

Case Summary: London Borough of Haringey v T (1996 Hague Convention Art 7) [2024] EWFC 151

25th July 2024

A recent judgment of MacDonald J in the High Court involving five members of 4PB. Christopher Hames KC and Clarissa Wigoder represented the applicant Local Authority. Henry Setright KC represented the first respondent mother. Mark Jarman KC and Charlotte Georges represented the third respondent child.

The court was concerned with jurisdiction following the mother having removed the child to Poland during the course of care proceedings in which only an Interim Supervision Order had been made in respect of the child. The judgment considers the ambit of Art 7 of the 1996 Hague Convention and whether a court vested with rights of custody can acquiesce to the wrongful removal of a child.

All parties, save for the Children's Guardian, were in agreement that the child was now habitually resident in Poland. The Local Authority and father conceded that the court retained jurisdiction following the child's wrongful removal by operation of Art 7 of the 1996 Hague Convention, and submitted that the court could surrender jurisdiction by declaring its acquiescence to T's wrongful removal.

The contrary was argued on behalf of the Guardian, who sought the grant of an Interim Care Order to the Local Authority and for T to be returned by the mother. It was argued that the court had not acquiesced to T's removal for the purposes of Art 7(1)(a), that the Court had jurisdiction under Art 5 as at the date of T's removal and that it retained that jurisdiction by operation of Art 7. The Guardian argued that it was not necessary to revisit the question of habitual residence as at the date of this hearing, or in the alternative that T had remained habitually resident in England and Wales.

The mother's arguments focused on whether, in the circumstances of the case, rights of custody were capable of vesting in the court for the purposes of Art 7 and whether the mother's removal of the child constituted a breach of those rights. It was submitted that even if the court were to conclude that rights of custody vested in the court, it did not automatically follow that the removal by the mother breached those rights of custody.

The court concluded that the fact of the Court being seised with care proceedings in respect of T vested rights of custody in the English court and that his removal amounted to a breach of those rights. As Art 7(1)(a) of the 1996 Hague Convention expressly proceeds on the basis that "an institution or other body" is able to acquiesce to the removal or retention of a child for the purposes of Art 7 of the Convention, the court considered the parties' arguments in relation to what the test for the court's acquiescence would be; the Court distinguished the subjective test applied to acquiescence of a parent and concluded that an objective test based on actions taken or not taken by the court is more attractive than a requirement to search, in the alternative or in addition, for the subjective intention of the court. On the facts of this case, the Court had not to date acquiesced to the removal of T.

As to whether this Court should now acquiesce to the removal, or make a transfer request under Art 8, the Court observed that whilst Art 7 provides a means of determining whether the court retains

jurisdiction under Art 5 notwithstanding a wrongful removal of the child, Art 7 is not itself a transfer provision. Art 7 concerns the question of whether jurisdiction has moved, not whether it should move. Art 7 does not provide a test or procedural framework for a court to determine whether it should acquiesce to a removal. The correct procedure for jurisdiction to be transferred was via Art 8 of the 1996 Hague Convention. Art 8(1) provides the test for transfer, that being whether the other Contracting State is better placed to assess the best interests of the child.

The decision follows the High Court's previous ruling in *B v N (No. 2) (Art 7 and Transfer of Jurisdiction)* [2024] EWHC 17 (Fam) that Art 8 continues to apply in cases where substantive jurisdiction has been retained pursuant to Art 7 of the 1996 Hague Convention because Art 7 of the Convention is not a basis of jurisdiction in its own right, but rather acts simply to retain existing jurisdiction under Art 5 based on habitual residence.

[Read the Judgment](#)