



TKJ, Re (Abduction: Hague Convention (Italy)) [2024] EWHC 198 (Fam) (02 February 2024)

Application by father for summary return of child to Italy. Application dismissed, after mother's Article 13(b) harm defence made out.

Please refer to the judgement in its entirety, this is a summary only.

Case Background Summary

The father (F) applied for a summary return order under the 1980 Hague Convention. The respondent is the mother (M), who removed their child (TKJ) from Italy to the UK without F's consent [See 1]. The following issues were not in dispute: the child had been habitually resident in Italy at the time of removal (as resolved in another case); the father was exercising custody rights within the Convention's meaning; he had not consented or acquiesced to the child's removal (which breached his custody rights); the child was too young to object to returning; the application was made within 12 months of the removal so there is no settlement exception available under Article 12 [See 4].

The Court was bound to order TKJ's return to Italy *unless M succeeded in establishing an exception, under Article 13(b), that ordering the child's return poses a grave risk that would expose them to physical or psychological harm or otherwise place them in an intolerable situation* [See 5].

The judge resolved disputed factual issues of whether M had been the victim of domestic abuse by F, whether M suffered from a mental disorder as a result and if it was likely to deteriorate upon her return to Italy, and whether F acted in breach of the non-molestation order [See 46-46.3].

Summary of the Mother's Allegations

The father had physically assaulted the mother and called her a 'slut' in front of the child. As detailed in paragraph nine, the mother's allegations of domestic abuse throughout the relationship included, for example, that the father was threatening, controlling and coercive. She alleged he subjected her to physical, emotional, verbal and sexual abuse (although no details were given of the sexual abuse). While living in Italy, the father had opened a restaurant which had failed, leaving him bankrupt. He stopped working and began drinking heavily. While drunk, he became very aggressive and violent towards the mother, making threats to kill her and causing criminal damage in the home by throwing or kicking their possessions. She was constantly in fear for her own and the child's safety, particularly when he drove a car with the child as a passenger while under the influence of alcohol. The mother had no support networks in Italy and feared what would happen if she went to the police. The father would often threaten that if she left him, he would take the child to Egypt and raise her there with the help of his mother.

The mother had agreed to weekly video calls between the father and the child, although she made clear her concern that F would misuse those calls or otherwise behave inappropriately. The mother alleged that in a number of these calls, the father was abusive. She recalled one occasion he called her a 'whore' and appeared to be drunk and slurring his words. On 25 October 2023, she received

an audio message from the father in Arabic, which was played in court. She maintained that this message contained a highly offensive Arabic phrase. He denied that the message was offensive. The judge gave permission to obtain a translation of this message, which read: 'Fuck your mother, fuck your father's mother, mother fucker, you whore' [See 20]

The mother relied on specific incidents in her arguments, detailed in paragraphs ten through eleven:

10.1. In January 2020, F came home drunk. The pair had an argument. F hit M so hard in the face using the back of his hand that M bled from her mouth and nose. They were in the living room and TKJ witnessed the assault. There was blood all over the floor. F recorded the aftermath of the incident on her mobile phone...

10.2. In August 2022, F threw a big metal air freshener spray (described also as a heavy perfume bottle) with considerable force; M turned her back and it struck her in the back, ripping her tank top and tearing her skin causing bleeding. The injury became bruised and swollen to the extent she was unable to sleep on her back. TKJ witnessed this incident; she was very scared and still remembers the incident. M took a video of the injury, but no longer has a copy of it. She explains that '[TKJ] accidentally sent it to a Facebook Friend and I deleted it'.

10.3. In November 2022 F threatened kill M with a knife. They were at home with TKJ. F had been drinking. M suggested he should cut down drinking and smoking and explained that it was becoming increasingly difficult for her to care for TKJ on her own. F lost his temper and grabbed a kitchen knife from the kitchen, held it to M's chest and threatened to kill her. M was petrified, apologised and asked him to put the knife down. F then punched her in the face and pushed her onto the balcony. TKJ witnessed the assault. M briefly contemplated escaping by climbing down from the balcony (the flat was on the 2nd floor) but was concerned about leaving TKJ alone with F. Shortly afterwards F left the house and M went back inside to care for TKJ.

10.4. On 15 November 2022 F repeatedly hit M in the face, threw a lighter at her which struck her nose and caused a nosebleed. He then punched her multiple times in the ribs, causing bruising...

10.6. On 1 December 2022 ... He then hit M in the face, pushed her into the bathroom and locked her in. While she was in the bathroom he kicked and damaged the door. A photograph of the damaged door was produced in evidence. F also threatened to throw M out of a window. MSC has given a statement describing this incident, including how F appeared in the background without his top on, shouting and swearing at M, his eyes were red and he looked drunk. M looked afraid and kept saying 'it is a disaster with us'. M then ended the call without warning.

10.7. On 8 December 2022 F left a voicemail message for M saying 'Every time you take [TKJ] out and you're planning to return late you must tell me, where the fuck are you?' F later assaulted M when she returned home. F became very angry with M and hit her in the head with a lighter he had in his hand, causing pain and bruising which took a few days to subside.

The final incident is what prompted the mother to leave the father a few days later and take the child with her to the United Kingdom.

The Judgement - direct quotes from Transcript

I have found that *M was the victim of domestic abuse comprising violent, coercive and controlling behaviour by F since, at the latest, January 2020 and that her removal of TKJ and flight to the United Kingdom was effected in order to escape that abuse...*

I have also made assumptions for the purposes of Article 13(b), namely that F has problems with alcohol and he also subjected M to sexual abuse...The domestic abuse has resulted in M suffering from an adjustment disorder which is likely to deteriorate if M is returned to Italy...In that event, *there is a grave risk M's ability to parent TKJ will be compromised, placing TKJ in an intolerable situation* [53].

There is independent evidence of abusive and controlling behaviour including F's text messages:

'I'll make you pay for everything that you are writing'

'Every time you take [the child] out and you're planning to return late you must tell me, where the fuck are you'

'I want to talk to my daughter, slut'

'Bitch and bitch's daughter ... let me talk to my daughter'

'Tell that slut of [M] to write to me in Italian'

'Fuck your mother, fuck your father's mother, mother fucker, you whore' [47.6]

I find that, on the balance of probabilities, *there is a grave risk that TKJ's return to Italy would expose her to physical or psychological harm or otherwise place her in an intolerable situation for the purposes of Article 13(b)* [52].

M has a genuine subjective fear that F will harm her or TKJ if she returns to Italy. As a result, she will feel unsafe, which is likely to have a deleterious impact on her mental state even if the abuse does not eventuate [54.3]. As the Supreme Court made clear in *Re. E* and *Re. S*, *a genuine fear of continuing domestic abuse may be sufficient to found the exception in Article 13(b) even if that fear does not have reasonable foundations* [54.3].

I also consider that ... there are substantial grounds for believing M is at a real risk of being exposed to treatment that- in light of the length and severity of the abuse that F has inflicted to date - crosses the threshold of *'inhuman and degrading treatment'*. This includes her subjective fear of such abuse [55].

F has shown he is willing to continue his abusive behaviour even when a court order is in force...He has left threatening messages in which he professes to be unconcerned by what the police will do...He has also shown that he is prepared to lie to a court when it suits him...I am not satisfied, from an objective standpoint, that the protective measures would adequately or effectively protect F and TKJ from harm [57.2]. M's subjective fear that F will harm her or TKJ if she returns to Italy will persist even if there are, objectively, adequate protective measures in place [57.3]. I also consider, for the same reasons, that those protective measures are inadequate to address the real risk that M will be exposed to treatment crossing the Article 3 threshold [58].

For these reasons, I find that M has established the exception under Article 13(b) [59]. It is not appropriate to return TKJ to Italy as a matter of discretion [62.2]. It is not necessary also to decide whether an order for TKJ's return would breach M's Article 3 rights, although I have found it helpful in my determination of the Article 13(b) question to consider the relevant Article 3 case-law and principles [62.3]. F's application is accordingly dismissed. That is my judgment [63-64].

Closing Thoughts

After hearing all the evidence, the judge found that the client was a victim of domestic abuse, including coercive and controlling behaviour. As a result of the abuse, she suffered from a mental disorder. In addition to this, the judge also found the father breached a non-molestation order. The judge found the mother had a genuine and subjective fear that the father would harm her or the child if they were returned to Italy. The judge also found that the father's proposed protective measures were inadequate- Article 3 could be crossed. This case helps set a precedent that domestic abuse is serious and can create a situation where the child is at grave risk if returned to their abuser.

This outcome is not a common one. While we are thankful to see this mother and her child protected, there must be change in order to ensure that an outcome protecting survivors is not an exceptional one but an expected one. We are grateful to Hauge Mothers and Dr Barnett for their tireless work to protect children and mothers. We look forward to the day when we achieve the much-needed changes for protection.

Written by [Right to Equality](#)

Barrister representing the mother, Dr Charlotte Proudman, founder and CEO of Right to Equality, Barrister at Goldsmith Chambers and Senior Research Associate, University of Cambridge