

**CIVIL COURT
(FAMILY SECTION)**

**THE HON. MADAM JUSTICE
JACQUELINE PADOVANI GRIMA LL.D., LL.M. (IMLI)**

TODAY 27TH SEPTEMBER 2021

Warrant No.: 156/2021 JPG

Case No.: 5

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

Vs

PB

The Court:

Having seen the sworn application filed on the 27th of August 2021, wherein it was held:

That the Applicant has an interest that the minor, hereinafter indicated, be not taken outside Malta;

That the Respondent is the person having, or who might have, the legal or actual custody of the said minor;

Wherefore, the Applicant respectfully requests that this Court orders the issue of a warrant of prohibitory injunction against the Respondent enjoining him not take, or allow anybody to take, the said minors out of Malta;

Particulars of the minor Theodore Louis Ceccolo Raphael Marie De Broglie:

1. *Name: TDB:*

Date and Place of Birth: Y

Habitual Residence Before the Illegal Removal: X

Present Residence: SPB

Physical Description: Z

Photo: Attached

That the Respondent is in possession of the passports of the aforementioned minors, which passports are issued by the United Kingdom Authorities.

Having seen that the application and its decree have been duly notified.

Having seen the reply filed by PB dated 3rd September 2021, at page 42, where it stated that:

That Respondent is for the time being opposing the issue of the warrant in the names set out above as requested since the Applicant does not qualify as a person who has an interest that the minor, TDB, be taken out of Malta.

Having seen all the documents exhibited;

Having seen Notes of Submissions;

Having heard Final Submissions;

Considers:

This is a decree in parte on the preliminary plea raised by the Defendant in her reply to Plaintiff's application for the issuance of a warrant of prohibitory injunction restraining Defendant from taking the minor TDB outside the islands of Malta.

In his sworn application, the Chief Executive Officer of the Social Care Standards Authority, requested the Court to issue a warrant of prohibitory injunction against the Defendant, PB, the minor's mother, prohibiting said Defendant from taking the minor outside the islands of Malta.

In these proceedings, the Chief Executive Officer of the Social Care Standards Authority is acting on behalf of the minor's father, LDB who is at present in Portugal, where the family was permanently based, after the father filed an application for the return of the minor with the X Central Authority, which was then transmitted to the Maltese Central Authority on the 13th of August 2021. At one point, Plaintiff asserts that Defendant without authorisation from the father, travelled to Malta with the child, taking with her the minor's French and Maltese passports and subsequently refused to return to X. Plaintiff alleges that Defendant planned the trip with a pre-determined intent to remove the child from his habitual residence in X.

On the other hand, in her reply, Defendant opposes the issue of the warrant, arguing that the Applicant does not qualify as a person who has the juridical interest to restrain the minor from leaving the Maltese islands. The Court notes that the Defendant expanded further on this preliminary plea during the sitting of the 7th September 2021, and argued that the issue of the injunction ought to be rejected inter alia on the grounds that Applicant does not qualify as an interested party who may request, the issue of this warrant and that moreover, this warrant does not qualify as an interim order of the Plaintiff as contemplated in Article 7 of Chapter 410.

In her note of submissions, Defendant further elaborates on this preliminary plea, and submits that: ***“the Applicant has not as yet filed a sworn application or other proceedings under Chapter 104 of the Laws of Malta, in respect of the subject matter of this warrant, such that, in the absence of a suit, it may not be argued that the application for the issue of this warrant be construed as a request for an interim direction under Section 7 of Chapter 104, even where the meaning of “directions” from the Court be stretched to include a warrant which it manifestly does not.”***

Additionally, Defendant also contends that Article 873 of Chapter 12 applies to all warrants unless otherwise excluded, however, although Article 877 of Chapter 12, does not indicate who may file such warrant, such silence, should not be interpreted as meaning that anyone may request that another person's child may be restrained from travelling. Moreover, and in this regard, Defendant asserts that this matter is regulated by the general provisions of Section 873(1) and (2) of Chapter 12 and an Applicant demanding the issue of such warrant must demonstrate that: (a) the travel of the minor is prejudicial to the Applicant; (b) the warrant is necessary to preserve the right of the person suing out the warrant; and (c) the person possess such right. According to the Defendant, the Applicant will not suffer any prejudice, as the Applicant does not possess the right to restrain the movement of the child, and any rights that the Applicant

claims to possess, arise from the norms in Chapter 410 which only contemplate interim directions under Section 7.

Considers:

At this stage of the proceedings, this Court is being called upon to determine whether the Chief Executive Officer (CEO) of the Social Care Standards Authority, qua Applicant, qualifies as a person having an interest as to whether the minor child may be restrained from leaving the islands of Malta. The Court observes that the issue under examination is essentially whether the CEO for the local Central Authority has sufficient juridical interest to file an application on behalf of one parent against the other, requesting the issuance of an injunction restraining a person from taking a minor outside of Malta.

Juridical Interest:

Local jurisprudence has always been clear on this point. The First Hall of the Civil Court in its judgment in the names: *Christian Satariano vs Socjeta` tad-Duttrina Nisranija M.U.S.E.U.M. (sezzjoni tan-nisa)* decided on the 28th of May 2015 maintained that:

Il-kuncett tal-interess giuridiku hu mibni fuq l-utilita' finali tal-azzjoni ghal min qed jipproponi l-azzjoni.

In the above-mentioned judgment, the Court made reference to a number of previous judgments, particularly that of: **J Muscat et vs R Buttigieg et**¹, where the Court held that:

L-interest irid ikun:

a) giuridiku, jigifieri d-domanda jrid ikun fiha ipotesi ta' l-ezistenza ta' dritt u l-vjolazzjoni tieghu:

b) dirett u personali: fis-sens li huwa dirett meta jezisti fil-kontestazzjoni jew fil-konsegwenzi taghha, personali fis-sens li jirrigwarda l-attur, hlief fl-azzjoni popolari;

c) attwali fis-sens li jrid johrog minn stat attwali ta' vjolazzjoni ta' dritt, jigifieri l- vjolazzjoni attwali tal-ligi trid tikkonsisti f'kondizzjoni posittiva jew negattiva kontrarja ghall-godiment ta' dritt legalment appartenenti jew spettanti lid-

¹ Deciza nhar is- 27 ta' Marzu 1990 Vol LXXIV.iii.481

detentur.

Gie ritenut ukoll izda li minbarra dawn l-elementi, biex wiehed ikollu interess li jiftah kawza, dak l-interess (jew ahjar, il-motiv) tat-talba ghandu jkun konkret u jezisti fil-konfront ta' dak li kontra tieghu t-talba ssir.²

The Court of Appeal in *Agatha sive Agathina Formosa Gauci vs Avukat Dottor Francis Lanfranco et* (App Civ No: 621/2001) decided on the 28th November 2003 stated that:

L-ligi taghna tezigi li min jipproponi azzjoni gudizzjarja jrid ikollu interess guridiku, l-ghaliex altrimenti jkun ifisser li kull min ikun irid jivvessa lil xi hadd inutilment ikollu l-opportunita' shiha li jaghmel dan billi joqghod "jiqqortja" mieghu fuq kwalsiasi protest li jkun, imqar jekk il-materja lanqas biss tikkoncerna lili.

In this judgment the Court delineated the principles that should serve as guidance to the Courts when seized with disputes on this matter. The principles elucidated by the Court of Appeal are the following:

- (i) l-interess (guridiku) mehtieg irid ikun wiehed dirett, legittimu, kif ukoll attwali;*
- (ii) l-istat attwali ta' ksur ta' jedd jikkonsisti f'kundizzjoni pozittiva jew negattiva li xxejjen jew tinnewtralizza dritt li jkun jappartjeni lid-detentur jew lil dak li lili jkun misthoqq;*
- (iii) l-interess guridiku fl-attur huwa dak li l-imharrek jirrifjuta li jaghraf il-jedd ta' l-istess attur u dan billi kull persuna ghandha d-dritt titlob li, fil-konfront taghha, isir haqq jew tigi msewwija ngustizzja li tkun giet maghmula kontriha;*
- (iv) l-interess guridiku jrid ikun iwassal ghal rizultat ta' utilita` u vantagg ghal min irid jezercita l-jedd. Jekk l-azzjoni ma tistax twassal ghal tali rizultat ghal min jibdiha, dik l-azzjoni ma tistax tregi;*
- (v) l-interess guridiku jrid jibqa' jissussisti matul il- hajja kollha ta' l-azzjoni, u mhux biss fil-bidu taghha. Jekk l-interess jintemm, il-konsegwenza*

² Vide Francis Tonna vs Vincent Grixti deciza nhar it-13 ta' Marzu 1992, (Kollez. Vol LXXV1.iii.592) u Brockdorff v Pace Balzan (Vol.XVII.P.III p.15.)

mmedjata tkun li l- imharrek jinheles milli jibqa' fil-kawza;

(vi) l-interest ta' l-attur ghandu jkun jidher mill-att tac- citazzjoni nnifisha. Ghalkemm il-mottiv ta' l-interest mhux mehtieg li jkun imsemmi fic- citazzjoni, dan ghandu jirrizulta mill-provi jekk kemm-il darba jigi kkuntrastat;

(vii) fil-prattika gudizzjarja, wiehed jista' jippromuovi kawza biex jikseb dikjarazzjoni preordinata ghall-azzjoni definittiva u ahharija, minkejja li din ma tkunx giet inkluza fl-azzjoni ta' accertament. Madankollu, f'kaz bhal dan, il- Qorti trid tkun soddisfatta li jkun hemm l-interest mehtieg, anki preordinat ghall-kawza l-ohra, u li d-dikjarazzjoni hekk miksuba tkun tiffirma l-bazi tal-kawza l-ohra li tista' ssir aktar 'il quddiem;

(viii) l-interest mhux bilfors ikun wiehed li jigi kkwantifikat f'somma determinata ta' flus jew gid, imma jista' jkun imsejjes biex ihares jew jaghti gharfien ghall- jedd morali jew soggettiv, imbasta l-jedd invokat ma jkunx wiehed ipotetiku;

(ix) jekk azzjoni, ghalkemm tkun imsejsa fuq jedd ta' l-attur, tkun mahsuba biss biex tirreka hsara lill-imharrek bla ebda vantagg utli lill-attur tali azzjoni titqies bhala wahda illegali – azzjoni maghrufa fid-duttrina bhala wahda acta ad aemulationem – u titqies li fiha jkun jonqos l- interest guridiku mehtieg.

The Social Care Standards Authority as the Central Authority for Malta designated to discharge the duties imposed by the Hague Convention of 1980:

Various European Union Regulations and International Conventions require that member or contracting states, establish Central Authorities within their jurisdiction to enforce the relative European Union Regulation or International Convention. These Central Authorities are guided by the respective EU Regulations, International Conventions and local legislation and work in close collaboration with other Central Authorities, especially when dealing with inter-country and cross-border cases. At a national level, these Central Authorities also liaise with various local entities and stakeholders involved in the relative sectors.

Article 6 of the Convention on the Civil Aspects of International Child Abduction of 1980, obliges contracting states to designate a Central Authority to discharge the duties which are imposed by the Convention. In turn, Chapter 410 of the Laws of Malta, the Child Abduction and Custody Act, which was enacted to enable Malta to ratify two international Conventions namely

the Hague Convention on International child abduction and the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children, provides that the functions under the Convention of a Central Authority shall be discharged by the Chief Executive Officer of the Social Care Standards Authority and any application made under the Convention by or on behalf of a person outside Malta, may be addressed to the Office of the Chief Executive Officer of the Social Care Standards Authority.

The Social Care Standards Authority is the product of Act XV of 2018. To date, amongst its other varied functions, the Social Care Standards Authority has been designated as the Maltese Central Authority in the following fields: Adoption, Cross-boarder Protection of Children, Fostering, Maintenance Obligations and Cross-Boarder Child Abduction and Access.

Article 7 of the Convention provides as follows:

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures -

- a) to discover the whereabouts of a child who has been wrongfully removed or retained;*
- b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;*
- c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;*
- d) to exchange, where desirable, information relating to the social background of the child;*
- e) to provide information of a general character as to the law of their State in connection with the application of the Convention;*
- f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access;*
- g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;*

- h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;*
- i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application*

Of particular relevance is Article 28 of the Convention which stipulates that:

A Central Authority may require that the application be accompanied by a written authorisation empowering it to act on behalf of the Applicant, or to designate a representative so to act.

Article 6(2) of Chapter 410 also provides that:

Whenever any person interested or the Chief Executive Officer of the Social Care Standards Authority alleges that a child has been wrongfully removed within the meaning of Article 3 of the Convention, he may, without prejudice to any other action with respect to the same matter that is lawfully available, make an application under sub-article (1) for redress.

Deliberates:

As a preliminary observation this Court notes that the Defendant in her note of submissions cites Chapter 104 of the Laws of Malta:

“the Applicant has not as yet filed a sworn application or other proceedings under Chapter 104 of the Laws of Malta, in respect of the subject matter of this warrant, such that, in the absence of a suit, it may not be argued that the application for the issue of this warrant be construed as a request for an interim direction under Section 7 of Chapter 104, even where the meaning of “directions” from the Court to be stretched to including a warrant which it manifestly does not...”

In the concluding paragraph to the same note of submissions, Defendant then invokes Chapter 410 of the Laws of Malta. The Court notes that Defendant erroneously cited Chapter 104 of the laws of Malta, namely the Motor Vehicles Insurance (Third Party Risks) Ordinance, which surely finds no application in the proceedings *de quo*.

After careful consideration of the submissions filed by the parties to these proceedings, it is this Court's considered opinion that both the Hague Convention and Chapter 410 of the Laws of Malta confer on the Chief Executive Officer of the Social Care Standards Authority the requisite juridical interest to file on behalf of a left-behind parent, such as in this case, an application under both the Convention and Chapter 410, and/or any other action with respect to the same matter that is lawfully available, including a warrant of prohibitory injunction as contemplated in article 877 of Chapter 12 of the Laws of Malta.

It is this Court's understanding that one of the **essential functions** of the Central Authority both under the Convention and under Chapter 410 is to either directly or through any intermediary, take all appropriate measures to *inter alia* prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures. Defendant contends that the Applicant does not qualify as a person who has an interest that the minor be taken out of Malta. This Court holds that the Chief Executive Officer of the Social Care Standards Authority does not simply have an interest in pursuing the injunction, but has a **positive obligation under both international and national law**, to ensure the prevention of further harm or prejudice both to the child and to the interested parties. This Court holds that is palpable from the spirit and wording of both the Hague Convention and Chapter 410 of the Laws of Malta, that the obligations imposed on the Central Authority of a contracting state are positive ones which vest the same Central Authority with the authority to take all necessary action required in each particular case.

This is reflected in the local legislation enabling the ratification of this international instrument, which very clearly spells out, in Article 6(2), that any interested person or the Chief Executive Officer of the Social Care Standards Authority alleging that a child has been wrongfully removed within the meaning of Article 3 of the Hague Convention, may without prejudice to any other action with respect to the same matter that is lawfully available, file an application for redress. Moreover, the Court observes that Article 28 of the Convention is abundantly clear in that a Central Authority may act on behalf of an Applicant and to this effect, the Central Authority may require an application be accompanied by a written authorisation empowering it (that is, the Central Authority), to act on behalf of the Applicant, or to designate a representative so to act. In fact, the said authorization in the form of a power of attorney dated 30th July 2021, was exhibited by the Authority in the acts of the case (*Vide fol 15*).

Therefore and in light of the above considerations, the Chief Executive Officer of the Social Care Standards Authority, whilst acting on behalf of the left-behind father LDB, father of the minor TDB, possesses the requisite juridical interest to file the warrant *of prohibitory injunction*. Whether the Chief Executive Officer's application for the issuance of the said warrant against Defendant is to be upheld or not, merits a separate and distinct evaluation.

Thus and in light of the above considerations, the Court rejects the preliminary plea raised by the Defendant in her reply dated 3rd September 2021, and orders the continuation of the proceedings on the merits.

Read

Madame Justice Jacqueline Padovani Grima LL.D. LL.M. (IMLI)

**Lorraine Dalli
Deputy Registrar**