroad on the 23<sup>rd</sup> January, 2020.

The School also confirmed that *“no facts of avoidance or improper execution of parental duties by the parents or domestic violence were established during the pupil’s education at school.”*<sup>7</sup>

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<sup>6</sup> Vide Dok. 3 attached with Nota of Plaintiff

<sup>7</sup> Vide Dok. 3 attached with Nota of Plaintiff

Plaintiff also produced documentation from the Ministry of Internal Affairs of Ukraine, to confirm that there was no prosecution, cancelled or criminal convictions against GI and he was not wanted until the 9<sup>th</sup> February, 2021.<sup>8</sup> The Ministry of Health also confirmed that GI had passed his drug examination<sup>9</sup> as well as his psychiatric examinations.<sup>10</sup>

Plaintiff also produced documentation that the minor child attended the Dubno Educational complex between the 16<sup>th</sup> March, 2018 and the 4<sup>th</sup> May, 2019.<sup>11</sup> The State Tax Service of Ukraine also confirmed that there were no debts due by GI on taxes and fees.<sup>12</sup>

Thus, considering all these points, it can be concluded that the minor child's father does not post much of a risk having a clean criminal record and no issues with the State. Above all this he also kept the child over the period 2018/2019. However, nonetheless, Dr. Anthony De Giovanni emphasized that notwithstanding his several requests, the Central Authority of Ukraine had failed to produce a clear report on the protection of the minor on his return to the Ukraine until a Ukrainian Court decision is reached on the *patria potestas* of the minor.<sup>13</sup> On the other hand, Defendant presented evidence that presently, her ex-husband unemployed and it also results that he has a new family, a new partner and a child. Moreover, she also produced evidence to show that she had insititued

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<sup>8</sup> Vide Dok. 4 attached with Nota of Plaintiff

<sup>9</sup> Vide Dok. 5 attached with Nota of Plaintiff

<sup>10</sup> Vide Dok. 6 attached with Nota of Plaintiff

<sup>11</sup> Vide Dok. 7 attached with Nota of Plaintiff

<sup>12</sup> Vide Dok 8 attached with Nota of Plaintiff.

<sup>13</sup> Vide Dok. DK 3

proceedings against GI because he failed to pay her maintenance for the child for the period 15<sup>th</sup> July, 2019 and the 1<sup>st</sup> February, 2021 and subsequent enforcement orders that were issued against him namely, an enforcement order on temporary restriction on his right to hunt, an enforcement order on temporary restriction on his right to drive vehicles, as well as an enforcement order on temporary restriction on his right to leave the territory of Ukraine, all issued on the 1<sup>st</sup> of September, 2020.

The Court, therefore, has to find a balance to determine whether the risks for the minor's repatriation are grave enough that they justify a decision against repatriation. The facts that the father is unemployed and thus will not be in a position to offer a sound financial upbringing for his son for the time being is not tantamount to a grave risk. However, there are other considerations to be made. Throughout the year that the minor child has been in Malta with his mother, his father has another partner and he has another child. So, essentially, if the minor child returns to the Ukraine he is going to find himself with new surroundings and a brother. These factors together create a further risk for a recurrence of his post-traumatic stress disorder. As Dr. Nigel Camilleri pointed out presently he shows slight symptoms of this disorder, but taking him back to Ukraine, where he suffered this trauma, would signify an intensification of this disorder and consequential damage to his emotional health.

A legal analysis of Article 13(b) provides the following example of an intolerable situation:-

*“A review of deliberations on the Convention reveals that “intolerable situation” was not intended to encompass return to a home where money is in short supply, or where educational or other opportunities are more limited than in the requested State. An example of an “intolerable*

*situation” is one in which a custodial parent sexually abuses a child. If the other parent removes or retains the child to safeguard it against further victimization, and the abusive parent then petitions for the child’s return under the Convention, the court may deny the petition. Such action would protect the child from being returned to an “intolerable situation” and subjected to a grave risk of psychological harm.*

*In other words, at one end of the spectrum are those situations where repatriation might cause inconvenience or hardship, eliminate certain educational or economic opportunities, or not comport with the child’s preferences; at the other end of the spectrum are those situations in which the child faces a real risk of being hurt, physically or psychologically, as a result of repatriation. The former do not constitute a grave risk of harm under Article 13(b); the latter do.”*

## **Article 12**

Defendant also makes reference to Article 12 of the said Convention, which article allows-but does not, of course, require-a judicial or administrative authority to refuse to order the repatriation of a child on the sole ground that the child is settled in its new environment, if more than one year has elapsed between the abduction and the petition for return. The article begins by setting forth the general rule that:-

*“Where a child has been wrongfully removed or retained... and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of wrongful removal or retention, the authority concerned shall order the return of the child forthwith.*

Article 12 of the Hague Convention carves out a simple exception:-

*“The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.”*

In other words, if more than one year has passed, a “demonstration” that the child is now settled in its new environment” may be a sufficient ground for refusing to order repatriation. However jurisprudence has gone as far as to state that this by no means *“implies that the question of whether a child is settled may not be considered at all under Article 13(b); it simply means that this factor cannot be the sole reason for repatriation, except as provided by Article 12.”* Under Article 13(b), the fact that a child is settled may form part of a broader analysis of whether repatriation will create a grave risk of harm. The ordinary disruptions necessarily accompanying a move would not by themselves constitute such a risk.

The Chief Executive Officer of the Social Care Standards Authority filed the petition on the 17<sup>th</sup> November, 2020, when the Defendant and her son travelled to Malta on the 9<sup>th</sup> November, 2019, thereby resulting in a lapse of over a year. Defendant provided evidence to show that her son D has settled and is very happy in Malta. He attends school here and has made friends and they live together in a nice apartment and also Defendant has a stable job providing for him.

Nevertheless, over and above all this, Article 12 has to be read within the ambit of the more restrictive interpretation of Article 13 (b) of the Convention.

Since Defendant is also basing her case on the proviso to Article 13 of the said Convention, it has also been interpreted that a court “*may consider a younger child’s testimony as part of a broader analysis under Article 13(b). In either case, of course, a court must take into account the child’s age and degree of maturity in considering how much weight to give its views. As the government acknowledges, however, it stands to reason that the standard for considering a child’s testimony as one part of a broader analysis under Article 13(b) would not be as strict as the standard for relying solely on a child’s objections to deny repatriation under Article 13.*”

The only evidence produced as to what the minor child really feels and wants is what he expressed to Dr. Nigel Camilleri – “*He says that he would like to go on living in Malta. He is afraid of going back to the Ukraine. He’s afraid that his father will try to harm his mother. He says that he has seen violence all his life. He has seen his father beat her physically and shout at her.*” Though he admits that his early childhood years were fine and happy, in the last year or so before returning to Malta “*he would only see his father twice a week and his father would use drugs and drink a lot and would often see him inebriated.*”

*Though appointed ex parte, Dr. Nigel Camilleri is a competent professional in his field and this was also confirmed by the Director of Social Welfare, despite the fact that they did not manage to communicate with him, therefore leading the Court to give the necessary importance and evaluation to the conclusions he reached:-*

*“However, if he returns to the Ukraine, the risk of exploitation under the terms of physical abuse and emotional abuse by his father are high. The*

*risk of neglect is also high given that his father was not in his life for a long time. Also, his father presents with an erratic history of substance misuse, violence, debt, gambling and also, possibly some element of instability within his relationships.....,*

*The risk of returning D back to the Ukraine and disturbing the stability will increase the chances of furthering thus trauma to become a complex Post Traumatic Stress Disorder. Furthermore, increasing the chances of D having life-long mental health problems as a result of trauma.*

*Furthermore, recurrent trauma is known to lead to emotional dysregulation, unless stability by a consistent caregiver is present within his life. Therefore, the fact that D has been exposed t trauma in early years, when there is neurodevelopment taking place, could cause lifelong damage to D emotional regulation which can only be corrected by D living within a stable and consistent environment with one stable caregiver.”*

The Court is of the opinion that the return of the minor child D to the Ukraine would cause him undue hardship and possible psychological harm. In this instance it is the duty of the Court to offer the child protection from possible further trauma, however that may be caused. The Court cannot ignore the evidence submitted by the parties and the submissions made by them. Although the Court can never be sure which of the parties' version of facts is closer to the truth, it cannot ignore the conclusions and recommendations made by Dr Camilleri. The Court furthermore chose specifically to rely on those findings as being objective enough to warrant the Court's consideration. Given the urgency of the whole case and the risk of subjecting the child to secondary victimisation and further trauma, the



Court avoided the appointment of an additional expert to re-examine the child and saw Dr Camilleri's report as sufficient in this case.

Considering all the factors proven and all the documentation and following the reasonings aforementioned, and above all that one year has elapsed from when the petition was filed, and the minor is now settled nicely in Malta, considering also that he was very clear and mature in expressing his emotions and desires with Dr. Nigel Camilleri, there exists solid and hard proof that satisfy the requisites of Article 13 of the Hague Convention on the Civil Aspects of International Child Abduction and that Article 12 also falls within the broader application of Article 13.

### **DECIDE**

For the above reasons, the Plaintiff's requests are hereby rejected.

All costs are to be borne by the Plaintiff.

**Onor. Imhalef Anthony J.Vella**

**Registratur**