



**CIVIL COURT
(FAMILY SECTION)**

MR. JUSTICE ANTHONY G. VELLA

Sitting of Tuesday 7th January 2025

Application number 424/2023 AGV

**TA duly represented by his special power of attorney Avv. Sarah Sultana
(ID: 0012581M)**

Vs

Y Z

The Court,

Having seen the GENERAL APPLICATION OF TA , duly represented by his special power of attorney Avv. Sarah Sultana (ID: 0012581M) - copy of special power of attorney attached as Dok. SS1 dated 28th July 2023.

Humbly submits:-

1. That preliminarily the applicant submits that this application is being filed by him in terms of The Child Abduction and Custody Act, Cap. 410 of the Laws of Malta as well as under the Hague Convention of the 25th October 1980 on Civil Aspects of International Child Abduction, which is an integral part of Maltese Law in terms of Cap. 410 of the Laws of Malta.
2. That the applicant (a Turkish citizen) and the respondent (a Ukrainian citizen) had a relationship, from which relationship the minor MA also known as MZ (hereinafter referred to as “the minor”) was born on the 12th April 2017 in Cook County, Chicago, United States of America (**Doc. SS2**) with the consent and acceptance of the applicant who attended for the birth and paid for all expenses in connection therewith.
3. The minor is a citizen of the United States of America, as well as a citizen of Turkey and is the holder of American Passport number 674149615 (**Doc. SS3**), as well as Turkish Identity Card number 33319789700 (**Doc. SS4**).
4. That initially the applicant and respondent were work colleagues in the international company Sensient Technologies Corporation, and this as of the year 2013, wherein the applicant was General Manager based in Istanbul, Turkey and covering the regions of Turkey, Middle East and North Africa whereas the respondent was a Sales Manager for Russia and Ukraine and was based in Kyiv, Ukraine. Eventually it was around the end of July 2015

that an intimate relationship began between them. Until such time, the applicant was married and was passing through matrimonial problem with his now ex-wife, from which marriage he also has a son CAA, who is eight (8) years old.

5. That the respondent was pregnant with the minor M in August 2016. The relationship with the respondent was a positive turnover in the applicant's life and a very important one for him, apart from the fact that he really desired this child, he insisted that he wanted to raise the child together with the respondent and to live together like a family. The applicant also explained to the respondent that at least until his elder son would grow up and reach University age, they had to live in Istanbul, Türkiye where his son also resides since he had no intention of abandoning his son. The respondent understood the applicant's position, gladly accepted it and hence moved to Istanbul to live with the applicant. The respondent also started putting pressure on the applicant to accelerate the divorce from his wife – the applicant had no issue with this as he wanted to start a new life with the respondent and their daughter, in fact he obtained his divorce in October/November 2017, a few months after the birth of the minor M.
6. That since her birth in the United States, the minor child always lived in Istanbul, Türkiye together with her father and her mother and therefore the habitual residence of the minor in these six (6) years since her birth was always Türkiye. The respondent was also resident in Istanbul, Türkiye in this time, as results from her Turkish identity card (**Doc. SS5**). In February 2019, the respondent started working with Pfizer in Türkiye, a job which the applicant managed to procure for her through his contacts, with a salary of circa €1,500 per month. She was eventually dismissed after 2 years in 2021.

7. That the applicant always took care of all the needs of the family and in particular of the minor – since they always lived together, the applicant always paid for the living expenses solely and out of his money, including the rent of the apartment in a residential area of high standards in Istanbul, including a 4+1 apartment with a pool chosen by the respondent, the utilities within the same apartment – electricity, water, internet, telephony etc, daily living expenses, food for the whole family, outings and frequent dinners in restaurants, clothes and toys for the minor, expenses for the minor’s extra-curricular activities, as well as a babysitter for the minor (which was imposed upon him by the respondent and which he is still paying to date) as well as all the minor’s educational expenses (which he is still paying to date), health insurance covering medical expenses for both the minor and the respondent. The respondent also had access to his credit cards which she used to buy whatever the family needed – the applicant used to spend circa €3,500 per month in this regard. Furthermore the respondent was always into travelling abroad as this was the lifestyle that she said she liked and she expected the applicant to subject himself to this - she would go abroad for holidays for an average of 6-7 times per year, including 3-4 times to her home country Ukraine, most of which were paid entirely by the applicant, and this over and above the monthly expense referred to above.
8. That on her part, the respondent used to contribute very little towards the expenses of the family and the money she made from her employment with Pfizer she used for the most part to finance her personal expenses, outings with her friends, a Macbook, two online Masters courses amongst other things. When the respondent was not working, the applicant used to give her a sum of money, between €300-€400 per month for her needs, even if they lived together and the applicant always paid for everything himself. The applicant always did his utmost to keep her happy.

9. That after 2-3 years of trying to convince the respondent to allow him to register his daughter in Türkiye under his name, in October 2021, in agreement with the respondent and with her acceptance and signature, the applicant registered his daughter M under his name as part of his family nucleus, in what is called the Family Register in Türkiye and in which even his son from his previous marriage CAA is registered. (an extract of the same register which is presently only available in Turkish is being attached, however the respondent declares that he is preparing a translation and authentication thereof which will eventually be presented in the proceedings – **Dok. SS6**). Consequently the minor was given her father's surname A, as well as Turkish citizenship, which she is automatically entitled to once her father is a citizen of Türkiye, as well as a Turkish identity card. This registration gives rights to the applicant over the child, and to take decisions for the minor including those related to health and education.
10. That notwithstanding the fact that the applicant always provided the best for his daughter and her mother Y , whatever he did was never enough for the respondent who was only interested in money. The relationship between the parties thus started deteriorating, particularly when already since last year (2022) she started regularly threatening the applicant that she was going to leave Türkiye for good together with their daughter and either go back to Ukraine or go to Chicago, USA where she also has Ukrainian friends residing.
11. That in early August 2022 then, whilst the respondent was abroad in Barcelona (Spain) on vacation and even after she returned home to Istanbul from this trip, she started threatening the applicant that she would take the parties' minor daughter and would move to Spain to live there with her.

12. That as a result of her behaviour and threats, the applicant was no longer trusting the respondent and thus the applicant proceeded to request the issuance of a travel ban from the Family Court in Türkiye in order to stop the child from being taken out of Türkiye. This in order to stop the respondent from executing her threats and leaving Türkiye with the minor child without his consent and approval.
13. That the travel ban was filed in the 4th Family Court in Anatolia, Istanbul on the 17th August 2022 and it was acceded to on the 23rd August 2022, wherein the Court decided “*to impose a ban on leaving the country from all land, sea, air and customs gates for MA ID Number 33319789700*” (copy of the court decree issued by the Family Court in Istanbul, Anatolia in the Turkish language accompanied by a translation into English and duly authenticated is being hereunder attached as **Doc. SS7**). This travel ban is still in place to date.
14. That furthermore apart from this travel ban, the applicant also instituted proceedings in the 4th Family Court in Anatolia, Istanbul (Case Docket Number 2022/624) to be entrusted with the care and custody of his daughter M (a copy of a decree issued on the 31st August 2022 by the Family Court attesting to this is hereunder being attached in Turkish together with a translation into English as **Dok. SS8**), which proceedings are currently still in place to date. The respondent is also well aware of these proceedings in Türkiye.
15. That notwithstanding this ban, and worse still while this ban was in place, and the respondent knew about the care and custody proceedings, the respondent deceived the applicant when on the 19th February 2023 she told

him that she was going with their daughter to meet some Ukrainian friends of hers that same day in the afternoon in Zekeriyaköy (Istanbul) but while making the applicant believe she spent considerable time at her friends' place, she instead escaped from Türkiye together with their daughter. The respondent sent a message to the applicant on WhatsApp at 7.50pm local time, just to inform him that she had already left the country with the child and that she was already out of Türkiye and would not return back. She also told him that she had abandoned his car on the street next to a hospital and that she had left the keys to the car in the space between the car and the wheel (see messages **Doc. SS9**). This in clear violation of the travel ban issued by The Family Court referred to above. The respondent is now facing criminal proceedings in Istanbul, which proceedings she is fully aware of.

16. That when the respondent fled with the minor, she did not have the minor child's documents, neither the American passport nor the minor's Turkish identity card, and to date the applicant cannot understand how it was possible for the respondent to escape in this manner with a travel ban in place and with what documents for the minor this happened.
17. That in March 2023, the applicant confirmed that the respondent had indeed fled with the minor child to Ukraine when the respondent herself told the applicant that she had arrived in Ukraine via another country (which she did not disclose) and took an 11-hours bus trip to her home town Lviv (Ukraine), where there is an ongoing war, and notwithstanding the applicant's pleas not to take his child to this war torn country, the respondent forged ahead with her plans. Moreover the same respondent informed him that she had managed to obtain a Ukrainian passport for her daughter and this without requiring the signature, consent and approval of the same applicant – in fact the applicant managed to acquire a copy of this passport and submits that

the minor has a Ukrainian passport issued in the name M Z , bearing number GF229564 on the 2nd March 2023 and valid till the 2nd March 2027, which passport is in the respondent's possession – (copy of the minor child's Ukrainian passport obtained without the father's consent is hereunder attached as **Dok. SS10**).

18. That consequently on the 1st March 2023, the applicant filed a report with the American Citizen Services Unit at the US Embassy in Kyiv, Ukraine alerting to the kidnap of his minor child by the respondent from Istanbul. The applicant also contacted the US Embassy in Istanbul after the respondent claimed that she had already applied for a new passport for their daughter in Kyiv. The US Embassy Istanbul informed the applicant on the 16th March 2023 that after checking with their counterparts in Kyiv, it indeed resulted that the respondent had gone to the US Embassy in Kyiv Ukraine and lied that the US Passport for Mila was lost, in order to request the issuance of a new passport - this is how conniving and deceitful the respondent is. The applicant alerted American authorities to the fact that the minor already had a valid US passport in Istanbul and he was providing no consent or approval to any new passport being issued to his daughter who had been kidnapped by her mother from Istanbul. He also put M, in the Prevent Abduction Children's Passport Issuance Alert Program at the US Department of State in the USA (copy of correspondence hereunder attached as **Doc. SS11-Dok. SS11B**).

19. That after the respondent went to Ukraine and obtained the minor's Ukrainian passport without the father's consent and behind his back, towards the end of March 2023, she left Ukraine and through Poland she came to Malta with the parties' daughter. At the time of the respondent's arrival to Malta with the parties' daughter, they stayed at a certain I B ,

another Ukrainian friend of the respondent until the 1st July 2023 and afterwards the respondent rented her own apartment in St. Venera where she is presently living with the minor. The parties and their daughter M, never had a connection with Malta.

20. That however the respondent has Ukrainian friends here in Malta and other friends in other countries in the European Union, including her niece, her brother's daughter, who she claims is in Spain and was granted international protection there, as well as friends in the United States as has already been mentioned. Furthermore, she has family members that have strong political connections in Ukraine and are capable of using their political influence to furnish her with documents even without the signature and approval of the father for the minor child. The applicant submits that he was in contact with respondent's brother, AZ to attempt a resolution, however all efforts were futile – AZ did not respond positively but simply mentioned that he is also involved and was supporting his sister.

21. That ever since the respondent fled from Turkey with the minor, the applicant has been continuously pleading her to take their daughter back to Turkey. The applicant tried many times to reach an arrangement with the respondent and made several proposals to try to resolve the issue amicably and for the minor to be returned to Türkiye voluntarily. The respondent, however, has only humiliated the applicant, taking him for a ride and making absurd financial conditions - as will result in the course of the proceedings, the respondent initially told the claimant that she would return to Türkiye with the daughter only on condition that the claimant buys her an apartment worth €400,000 in Istanbul so that she could apply for Turkish citizenship, which in any case she is entitled to through her daughter M, and this when

she knows that the applicant does not have this money parked somewhere for her demands and he cannot buy a property that costs so much money.

22. That eventually her condition to return to Istanbul with the girl changed - she wanted the applicant to rent a 3 bedroom apartment for her in a luxury area in Istanbul, she chose the area and the street where she wanted it, she wanted him to pay the rent out of his own pocket until she gets up on her feet, to solely pay all expenses for the minor as he has always done, to give her a maintenance of around €1000 per month and did not want restrictions on traveling with the minor among other things.
23. That the applicant was so desperate to be reunited with his daughter that he was ready to accept these conditions, including applying for Turkish citizenship for her and maintaining her Turkish residence until the citizenship process is over, finding a job for her and applying for a work permit, all at his own expense. But even this was not enough and the respondent did not accept arriving at any agreement. The respondent preferred to deny her daughter of her father, from her life, her schoolmates, her paternal grandparents, her brother and her aunt who are all in Turkey and who have always been present in the child's life in these six years and as long as she does what suits her and as long as she did not achieve what she wants financially, she continues to defy the applicant and make his life impossible.
24. That the applicant all the time mercifully pleads with the respondent to see his daughter and speak to her - the respondent put him in a situation where not only did she flee with his daughter with whom he has a strong relationship, but she reduced his contact with his daughter, whom he was with every day since her birth, to telephone contact via the respondent's

mobile phone, at the times which are convenient, according to what works for her and as pleases her. Currently, the applicant speaks to the minor every day for 15-20 minutes in the morning, 15-20 minutes in the evening, unless the respondent loses it - until a few days ago she even started threatening that she will not allow him to speak to the girl twice a day, that unless they agree on a schedule of how and when he will talk to her on the phone, she would not let him talk to her, because in her words the fact that she allows him to talk to his daughter is a privilege she gave him and that she can revoke if and when she wants. All this because the applicant discovered from his daughter that the respondent is already sleeping with a new partner in her home and in the presence of the minor girl who showed her father that she is not at all happy with her mother's behaviour, and the applicant confronted the respondent about this.

25. That for the time that the respondent has been in Malta with the minor, in order that the applicant does not lose contact with her daughter, he has visited her twice and spent some time with her in Malta - and in the last visit in the last two weeks of June - beginning of July 2023, the respondent also demanded that if the applicant did not give her possession of his passport while he was in Malta, she would not allow him to spend time with his daughter, when after all the unreliable person who fled with the girl is the respondent not the applicant - the applicant did not give in to this, even since the respondent has no right and it is illegal for her to withhold a third person's passport, and he still managed to see the girl and spend all these days with her. However this is not enough for the applicant who is being unjustly denied his daughter, who he wants to continue raising as he has raised her so far, because of her mother's whims, and he wants that his daughter is returned to her country from where she was taken.

26. That furthermore the respondent is also deceiving the Maltese authorities owing to the fact that on the 23rd June 2023, whilst the applicant was in Malta, he discovered that the respondent had applied for international protection in Malta with the International Protection Agency in Hamrun, in which application she blatantly lied that the minor's father had stolen the minor's American passport. She did not indicate at all that the minor is a Turkish citizen apart from the fact that she is an American citizen, she did not indicate that she had fled with the child from Turkey where they were residing since May 2017, and even in that part of the application referable to the father's details, she even purposely omitted the father's details and instead indicated all such details as N/A (Not Available), when she knows fully well all of his details (copy of the relevant pages of the said application hereunder attached as **Doc. SS12**).
27. That when the applicant confronted the respondent about this application, she claimed she did it to legitimise her status in Malta as the 90 day visa-free travel conceded to her was going to expire and instead she claimed to have used the International Protection mechanism until she applied for a work permit, in a possible blatant abuse of the system. At the same time the respondent told the applicant that she had already found a job and is working in an administrative position with a German educational academy named "Triagon Academy Malta" in Marsa.
28. That since September 2020, the child was attending kindergarten in the district of Kadikoy (Istanbul) named "Suadiye Küçük Şeyler Anaokulu". When the respondent fled with MZ, on the 19th February 2023, the child was in her third and last year at kindergarten, which year was interrupted brusquely by the respondent and this contrary to the child's best interests. The last months of school which the respondent deprived her daughter of,

are the most important months as the children are prepared for primary school in this time.

29. That in fact as of September 2023 the minor is supposed to start attending Primary School. The parties together chose one of the very best private primary schools in Istanbul by the name “**BİLFEN ÇAMLICA İLKÖĞRETİM OKULU**” in Üsküdar District. The parties agreed to enrol the child in this school and signed and applied to enrol the child months before the respondent fled with the child. M was chosen to attend this private school after she passed a face-to-face assessment successfully. M Was very happy and motivated to go this school. The applicant submits that his son CAA also attends this same primary school, and has just concluded his third year. Furthermore the applicant has, since January 2023 to date, already been paying the school fees out of pocket (**Doc. SS13** attached).
30. That this notwithstanding, the respondent also informed the applicant that she applied to send M to school in Malta, namely summer school at “Mickey's Child Educate Centre” in St. Venera, which apparently the child has already started attending always according to the information that the respondent is giving the applicant, as well as the primary school St. Theresa College St. Venera Primary (see messages **Dok. SS14**) – the father’s consent was not requested nor was it given, nor was approval of this Honourable Court given to the respondent to be able to do this without the father’s consent. In this regard, the respondent is probably also deceiving the authorities as Maltese Law requests the approval and the signature of both parents, or an order of the Honourable Court in the absence thereof.
31. That in the meantime as well, the respondent has engaged the services of a babysitter for her daughter and the applicant also discovered that the

respondent is leaving their daughter for entire days with the babysitter whilst all she is concerned with is going out to have fun and she is already in another relationship with a third party, without even considering the damage that she is causing to the minor, after she forcefully took her and deprived her from her father and escaped with her to a new country where the child has nothing and no connections.

32. That in view of all the circumstances submitted herein, apart from the fact that the applicant *qua* the father of the minor had the physical care and custody of his daughter until she was taken by the mother with his consent, always had access to his daughter who he always lived with in these 6 years of her life and the decisions regarding the minor, including those related to health and education were always taking by the parties together, and considering that the child's life is and has always been in Türkiye where she has her school, family, friends and was settled in Türkiye before her mother arbitrarily and illicitly removed her from the environment in which she was raised, it is also fair and equitable that the minor is returned to her father in Türkiye, even due to the fact that there are proceedings for care and custody of the same minor pending in Türkiye, and this in a short and peremptory period which should be determined by this Honourable Court in the best interests of the minor and in order for the minor not to continue being traumatised further and over and above the trauma that her mother has in such a blatantly egoistic manner subjected her to.
33. That both Malta and Türkiye are contracting States to the Hague Convention of the 25th October 1980 on Civil Aspects of International Child Abduction.
34. That this is why these proceedings had to be instituted.

Therefore the respondent shall state why, saving any necessary and appropriate declaration, this Honourable Court shall not proceed to

1. Declare that the habitual residence of the minor MA , also known as M Z holder of American passport number 674149615 and of Turkish identity card number 33319789700) is in Türkiye;

2. Consequently declare that the removal of the minor MA also known as MZ (holder of American passport number 674149615 and Turkish identity card number 33319789700) from her habitual residence in Turkey on 19th February 2023 and the taking of her first to Ukraine, then from Ukraine to Malta in the following months, as well as the retention of the same minor girl in Malta by the respondent, was committed without the consent of the applicant ie the father of the minor TA , and therefore to declare that the acts of the respondent amount to an illicit act and to abduction of a minor, and this in terms of the Cap. 410 of the Laws of Malta and/or of the Hague Convention of 25 October 1980 on Civil Aspects of the International Abduction of Minors.

3. Consequently order the return of the minor MA also known as MZ (holder of American passport number 674149615 and Turkish identity card number 33319789700) to her father in Türkiye, this being the habitual residence of the minor, in a short and peremptory time to be determined by this Honourable Court and this in terms of Cap. 410 of the Laws of Malta and/or of the Hague Convention of 25 October 1980 on Civil Aspects in the International abduction of minors;

4. To give all those necessary and appropriate orders and directives to ensure that in the event that the respondent fails voluntarily to obey the order of the Court for the return of the minor in terms of claim numbered 3 above, in order to

authorize that the minor be taken from the respondent YZ by force, including through the intervention of the marshals of this Honourable Court and the Executive Police, and any other competent entity that this Honourable Court deems fit, in order to ensure the return of the minor to the father and back to her country, that is Türkiye;

5. Give those necessary and appropriate directives including interim directives as required by the circumstances of this case, and this in terms of Cap. 410 of the Laws of Malta and/or of the Hague Convention of 25 October 1980 on Civil Aspects in the International Abduction of minors;

With all costs against the respondent, including those of the warrant of prohibitory injunction number 110/2023 AGV in the above names issued on 20th July 2023, and with the respondent who is as of now being summoned for the reference to the oath.

Having seen the reply of YZ respectfully submits:-

1. That preliminarily, and principally, it is immediately revealed that applicant TA does not have the care and custody of the minor MZ neither alone nor jointly with the mother, as he tries to imply.

The Turkish law is very clear in this regard where it dictates that in the event that a child is born out of wedlock, the care and custody of the minor is vested and entrusted usually to the mother.

Applicant knows this very well because as he explains in his own application, he initiated a judicial procedure in Turkey in order to be thus vested with the care and custody of the minor. Additionally, applicant does not even have a right of access to the minor or to determine her residence.

Therefore, applicant does not have *locus standi* to bring this action and in any case, this procedure is untimely, because not only is there no outcome from the judicial procedures in Turkey, but they are still in a very early stage.

2. That without prejudice to the previous preliminary plea, since the care and custody of the minor is vested exclusively in the mother *qua* the exponent, it can never be considered that an illicit removal of the minor has taken place.

In fact, article 3 of the Convention on the Civil Aspects of International Child Abduction, as translated into Maltese law, in the First Schedule of Chapter. 410, dictates that:

*“The removal or the retention of a child is to be considered wrongful 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 removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.”*

Ulteriorly, the same article proceeds to explain that:

“The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.”

In this regard, it is confirmed that there is no agreement between the parties from which any right of applicant arises and that there is no judicial or administrative decision in this regard and as explained above, Turkish law provides that the mother is vested with the care and absolute custody of the minor.

Furthermore, as provided by the first article of the aforementioned Convention on which this procedure is based, its purpose and objective is:-

"to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States."

Therefore, not only is this procedure frivolous and vexatious, and unfounded in fact and in law but because it cannot succeed, since what is being requested by applicant is that this Honorable Court effectively goes against the Convention. It is very likely for this reason that applicant did not choose to turn to the Central Authority.

3. That for all intents and purposes, it is also being clarified that the exponent was not aware of any judicial proceedings in Turkey before relocating together with the minor.

4. That ulteriorly, it is being pointed out that not only was the mother vested with the discretion and the power to relocate together with the minor, from Turkey to Ukraine, and eventually from Ukraine to Malta where she applied for refuge for her and for the minor, but as it will be proven in the course of these proceedings, she had very valid reasons to no longer reside together with the minor in Turkey, and with the applicant.

In this regard it is submitted that there is a serious risk that in the event that the minor returns to Turkey, the minor will be exposed to psychological damage and to an intolerable situation, as the mother would be.

5. That without prejudice to the above as far as the habitual residence is concerned it is pointed out that the minor is an American citizen, apart from being Turkish, she has a Ukrainian passport, she has always been brought up in a multicultural environment, and does not form part of a religious community. In fact, the minor speaks Russian, English, and Ukrainian in addition to Turkish. With this explained, and added to the fact that the minor is still a minor, it cannot be said that there exists no special connection with the State of Turkey.

More importantly, however, the minor does not wish to live in Turkey.

6. That finally, it is being pointed out that through the untrue and unfounded allegations on which this action is based, applicant attempts to undermine

the credibility of the exponent, portraying her as a person without values and furthermore, a mother who does not look after her daughter's interests, which is absolutely not the case.

Exponent categorically denies these malicious allegations and states that she will be proving the opposite throughout the current procedure (as far as it is relevant for this procedure), while pointing out that what applicant is trying to do is to try to obtain a premature decision through this procedure, and this in order for him to use it to his advantage in the judicial proceedings in Turkey.

7. That for these reasons, exponent humbly requests this Honorable Court to reject the claims of the claimant.

With costs against applicant.

Having seen all the acts and documents exhibited in this case.

Facts

1. Plaintiff explains that he had met Defendant since they were colleagues working for the same company. At the time they met he was living in Istanbul, Turkey, whereas Defendant was living in Kiev, Ukraine and he was still married with marital problems, only to divorce in 2017 through a court decision.

They had conceived the child whilst on a holiday in the South of France and M was born on the 12th April, 2017 in the US as Defendant insisted that since she had a Ukraine friend living in Chicago, this would help their minor daughter acquire a USA residents card. He agreed to this and he went over to the US when

their daughter was about to be born and they spent another month there after her birth.

They then returned to Istanbul and they lived there between May 2017 until the 19th February, 2023, when Defendant left with M. Initially they lived on the other side of Istanbul close to where he worked so he could help out whenever Defendant needed.

Prior to the 19th February, 2023, they were like a normal family planning their daughter's education. Since he had a son from his first marriage, he wanted to remain in Istanbul and Defendant did not oppose and moved there. Their daughter started her kindergarten years and later she started to attend the Primary School that her stepbrother attended.

He goes on to explain that when Defendant moved to Turkey she had to quit her job and from that moment on he had to assume all financial responsibilities, including also the expense for a babysitter that Defendant requested. It also made more sense for them to remain living in Istanbul since he was going to be the main income earner. Also, he had the divorce proceedings ongoing, and also he had his son from this marriage who was in Istanbul.

Throughout this period, he explains that in January, 2018, Defendant had gone to Ukraine and she had told him that she was not returning to Turkey. She had also taken all documents related to M. She had asked him nonetheless to purchase the air tickets together with the return. She was reluctant to come back, because she felt she had no help, her family was too far away and also she did not have any friends in Turkey, but she had only been living there for around seven months.

He flew to Ukraine and somehow he managed to convince her to return and meanwhile they kept on with their life travelling and getting on with their usual plans. Then Defendant started to insist she wanted to find a job and through his contacts, he found her a job with Pfizer in the beginning of January, 2019 and she

remained there till the summer of 2021. He also engaged the services of a Russian babysitter as Defendant wanted M to learn Russian.

During the time she worked he states that her contribution was minimal limited to some groceries as well as paying the cleaner on a weekly basis.

He explains that Defendant used to travel especially to see her relatives in Ukraine, practically every three months, but then she used to return to Turkey and until August, 2023 she always had a two year residency permit, for which his parents entered as guarantors, but once he obtained his divorce he entered as a guarantor.

Once they divorced to avoid all this residency permit or work permit from scratch, he had insisted with her to take Turkish citizenship in the interests of M. It took sometime for him to convince her as she objected, until finally in the summer of 2021, they succeeded in obtaining Turkish residency and a Turkish citizenship card for M as she has been registered under his family name. He also confirms that he wanted M to be Muslim.

On cross-examination, Plaintiff admits that he had opposed to Defendant's request to move to Antalya until the court case was over regarding the travel ban and custody, but it created problems since M would not be attending school, being in Antalya. She also used to get mood swings and one day she was happy in Turkey, another day she would say that she wants to move to Spain or Malta with M and in one way or another she would do it.

On the 19th February, 2023 Defendant went to visit friends of theirs who did not live far from Istanbul airport, together with M and she sent him a message to inform him that she was leaving Istanbul and as a result he had contacted the police.

In August 2022 the Court had issued a travel ban since Defendant had told him that she wanted to leave with M and move to Spain. At the Court's request he had

deposited M's documents in Court. The travel ban is still in force in Turkey. Plaintiff insists that Defendant was aware of the travel ban, even when she went to Antalya and this is evident even by the fact that she had granted a power of attorney to her lawyer in November, 2022.

He had also commenced shared custody court proceedings, which he had instituted pre 19th February, 2023 and at the time Defendant was still living in their apartment in Turkey. He adds that eventually he converted the proceedings to one of full custody, which proceedings are still ongoing. He confirms that he had applied for temporary custody and this was rejected.

After she left he was shocked how she managed to get out of Turkey and this when she had left her American Passport and her Turkish Identity card.

He also admits that he had instituted proceedings so that the court investigates as to how Defendant managed to leave Turkey, with the minor, despite the fact that there was a travel ban. Plaintiff denies that Defendant was not made aware of the travel ban and this due to the fact that generally she would get notified through the egovernment and moreover, she had engaged the services of a lawyer and also gave him a power of attorney and this was in November, 2022. On being cross-examined Plaintiff explains that in Turkey Defendant did not have a job, no car, no apartment, she was fully dependent on his job.

As to where he tried to notify her, on cross-examination he stated that it was up to his lawyer, but as he was her guarantor it was his address, but there were various other ways to notify a party in Turkey and it was confirmed that she was duly notified.

He managed to contact her the day after she left and she informed him that she was on a bus which he suspected she had caught from Moldova or Romania and was heading to Ukraine , where there was a war. He explains that Defendant had informed him that she was going to the US Embassy to try and obtain a new

passport. From his end he informed the US Embassy in Kiev that it was not true that Defendant had lost her passport.

He also admits that Defendant had also told him that she had acquired a Ukrainian passport and citizenship, without his consent and this is required at least under Turkish law.

He complains that despite the dangers and the risks of the war that was taking place in Ukraine, he disagreed with Defendant for travelling long distances with M. He was in contact with him when she had informed him that she was travelling to Poland, but then there did seem to be a change of plans and she informed him that she was coming to Malta, where she did not have any friends, except for a good friend IB who had been in Malta a year before.

He explains that he wants to be able to communicate with his daughter and he did come to Malta for a couple of times. He also insists that Defendant should avoid involving other men into her lives, because she had already been through a lot from moving from one place to another, whereas in Turkey she had close family, who lived close by and she also had her school friends.

Plaintiff also admits to being irritated in the sense that he had registered M in one of the best schools in Istanbul, but on the other hand, here in Malta, Defendant was taking decisions alone and registering M at schools without his consent and then she requested his signature with regards allowing M to stay at school after school hours. He confirms that he had attempted to try to contact the Santa Venera school, where Defendant had registered M, but he had not given his consent and she had not provided them with his email and phone number which she knew. He also added that he was not aware that Defendant had applied to the Turkish court for M to be granted permission to attend school in Malta.

He confirms that today Defendant has informed him that M attends Naxxar Primary School.

Since he has been coming to Malta to follow the court case, he confirms that he has seen M around six or seven times. He also confirms that when he is in Malta, M sleeps with him. The majority of times when he is not in Malta, he speaks to his daughter twice a day, though there have been problems by Defendant or her partner who impede him from speaking to her. From time to time he does also communicate with her via video conferencing.

Regarding maintenance, he confirms that he has not paid for the everyday expenses related to the child, but he bought her whole wardrobe of clothes, all her toys and he spends all his vacations in Malta to be near his daughter. He also stated that it must be considered that when Defendant and M came to Malta, they lived with her friend so they did not pay rent. Then she went to live with her fiancé.

On being cross-examined he also confirmed that during her time in Turkey, Mila attended swimming lessons and also gym.

2. Defendant confirms that she met Plaintiff in 2015 since they were colleagues, Initially, they were in the honeymoon period and then she got pregnant. Plaintiff was not very happy about it and wanted her to have an abortion, but she refused. She also confirms being aware that Plaintiff was married and that later he got divorced. She admits that they had kept their relationship secret until he recognised M.

She admits that she wanted to give birth in the US because she believed that if her daughter had a second citizenship (an American one) it would help her get a better education later on and a better job. She did not have plans to relocate there. It was only when she decided to leave Turkey that she had plans to relocate there. She admits that she did not include Plaintiff in these plans, like he had not informed her with the case to withdraw custody from her, she decided to do things

behind his back too. She denies that they had agreed to live in Turkey for ten to twelve years.

She confirms that she agreed to move to Istanbul because Plaintiff promised that he wanted to be a father and he also promised that they were going to have a family and get married. They had agreed that M would be Muslim and that she would be multicultural since she was Ukranian. So their daughter spoke both Turkish and also Russian. She also confirms that whilst she was on maternity leave she travelled around four or five times a year to Ukraine.

She explains that when she moved to Istanbul they moved to the European side of Istanbul due to the fact that it was closer to Plaintiff's work. Also, besides he did not want anyone apart from his parents to know that he was having a child. She admits that Plaintiff wanted to stay in Istanbul because he had a son from another marriage, but at the same time he was looking for jobs in Dubai and in other cities outside of Istanbul.

In Istanbul she confirms that she had a long tourist visa and Plaintiff's parents were guarantors for this visa. This visa did not permit her to work and it had a two year validity. She could not even open a bank account and as a result have a credit card. M had the same permit and she also had a citizenship card. It was renewed and by then she was working with Pfizer, whereby she obtained a work permit. When Pfizer terminated her job, she applied for a new tourist visa again and it was supposed to be issued in August, 2023. After her maternity leave terminated they asked her to relocate to Warsaw, but Plaintiff wanted her to remain in Istanbul and she had to quit the job.

She explains that it was very important for her to get married to Plaintiff because firstly she wanted a family and grow the child in the full family and from a legal

perspective, if she married Plaintiff she would have legal rights as a citizen and could apply for a citizenship within three years and she would also have been entitled to apply for a job.

Whilst they were in Turkey Defendant confirms that she had care and custody of the child and still does. Their address was that of Plaintiff's parents since they were guarantors for their residence permits. The address was Bostanci Mah Levent, Kadikoy, Istanbul, Number 30, Appartment 7.

As time went by she admits that their relationship deteriorated and this was because Plaintiff was dominant and possessive and also kept on insisting to be intimate and when she disagreed, he would end up picking up a fight with her. She also confirms that she had a C-section so it was impossible for her to have intimate relations with him. They used to argue a lot and Plaintiff would raise his voice and she disliked it because of the child and moreover, she did not like the situation having her daughter grow up where the female had no voice. He harassed her with phone calls and messages and wanted to follow her whereabouts constantly.

She explains that it was very tough for her to live in Istanbul without any relatives or friends, so many times she told him that she wanted to leave, but Plaintiff would not believe her and then he would start being nice again and she returns. She did have friends from the Russian and Ukranian community.

When she left she went to Ukraine, but because Plaintiff had retained all M's documents, in Ukraine she had to get her inserted on her passport and it was then that they came to Malta. She was not keen to stay in Ukraine due to the ongoing war and preferred spending sometime in Malta with a friend till the green card

was issued from the US. However, things changed and she had to change her plans.

Defendant confirms that once she left Plaintiff he knew where she was as she informed him and he also spoke to M about twice a day. She also made him aware that she was staying at a friend in Malta and that she was looking for schools.

M was out of school between September and February until the Turkish Court granted her full care and custody and she could therefore take decisions regarding her education.

Defendant confirms that at present M attends Naxxar Primary School and she supports her financially. Plaintiff only contributes when he comes to visit her in Malta by bringing her toys and pays for the time they are together. She adds that for the time Plaintiff is in Malta, he has M

Defendant explains that the outcome of the two cases that Plaintiff had filed in Turkey, one accusing her of child abduction and the other for custody, declared her not to have abducted the child and granted her sole care and custody of the child. As a consequence, she registered M with the Unit.

She confirms that from the birth of their daughter in 2017 until the 19th February, 2023, they lived in Turkey. She disagrees that she left on the 19th February, 2023, without Plaintiff's consent. She explains that she had been asking him for a separation and he objected. She had problems with her residence permit, for as long as she worked with Pfizer, her working permit was taken care of, but when she left she was dependent on a tourist residency that was about to expire.

So, she decided to leave Turkey and obviously she could not leave M behind since she was still young and in need of her mother. She had tried to come to a compromise with Plaintiff, but since it was an impossible task, it made her take

the decision to leave. She also explains that she never hid to Plaintiff where they were, so much so that he spoke to his daughter on a daily basis.

She adds that she had sent a message to Plaintiff informing him where she had left the car and that she had left Turkey for good. She explains further that she had managed to leave Turkey because she had obtained a Ukrainian citizenship for M as under Ukrainian law she is allowed to do so without Plaintiff's consent. She obtained a Ukrainian passport between December 2022 and January 2023 and that is the reason why after she left Turkey she went to Ukraine, which after .all was her home country. The passport was granted on the 9th January, 2023 and she added that in Ukraine, the consent of one parent is enough for the issuing of a passport.

She also explains that when she applied for citizenship, due to the fact that there is an ongoing war in Ukraine, they offer the solution that for children under 14 years of age, they will be inserted in the parent's passport and this is what happened at the consulate of Ukraine and this represents a valid travel document. This happened around January 2023.

She also confirms that a Ukrainian passport was issued for M in March 2023. She denies being aware that there was a travel ban issued against her and when she left Turkey she used her passport, wherein there was also a photo of M and no one ever stopped to question her. She only discovered afterwards through Plaintiff.

She confirms that M has an American passport as well as a Turkish citizenship. She admits that she was in contact with the US Embassy and she insists that she had told them that M's passport had been stolen by Plaintiff.

She also explains that she had sole care and custody because under Turkish law they were not married. Initially her plans were not to come to Malta, but to go to

the US, for where she had received the green card. However, she decided to come to stay in Malta for a while with a close friend of hers until all the documentation required was processed. Meanwhile, when they were here, her daughter was hit by a car and she had to recover. She was also offered a job here and since she was tired of moving from one place to another she decided to try and stay in Malta. She confirms that she had applied for international protection to be given asylum so as to be able to get a job, rent an apartment and send her daughter to school.

She also adds that she has no intention of leaving Malta, as they have settled here, she has a job, they have a social circle of friends, M is happy at school and she also has her fiancé here in Malta.

Defendant confirmed that at present she is living in Malta with her minor daughter and her fiancé K H. As to her plans, she denies that she plans to leave Malta as her passport is deposited in Court. Moreover, she discovers that Plaintiff has opened a new case against her so she is in no position to make plans.

She explains that at present she is living off her savings and that is how she maintains her daughter and they are living off around a Eur. 1000 a month.

She confirms that when she moved to Turkey she only had a tourist visa and since she had no chance to work, they agreed that he would provide for all living expenses.

On being cross-examined she confirmed that she had accepted that Plaintiff registers their daughter at a very good primary school in Turkey and also that he registers M in the Plaintiff's family registry.

She also confirms that Plaintiff made an attempt for them to reach an agreement with her to return the child to Turkey and she also adds that he offered to rent her an apartment for ten years, paying an amount of money and covering the cost of living for M. She had requested that he buys her an apartment. She had taken

advice from her lawyer who had told her that this agreement had no legal validity and she should not accept it.

She also confirmed that she had initiated proceedings for alimony in Turkey. Currently there is no decree ordering alimony. Also, the proceedings on care and custody in Turkey are still ongoing.

At present, she confirms that M, is doing very well in Malta, she is doing very well at school and she has made a lot of friends.

She also confirmed that at present she is employed as a Product executive with Malta Transport Authority, with an annual income of €35,000 with an indefinite contract.

On being cross-examined, Defendant confirms that throughout the period she was in Turkey she had a babysitter five days a week and many times on the weekend. She also had a cleaning lady once a week and it was always paid by Plaintiff. She also admits that Plaintiff more often than not used to drop off M to kindergarten, but it was more a matter of logistics, because it was on his way to office, and overall he took care of the child.

She admits also that Plaintiff paid for all expenses, food, clothes, extra curriculum activities, school and also babysitters. She did contribute when she worked at Pfizer.

On being cross-examined she refers to the incident that took place at the train station and she confirms that she had told Plaintiff that she was planning to go to Antalya until the court case was decided and this was because she was very hurt when she found out about the custody case and when she said this it was an emotional response. She denies that that day she was planning to leave. She was planning to sleep at a friend of hers and the belongings she had were not sufficient for two months.

As to M's enrolment in a Maltese school, she admits that she had filed the enrolment application alone, without Plaintiff's consent. However, she admits that she had given them his details, but emphasized that he lived abroad. She also confirms that there was an email sent by his lawyer asking for information about M's enrolment at school. She also added that she had many times asked him to sign the enrolment form, but he would laugh about the fact that she needed him.

Furthermore, she had obtained a decree from the Turkish courts authorising her to enrol M in a school in Malta. She had not filed an application here in Malta, because her Turkish lawyer had advised her that since both her and M were not Maltese citizens, she could not proceed before the Maltese courts.

On being cross-examined she explains that there are times when M, is in contact with her step-brother.

3. **Andrew Xuereb** in representation of the Housing Authority confirmed that there was a lease registered between MS and YZ on the property 89, Desire 2, Triq il-Kukkanja, Santa Venera, which lease is dated 5th June, 2023 and it was to last for one year with effect from 28th June, 2023.

4. **Louis Buhagiar**, in representation of Jobs Plus confirms that there was no employment registered under Defendant's name, quoting reference number as being 36836P from the Asylum- Seekers in Malta.¹

Actually, he points out that there was one employment that commenced and terminated on the same day,² He also explained that if a person has asylum, to find employment they still have to apply through Jobsplus.

¹ Dok. LB 1

² Dok. LB 2

5. **Thomas Berry** in representation of Identita' Malta confirms that there were no residents permits or work permit that had been filed on behalf of Defendant as well as her daughter MZ also known as MA
6. **Stephen Abela** on behalf of Exceed Ltd. Confirms that they had offered an employment contract to Defendant and on the 3rd October, they started the registration with Jobs Plus, but retracted the same application on the 13th October because it was very clear that Defendant did not have experience in the field.
7. **Michael Mercieca** on behalf of Santa Venera School confirms that although he was not head at the time, there was an application to enrol M at the school, but it was not approved because there was missing data of the father and the application lacked the father's signature.

Recently, there was a second application that went through the Migrant Learning Unit and he was informed that her application was approved and he was advised to enrol her in the school. He further explained that foreign students come through the Migrant Learning Unit and he would have to accept them.³

8. **Simon Zammit** on behalf of Mickey's child centres confirmed that M had attended the summer school and presented the invoices and the receipts and he also presented the attendance. He confirms that it was Defendant who applied for M to attend the school.⁴

³ Doks. MM1 and MM 2

⁴ Dok.s SZ1 – SZ 3

He also noted that Defendant had informed them that the Plaintiff father was always abroad so they did not insist for his signature in the application. He also added that the application covered the period between the 10th to the 14th July and between 31st and 4th August.

He confirmed that he was not the person who had processed the information.

9. **Sara Ezabe** confirmed that Defendant had applied for asylum on the 23rd June, 2023 and an asylum seeker document was issued. The application for international protection and that of her daughter is still pending since that of M would be attached to her mother, since she is a minor. She was seeking asylum because of the ongoing war in Ukraine.

She also confirmed that Defendant had a ref com number 36837. She confirms that Defendant was not given temporary protection in all probability because there was no documentation that she was residing in Ukraine prior to the 24th January, 2022.

She explains further that if the asylum protection is approved, she would either qualify for refugee or for subsidiary protection, or in the absence of, she would be rejected from asylum and she would not fall within the remit of international protection.

Further to her application, an interview would be held and they assess her area of origin and also her personal profile and family links, personal targeting and also fear of persecution. These things would be assessed post her interview. So the assessment that the IPA carries out, is not limited to her past residence, but also to where she will be allocated, after the application process is carried out.

The risk assessment would be if the applicant is sent back to Ukraine.

She also confirmed that within the application there was an admission by the Defendant that M, was born outside of marriage. Since the applicant would be seeking asylum as a procedure they do not burden them with producing various documentation, it is sufficient if they produce theirs.

As to Plaintiff's information she states that there was a declaration that M has a double nationality, US and Ukrainian and that the father of the child had stolen the US passport of the child and that is why they had escaped him.⁵

10. Dr. Yanika Zammit Tabona on behalf of Central Authority Malta confirms that no request for information was asked from the Maltese Central Authority with regards the alleged abduction of the minor M by her mother. In addition, she states that they do not have any information, whether locally, to the Maltese Central Authority, or, from the Turkish Central Authority, to the Maltese Central Authority.

Regarding the habitual residence it would be the Turkish Central Authority or the Turkish Law Courts who establish the habitual residence.

11. Bernardette Portelli on behalf of Maria Regina College, Naxxar, Primary School confirms that M attends their college and she has been attending since February, 2024. She also confirms that her attendance was regular and she was very well behaved and well-mannered. She was enrolled from another school, precisely the school of Santa Venera.

On being questioned as to the involvement of the migrant unit with respect to the minor child, she explains that since M, was proficient in English, she did not need

⁵Doks. SE 1

to attend the migrant learner unit, where one attends if he lacks proficiency in Maltese or English.

As to the enrolment form she explains that it was signed by Defendant, but although it requested the Plaintiff's details, being the father, these were not given. However, she explains that the application was done through the College Principal and moreover, she confirms that she had met Plaintiff.

She admits that since there was one signature on the enrolment form she did not feel it was necessary to pass on information to the Plaintiff related to the child. They would have video conferencing with the parents. She also confirmed that defendant had authorised KRH to get the child to school or pick her up, There were around two occasions since the minor started school in February, where Plaintiff has picked up his daughter.

12. **Y P** is a childhood friend of Defendant and she states that Defendant was always a positive person, but when she progressed in her relationship with Plaintiff, she became depressed and sad. Having had read to her a communication she made to Plaintiff on the 14th August, 2016, she confirmed that she had contacted Plaintiff to show her disapproval of his insistence that Defendant commits an abortion.

She also confirms that there were other messages between them and they had a good friendship. At the time she lived with Defendant.

13. **IB** , Defendant's friend since 2006, when they were following their studies together, so for this reason he readily agreed when she asked him to host her and her daughter in Malta in March 2023. They arrived on the 30th March, 2023 and he accommodated them for three months.

From what he could see when they were living with him, Defendant was a very dedicated mother and always prioritized M's well-being. Moreover, throughout her stay in Malta, M displayed a joyful and social demeanour. She easily made friends.

He adds that since Defendant was a caring mother, she ensured that the minor child was in contact with her father on a daily basis and video calls were readily available.

He also explained that during the time that Plaintiff was in Istanbul, he did not provide for financial support for the minor child, except for the initial bill in Mater Dei and the hiring of a stroller for two weeks.

He explains that during their stay, he developed a strong and trusting relationship with Defendant and her daughter.

Defendant was also very dedicated to M's education and even enrolled her in a summer school so as to prepare her for attendance at a Maltese school.

He also admits being concerned about Plaintiff's financial support for the minor child as he was not contributing at the time and everything was being paid by Defendant. When Plaintiff came to Malta he would either bring M's old clothes, or else he would purchase clothes according to his own liking, without consulting with Defendant. However, he could see that Plaintiff was not only willing to show his support, but he improved her living conditions by financing some things.

He was also concerned because of the verbal abuse that Plaintiff would use towards Defendant. He could see that Plaintiff had a troubling pattern of behaviour.

On being cross-examined he explains that he had not informed Defendant that there were other expenses since M was injured and the recovery was obligatory by the doctors and physicians.

He adds that he was not aware that the minor child M , had a health insurance that covered her.

He explains that Defendant to enter the school had to undergo a test, but being a very smart girl, she managed to enrol.

14.**KH**, Defendant's partner since May 2023, explains that when he met her she had opened up and told him that Plaintiff used to maltreat her to the extent that she had to leave Istanbul. This is what she told him as well as he came to these conclusions himself because of messages she showed him. When Plaintiff discovered that they were in a relationship, he embarked upon a campaign of harassment directed towards him. There were also a lot of threats through social media and this harassment continued until he had to block his contact details.

On being cross-examined he confirms that he was receiving threats from Plaintiff's lawyer.

He confirms that subsequently, Plaintiff opened proceedings in Malta making baseless allegations against Defendant. Defendant was abused by both Plaintiff as well as his family, so much so that it was so bad that she felt safer by returning to Ukraine, which is a country at war and full of risk. Such circumstances require that Defendant should be granted empathy and unwavering support.

Considerations

Habitual Residence

Plaintiff is requesting that their minor child M, be returned to Turkey, since she has been forcefully removed wrongfully from her habitual residence, namely Turkey and brought to Malta. Plaintiff is now asking the Maltese Court to order the return of the minor.

The parties met as they were colleagues working for the same company. They started a relationship that led to the birth of their daughter M in 2017. Both parties had agreed to have the birth in the US as Defendant felt that having a US citizenship would help M, in the future and give her more opportunities.

After around four months in the States, they returned to Turkey and they lived together until 19th February, 2023. Plaintiff also had a son from another marriage, who also lived in Istanbul.

During the time that Defendant was in Istanbul she confirms that she had a residence permit that could be extended every two years. She later acquired a working permit once she got employed with Pfizer. As to M, initially she had a residence permit as her mother's and later acquired Turkish citizenship.⁶ M was given her father's surname and they applied for her within the Plaintiff's family register, for which his parents were made guarantors for them.

Moreover, there is no contestation between the parties that whilst they resided in Istanbul, M attended kindergarten in Turkey and she was also enrolled to start at one of the best schools in Istanbul, where Plaintiff's other son attended. As a father, there arises no doubt that during the time his daughter was with him in Istanbul he used to take her to school as it was on his way to work and he contributed towards all her expenses, including those of the extra-curricular activities she attended. Defendant does not contest Plaintiff's version.

⁶ Dok.SS4

Things took a turn, when Defendant was feeling unhappy in her relationship with Plaintiff, as he was very possessive and dominant and made sure he followed every footstep to ensure he knew of her whereabouts. There was a first episode when Defendant went to Ukraine, with M and she was not willing to return. It was only on Plaintiff's insistence, who travelled all the way to Ukraine, that he managed to convince her to return.

Undoubtedly, there were problems surfacing in their relationship, so much so that many a time Defendant used to talk about her unhappiness in Turkey. She had no family, a small community of Ukrainian friends and so she felt very lonely and moreover, she had a toxic relationship with Plaintiff. From the evidence produced, Defendant had told Plaintiff that she wanted to move to Spain and he insists that there were other instances when she mentioned her unhappiness in Istanbul and spoke about wanting to leave with her daughter.

To safeguard any imminent danger of losing his child, Plaintiff sought to have the Court issue a travel ban against Defendant and this was upheld by the Turkish Court. Simultaneously, so as to keep the travel ban enforced, he also filed a case for joint care and custody of the child. To date this travel ban is still in place.⁷

Plaintiff goes on to contend that Defendant is not credible when she insists that there could have never been an abduction, because she was not aware of the travel ban and when she did leave, she informed Plaintiff of her whereabouts, only when she arrived in Ukraine. Plaintiff's version seems to be the most credible one, considering that Defendant initially states that she had no clue that Plaintiff had

⁷ Dok.SS 27

initiated proceedings against her for joint care and custody, as well as he succeeded in obtaining a travel ban issued against her.

On being cross-examined regarding an incident that happened at the train station in Istanbul, Defendant had no qualms to admit that when Plaintiff went to catch up with them to impede her from leaving, she admitted telling him that she was off to Antalya. During the cross-examination she also confirmed that she had lied about going to Antalya, because she wanted to take her revenge on Plaintiff as she felt betrayed when she discovered that he had asked for the issuing of the travel ban, as well as the joint care and custody of M. There was also correspondence between the parties, when Defendant admitted with her friend that she was aware that Plaintiff had instituted proceedings against her.⁸

Despite the travel ban being in place, Defendant managed to leave Turkey on the 19th February, 2023, together with M, sending a message to Plaintiff that she had left and would contact him, only to do so in March when she had reached Ukraine. Moreover, she succeeded to leave under false pretences, argues Plaintiff since she made him believe that she was going to visit a friend, together with M, when in fact this actual friend helped her with the abduction.

Plaintiff believes that there are sufficient grounds for the Court's to declare that M' habitual residence is Turkey and this considering that she was brought up in Istanbul, she had started attending kindergarten, where she had friends. She also had Plaintiff's family in Istanbul as well as a stepbrother with whom she got on very well. When Defendant removed M from Istanbul, she was very well aware

⁸ Dok. SS 25

that their daughter had stability because she had consented to her being brought up there.

Plaintiff contends that Defendant is opposing to Mila's habitual residence being Turkey because in her view, she has been granted sole custody of the minor child M by the Turkish court and therefore in such a scenario Plaintiff had no rights of custody that is a pre-requisite, in her claims, to file a case for wrongful removal of the minor child and this in terms of Chapter 410 and the Hague Convention, precisely Article 3 which is part of Chapter 410 of the Laws of Malta.

Once again, Plaintiff rebuts these allegations and claims that Defendant failed to prove that she has sole custody of the minor child M. He contends that all she exhibited before the Maltese Courts is a decree issued by the Turkish Courts, that allow the proceedings instituted by Plaintiff for joint care and custody to be reduced to one whereby he is asking for sole care and custody, Infact, what the Court issued was an authorisation certificate to this effect.⁹

Moreover, Defendant exhibited before these proceedings, a decree issued with reference to case 2022/6224 whereby the court authorised Defendant to take the necessary actions regarding M's school enrolment. This in itself no way represents a decision that grants sole care and custody of the minor child.

Defendant, on the other hand, claims that the Court should reject Plaintiff's arguments, in that purposely, the text of the law was not referred to conveniently enough by him. Article 3 of the First Schedule of Chapter 410 states that the removal or retention of a child is to be considered wrongful where it is in breach

of rights of custody attributed to a person, under the law of the State in which the child was habitually resident, immediately before the removal or retention.

Moreover, according to Defendant Article 3 goes further and interprets what would be tantamount to “rights of custody” and it provides three options:-

- i) By operation of the law – under Turkish law she contends that the law is crystal clear in that the care and custody of a child borne out of wedlock, is solely vested in the mother. Plaintiff did not provide any evidence to counter that Turkish law does not state this.
- ii) By a judicial or administrative decision - from evidence produced Defendant claims that there is no judicial or administrative decision that grants Plaintiff care and custody, but on the other hand, it is the Plaintiff himself who initiated proceedings in Turkey, initially asking the court to grant joint care and custody towards the minor child M, only later to convert the proceedings into a request for sole and exclusive custody.

Defendant claims that this is evidence that there was no care and custody granted at any point to Plaintiff. Moreover, this case initiated in Turkey is still pending and therefore there is no definite outcome on care and custody for Plaintiff. Furthermore, the Turkish Court also upheld Defendant’s request to be able to take decisions regarding the minor’s education in Malta, especially since Plaintiff was not cooperative in this respect.

The Turkish Court also rejected any claims filed by Plaintiff there there was abduction by Defendant of the minor child M.

So, essentially the second requisite has also not been satisfied.

- iii) By virtual agreement – no evidence was produced to show that the parties had reached some agreement regarding the care and custody of the minor child.

Defendant goes on to cite Article 3(B) and states that the said article reiterates that at the time of the removal or retention of those rights, those rights would have actually exercised, or would have been exercised, if the retention did not take place. However, Defendant once again, reasons that retention or not, there were no rights to be exercised in the first place and therefore they could not have been exercised. In addition, Plaintiff never proceeded through the Central Authority as generally happens in these cases and he tried to bypass it by opening proceedings under Article 3 of Chapter 410 of the Laws of Malta. Dr. Noel Cutajar in representation of the Central Authority confirms that to proceed through the Central Authority there must be care and custody, which Defendant insists, Plaintiff did not have.

Defendant is also claiming that in terms of Article 13 of the Hague Convention, it is within the Court's discretion to decide whether there was a wrongful removal or not and whether there exist psychological and physical harm that the child is going to suffer if she goes to live in Istanbul.

Plaintiff rejects the applicability of such an article considering that Defendant never produced evidence to show that M is opposing returning to Turkey. There were no social workers' reports or any other prove to show that it is detrimental for the minor child to return to Turkey.

Moreover, Plaintiff contends that this case was filed less than a year after the child was taken from Turkey and generally such decisions in terms of Article 13 apply after the period of one year has elapsed and not before.

In addition, if the Court had to consider that the child would suffer physical and psychological harm it has been established that a number of considerations have to be made as was decided in the case “Direttur (Standards Harsien Socjali) vs Michael Caruana”, decided by the Court of Appeal on the 3 August 2008.

“The threshold to be crossed when an Article 13B defence is raised is a high one and a difficult one to surmount, hence the Court in this country has always adopted a strict view of Article 13B, the risk must be grave and the harm must be serious. The Courts are also anxious that the wrongdoers 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.

It has been established through jurisprudence, 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 will follow an unwelcome return to the Jurisdiction of the Court of habitual residence.

In the light of the above, no evidence was produced to show that there was any imminent physical or psychological danger that the child could be exposed to. Plaintiff comes to Malta to follow the court case and on Defendant’s own admission, when he comes to Malta, M spends all the time with him, making the whole meaning of Article 13 inapplicable.

Defendant, on the contrary is of a different opinion and does not raise the issue of the applicability of Article 13 of the First Schedule of Chapter 410 after the lapse of one year as mentioned by Plaintiff. On the other hand, Defendant focuses more on the fact that M is not subjected to any physical harm, since once Plaintiff

is in Malta, Defendant never denies him access, so much so that the minor actually sleeps with the father. What the minor will suffer however, if she is ordered to return to Turkey is psychological harm and this since separating the minor from her mother would be detrimental as they have always been together especially the last year where Defendant has been her sole custodian.

Defendant finally insists that there was no abduction committed by her, and this is evident even more so due to the fact that Plaintiff is totally aware of where Defendant and their daughter are residing, he is on video call practically with his daughter twice a day and when he comes to Malta he has full access to the said child. This all proves that there was no wrongful retention or removal of M.

Having considered all the above submissions, it is evident that Article 37 of the Turkish Civil Code (Turk Medeni Kadanu) as produced by Defendant states that when a couple is unmarried and they conceive a child outside that marriage, *ipso facto*, the care and custody of the child is the mother's, thus in this case the Defendant.

Plaintiff attempts to attack this law arguing that he possesses the same rights as Defendant with regards their daughter M so much so that to this effect he instituted proceedings, so the Turkish Court issues a travel ban against the Defendant to prevent her from leaving Istanbul with M. This was done after many a time that Defendant told Plaintiff that she wanted to leave Istanbul and move to Spain.

Before the Turkish Courts, Plaintiff refers to Protocol No. 11 and Protocol No.7 to the Convention for the Protection of Different Human Rights and Fundamental Freedoms signed on the 14th March, 1985 by the Republic of Turkey which then

formed part and parcel of their domestic law. To substantiate his arguments, Plaintiff cites Article 5 of the same Protocol:

“Spouses are equal in terms or rights and responsibilities that have a private law nature, in their relations with each other and with their children, within the context of marriage, during the marriage and in case of termination. This article does not prevent the states from taking the necessary precautions for the benefit of the children.”

Plaintiff goes further to state before the Turkish Courts, that the trend has been applied also by the Supreme Court of Appeal in Turkey, wherein it has adopted a wider approach, stating that even when the parents are unmarried ***“it has been concluded that the concept of joint custody is appropriate in terms of Turkish public order and after local jurisprudence have started to rule in the form of joint custody in accordance with the best interests of the child.”***¹⁰

The Court reiterates that these procedures instituted by Plaintiff before the Turkish Courts, precisely, the travel ban and the case for sole care and custody of M are still pending, but nonetheless, to find a way forward, Plaintiff decided to institute the proceedings for abduction here in Malta.

Primarily, the Court after having examined the various court documents exhibited before this Court, contends that the Turkish Court has already ruled that despite the fact that there was a travel ban in force before the Courts, Defendant still managed to bypass the law and left Istanbul with M. Nonetheless, the evidence produced was not sufficient to initiate criminal proceedings for kidnapping and abduction in terms of Article 234/1 of the Turkish Penal Code, against Defendant.¹¹

¹⁰ A fol. 237/238

¹¹ A fol. 375/376

Furthermore, this Court is more convinced that Defendant is entrusted with the care and custody of the minor child M, under Turkish law, considering that the Turkish Court found no problem to authorise her to take all decisions regarding M's school enrolment and this to safeguard the best interests of the child.

This analysis of the parties' position under Turkish law was necessary for this Court, before it can proceed to pronounce its decision here in Malta.

These considerations are to revolve around two articles of the law precisely:-

- i) Article 3 under Chapter 410 of the Laws of Malta
- ii) Article 13 under Chapter 410 of the Laws of Malta.

Article 3 Ch.410

Article 3 of the 1980 Hague Convention on the Civil Aspects of International Child Abduction states as follows:-

“The removal or the retention of a child is to be considered wrongful where:-

- (a) It is in breach of rights of custody attributed to a person ...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 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 rights of custody mentioned in subpara. (b) above, may arise in particular by operation of law or by reason of a judicial or administrative decision or by reason of an agreement having legal effect under the law of that State.”

Article 3 under Chapter 410 of the Laws of Malta provides as follows:-

“(1) In this part of this Act “the Convention “ means the Convention on the Civil Aspects of International Child Abduction which was signed at the Hague on the 25th October, 1980 and the relevant Articles of which Convention are set out in the First Schedule to this Act.

(2) Subject to the provisions of this Part of the Act, the provisions of the Convention set out in the First Schedule to this Act shall have the force of law in Malta.”

In consideration of the above, various factors have to be taken into consideration:-

Habitual residence

“Reference is hereby made to the judgement in the names of Direttur tad-Dipartiment ghal Standards fil-Harsien Socjali vs Jessica Farrugia decided by the Court of Appeal on the 5th December, 2014 whereby the Court held:-

“Trattat il-kuncett ta’ residenza abitwali, dina l-Qorti tara li, skond id-duttrina Ingliza, li magħha dina il-Qorti taqbel, mhux mehtieg li dak li jkun imur f’post bi hsieb li jibqa’ fih b’mod indefinit, sakemm dak li jkun iur f’post “for a settled purpose,” li mhux vaganza jew għal fini ta’ access, jista’ jitqies li rawwem ir-

residenza abitwali f'dak il-post. Fil-kaz Re B (Minors) (abduction) (No.2) 1993, Waite J osserva:-

“Habitual residence is a term referring, when it is applied in the context of married parents living together, to their abode in a particular place or country which they adopted voluntarily and for settled purposes as part of the regular order of their life for the time being, whether of short or of long duration.”

”.....Mhux mehtieg fil-fehma ta' dina l-Qorti, xi hsieb li dak li jkun li jibqa' fil-post ghal xi zmien konsiderevoli. Il-kuncett ta' intenzjoni waqt residenza hija mehtiega biex tistabilixxi domicilju, mentri minn naha l-oħra, residenza abitwali huwa stat ta' fatt determinat minn abitazzjoni ta' persuna f'pajjiz partikolari ghal zmien apprezzabbli u ghal skop preciz li mhux ta' vaganza.”¹²

Wrongful Retention

In the case **Direttur tad-Dipartiment ghal Standards fil-Harsien Socjali vs Michael Caruana** decided by the Court of Appeal on the 3rd August, 2008, it was held:-

“...il-Qorti tinnota li r-regolament in kwistjoni jolqot kemm wrongful removal kif ukoll wrongful retention, b'din tal-ahhar tavvera ruhha meta minuri li jkun barra mill-pajjiz tar-residenza ordinarja tieghu ghal perjodu temporanju, ma jigix ritornat lura f'gheluq dak il-perjodu. Il-protezzjoni, f'kull kaz, ghandha tintalab minn min ikollu “drittijiet ta' kustodja.” Dina l-Qorti sejra, minn issa 'l quddiem, tirreferi b'mod generali ghall-ktieb “Bromley's Family Law” (10th Edition 2007 ta' Nigel Lowe u Gillian Douglas, Oxford University Press), peress li dan jaghti trattat meqjus u car tar-Regolament applikabbli fost diversi stati tal-Unjoni Ewropeja. Dwar kif ghandhom jigu stabbiliti dawn id-drittijiet

¹² Director of the Department for Standards in Social Welfare vs Eileen Barbara Kelly (decided on the 31st July, 2017).

fil-ktieb jinghad hekk (pagna 639): “The general approach in determining this issue has been well summarised by Dyson LJ in Hunter vs Murrow (Abduction: Rights of Custody). The first task, the so called “domestic law question,” is to establish what rights, if any, the applicant had under the law of the state in which the child was habitually resident immediately before his or her removal or retention. This question is determined in accordance with the domestic law of that State and involves deciding what rights are recognised by that law and how these rights are characterised. The second task, the so-called “Convention question,” is to determine whether these rights are properly to be categorised as “rights of custody.” This is a matter of international law and depends upon the application of the autonomous meaning of the phrase “rights of custody” as understood by the English Courts.” ...jew, fil-kaz taghna, mill-Qrati ta’ Malta.”

In this regard, the Court has already analysed the various factors that led to Defendant leaving Turkey. She was unhappy living in Istanbul and moreover she was facing problems to acquire her citizenship and many times she made Plaintiff aware of her unhappiness. His possessiveness and dominance did not help their relationship.

To add to these problems, Defendant only possessed a residence visa that had a two-year validity. She only obtained a working permit when she started to work for Pfizer, but when she left this job, she relied once again on her residence visa. Moreover, no matter how much she insisted, Plaintiff refused to marry her as that would have solved many of her problems, as she would have been considered to be a Turkish citizen after three years. She would also be entitled to a bank account and also a credit card, something she was deprived of.

There is no doubt that Plaintiff took care of M, maintaining her, taking her to school and also enrolling her at the best school in Istanbul. M also had a step-brother in Istanbul.

Defendant also admits that she was offered a job in Warsaw that Plaintiff made her reject. Defendant also chose to obtain a US citizenship for M by giving birth there, to offer her a better education and a life in the future. Her only intentions to relocate there arose when she left Turkey.

What led Defendant to leave Turkey was definitely when she discovered that Plaintiff had issued a travel ban in her regard and was asking for joint custody.

Undoubtedly, the parties lived in Istanbul, but Defendant always made it clear that she was unhappy and preferred to move elsewhere. Malta was not initially in her plans, She also admits that Plaintiff looked for other jobs, other than Istanbul, such as Dubai and other places.

The parties did what would be the norm in the upbringing of their daughter, sending her to school and to extra-curricular activities.

In this respect, the Court would argue that definitely 's habitual residence is Turkey. However, there is another factor that surpasses all this, namely that Plaintiff took the law in his hands and issued a travel ban through Court proceedings in Turkey, that are still in force today. This is perceived as a unilateral and arbitrary decision of Plaintiff, who decided that come what may he was keeping the minor in Istanbul.

Defendant's reaction to this was to find a means to escape because he could not prevent her from leaving and likewise she took the law in her hands too and left Istanbul anyway.

This was the same scenario in the case **Direttur tad-Dipartimenti ghal Standards fil-Harsien Socjali vs Josephine Arslan** decided on the 8th July, 2008:-

“Dakinhar ma halliex tiddeciedi fejn tghix il-minuri u dehrlu li d-decizjoni kellu jehodha wahdu arbitrarjament. Ghalhekk filwaqt li l-intimata teknikament kisret il-ligi u hadet lit-tifla minn gurdizzjoni ghall-ohra, ma jidhirx li kellha rimedju iheor Prattiku fic-cirkostanzi. Fi kliem iehor hija rrispondiet ghal vjolenza bi vjolenza fis-sens li ghall-ksur tal-ligi rrispondiet bi ksur tal-ligi.”

Above all this, Plaintiff did not even have custody of M and this is the situation to date.

Establishing that for argument’s sake, M’s habitual residence is Turkish, the return of the child is always subject to Article 13 of the First Schedule to the Hague Convention.

Article 13 states that:-

“Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -

- (a) The person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention or had consented to or subsequently acquiesced in the removal or retention; or*

(b) There is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

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.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence."

Furthermore, in the case, a Court of Appeal judgement of the 30th September, 2016, in the names **Direttur tad-Dipartiment ghal Standards fil-Harsien Socjali vs Katya Vella Bamber**, the Court of Appeal made the following considerations:-

"Fil-fehma tal-Qorti, dan hu car fejn il-genituri bl-agir taghhom joholoqu impatt negattiv fuq it-tifel taghhom. Ma jistax ma jigix ribadit li l-omm kienet tkun mhux biss legalment korretta, izda kienet tkun qiedgha tagixxi fl-ahjar interess tat-tifel, li kieku segwiet il-proceduri legali u mxiet mal-ftehim li kellha originarjament mar-ragel u talbet lill-Qorti Belgjana l-kura u kustodja tat-tifel, inkluz li tirriloka f'Malta bit-tifel. Izda dawn huma materji li f'kull kaz jistghu jigu trattati fil-forum kompetenti u ma jimpedux ir-ritorn tat-tifel. Din il-Qorti taf, mhux biss, li l-Belgju huwa pajjiz demokratiku u membru tal-Unjoni Ewropeja u firmatarju tal-Konvenzjoni ghad-Drittijiet tal-Bniedem, izda jikkontjeni struttura guridika efficjenti u qawwija bizzejjed biex f'kull cirkostanza, tipprotegi l-interessi tal-minuri (ara, bhala rifless fuq dan, il-ktieb "Introduction to Belgium Law" ta' Bocken u DeBondt).

Ma hemm xejn fl-atti li juri li, jekk it-tifel jigi ritornat lejn il-Belgju, se jsofri minn xi trawma ta' hsara kbira ghalih. Ovjament, it-tifel zgur li qed thossu konfuz b'dak li qed jigri, u n-nuqqas tal-genituri tieghu li jiftiehm u, aktar, li jonoraw dak li jkunu ftehm fuqu, zgur li qieghed ihalli impatt xejn sabih fuq il-minuri, Pero', din il-Qorti ma tistax turbot ma' din il-konfuzjoni f'mohh il-minuri biex tichad ir-ritorn u fin-nuqqas ta' prova li r-ritorn tal-minuri lejn il-Belgju jista' joholqu pregudizzju serju, pregudizzju li l-qrati tal-Belgju ma jkunux jistghu jahsbu ghalih, allura ma ghandux jinholoq intoipp ghar-ritorn tal-minuri lejn il-gurisdizzjoni abitwali tieghu.

Il-fatt li l-minuri jista' jkollu f'Malta hajja ahjar milli jkollu gewwa Brussel, u li jista' jkun iktar kuntent hawn milli hemm, dan huwa mertu li ghandu jigi investit f'kawza ta' kura u kustodja. Jigi ribadit li l-kwistjoni ta' kura u kustodja tal-minuri ghandha tigi trattata mill-Qrati Belgjana, il-post tar-residenza abitwali tal-minuri, u mhux minn dawn il-qrati, permezz tal-proceduri odjerni, Fil-fatt, kif gustament tosserva l-abbli rappresentant tad-Dipartiment appellat, l-Artikolu 19 tal-Konvenzjoni tal-Ajja espressament jipprovd:-

“Decizjoni li ttiehed taht din il-Konvenzjoni dwar ir-ritorn ta' minuri m'ghandhiex titqies bhala li tkun qed tiddeciedi ukoll il-mertu ta' xi kwistjoni dwar il-kustodja.”

It has also been held that by the UK Courts that : “The Threshold for an Article 13 defence is not to be decided on the basis of straightforward welfare considerations, but according to the higher standard of serious risk of harm.”

Defendant had initially come to Malta to stay with a friend until the green card was issued by the US authorities to set up their residence there. However, an incident happened, whereby M was run over by a car and took some time to

recover, in addition with the fact that the US authorities took time to issue the green card. Defendant and M started a life in Malta, Defendant finding a partner, a job having an annual income of €35,000, working as a product executive. M attends school and they have formed a circle of friends. Moreover, M has been in Malta for over two years and has been in contact with her father and even when he comes to Malta, Defendant allows her to sleep with him.

This was always the case after Defendant and Mila left Turkey. She always disclosed her whereabouts to Plaintiff.

In consideration of the above, this Court believes that if it had to order the return of M to Turkey it would create more psychological harm. The mother has no future in Istanbul so it becomes pointless for her to move there, The Court cannot separate a mother and her child when they have been together for so long. Moreover, if Defendant had to relocate to Turkey she is at the mercy of Plaintiff's parents that are guarantors for her residence visa, which they can refuse at any time., Thus, a decision in favour of a return would cause harm “ *of a substantial or weighty kind.*”

DECIDE:

For the above reasons, therefore, the Court rejects Plaintiff's claims.

In view of the circumstances of the case, the application is being decided without costs between the parties.

Onor. Imhalef Dr. Anthony J. Vella

Registratur