

IN THE MATTER OF THE GUARDIANSHIP OF
MINOR ACT 1971 (UK)

IN THE MATTER OF SUB-ARTICLE 3(1) OF
THE CONVENTION OF THE RIGHTS OF THE
CHILD (RATIFICATION) ACT NO.26 OF 1992

BETWEEN: ZORICA POPOVIC
Claimant

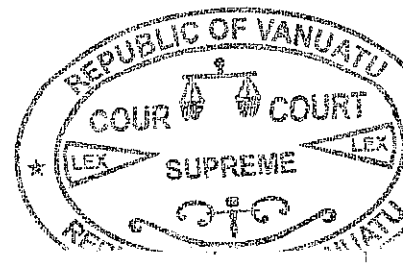
AND: PREDRAG POPOVIC
Claimant

Date: 7th November 2023
Before: Justice W.K. Hastings
Counsel: Mr J Mesao for the Claimant
Mr N Morrison for the Defendant
Mrs P.K Malites for the Children

JUDGMENT ON JURISDICTION

Introduction

1. Zorica and Predrag Popovic were married on 15 May 2010 in Belgrade, Serbia. They are both Serbian citizens. Zorica Popovic will be referred to as Zorica or the mother. Predrag Popovic will be referred to as Predrag or the father.
2. They had two daughters, Dunja who was born on 14 February 2011, and Mila who was born on 29 June 2012. Both were born in Serbia.
3. Zorica and Predrag divorced on 27 March 2013.
4. Zorica married Robert Miljkovic, an Australian citizen, on 18 December 2017.
5. Zorica, Dunja and Mila were recorded leaving Serbia at 5.28pm on Friday 22 March 2019. They left Serbia without Predrag's knowledge or consent.
6. On 14 November 2019 the Third Basic Public Prosecutor's Office in Belgrade charged Zorica and Robert Miljkovic with two counts of abduction of minors. On the same day, a judge issued a warrant for their detention and Zorica's passport was annulled.



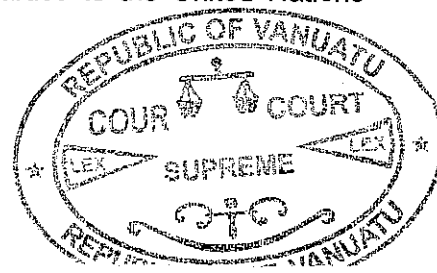
7. In October 2021, Zorica separated from Robert Miljkovic.
8. In January 2022, Zorica began a relationship with Jordan Jean Cassart, a citizen of Vanuatu. She and the children moved in with him in October 2022.
9. Zorica, Dunja and Mila were granted permanent residency in Vanuatu on 16 December 2022.
10. On 7 February 2023, at the instigation of Interpol Port Vila, Zorica contacted Predrag on WhatsApp and Predrag spoke with Dunja and Mila.
11. On 11 October 2023 Robert Miljkovic pleaded not guilty in the Vanuatu Supreme Court to four counts of indecency with a young person, one count of intentional assault and one count of domestic violence, all alleged to have been committed against Dunja in November 2019 and October 2020. He is on bail in Port Vila awaiting trial.
12. There continues to be an Interpol "Red Notice" issued against Zorica Popovic.

This hearing

13. The mother applied to the Supreme Court of Vanuatu for sole custody of Dunja and Mila on 5 April 2023. The application was made pursuant to ss 1 and 9 of the Guardianship of Minors Act 1971 (UK) which is the legislation in Vanuatu that applies to proceedings brought in the Supreme Court to determine the custody of a minor, and Article 3(1) of the Convention on the Rights of the Child. The Guardianship of Minors Act requires the Court in custody proceedings and proceedings related to the administration of property belonging to or held on trust for a minor, to "regard the welfare of the minor as the first and paramount consideration." Article 3(1) of the Convention on the Rights of the Child also states "the best interests of the child shall be a primary consideration."
14. The father opposed the application and stated a Serbian Court made orders on 28 May 2019 partially depriving the mother of parental rights, and on 23 February 2021 fully depriving the mother of parental rights, and awarded custody of Dunja and Mila to him.
15. Mr Morrison on the father's behalf has made an application to determine jurisdiction. There is no doubt the Supreme Court of Vanuatu has inherent jurisdiction to determine custody. The issue is whether it should. Mr Morrison submitted the courts of Serbia rather than Vanuatu should determine the question of custody of Dunja and Mila and that the principles of the Hague Convention on the Civil Aspects of International Child Abduction should be applied to assist in determining the jurisdictional issue.
16. This hearing only concerns the application to determine jurisdiction. It is not to determine custody. However, the issue of jurisdiction cannot be determined in isolation of what is in the best interests of the children. For that reason, considerable documentary evidence from Serbia was placed before the Court. As well, the father, mother, maternal grandparents and Dunja gave evidence.

Legal principles to determine jurisdiction

17. It should be noted at this point that Serbia is a party to the Hague Convention on the Civil Aspects of International Child Abduction but Vanuatu is not. Both countries are parties to the United Nations Convention on the Rights of the Child.



18. Although Vanuatu is not a party to the Hague Convention, the Court can properly have regard to the policies and principles of the Convention. In *Wagner v Radke* [1997] WSSC 6, a case involving the abduction of children from Germany, a Hague Convention state, to Samoa, a non-Hague Convention state, Chief Justice Sapolu of Samoa said it was appropriate for a court in a non-Hague convention state to "have regard to the purpose and philosophy of the Hague Convention in applying common law principles". I agree with His Honour. It is widely accepted that the principles embodied in the Hague Convention represent best practice when considering jurisdictional disputes in cases of international child abduction. Sapolu CJ confirmed the approach of Lord Donaldson MR in *Re F (minor : abduction : jurisdiction)* [1990] 3All ER 97 at 100:

"The welfare of the child is indeed the paramount consideration, but it has to be considered in two different contexts. The first is the context of which court shall decide what the child's best interests require. The second context, which only arises if it has first been decided that the welfare of the child requires that the English rather than a foreign court shall decide what are the requirements of the child, is what orders as to custody, care and control and so on should be made."

19. This judgment of course concerns the first of Lord Donaldson's contexts, which court shall decide what the children's best interests require. In that respect, this Court must consider the principles of the Hague Convention set out in Articles 12 and 13. Those Articles establish the principle that a wrongfully removed or retained child should (not shall) be returned if more than a year has elapsed since the removal or retention, unless:

the child is now settled in her new environment; or

the person seeking the child's return was not actually exercising custody rights (which include the right to determine, jointly or individually, the child's place of residence) at the time of the removal or retention, or had acquiesced in the removal or retention; or

there is a grave risk that the child's return would expose her to physical or psychological harm or place the child in an intolerable situation; or

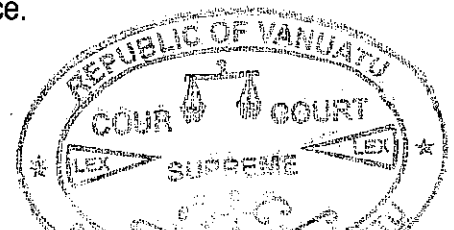
the child objects to being returned and has attained the age and maturity at which it is appropriate to take account of her views.

Background

20. It is necessary to go into some detail about what happened in Serbia, including the Serbian court process. There was no dispute that the translations of Serbian government and judicial documents are accurate, and that the documents themselves can be admitted into evidence as proof of the truth of their contents. I will consider first the documentary evidence, and then the evidence of the witnesses.

Documentary evidence

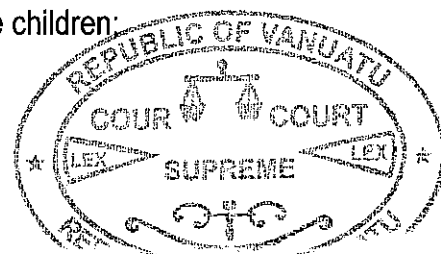
21. On 27 March 2013, the day of the divorce, Judge Ljiljana Mihailovic of the Second Basic Court in Belgrade awarded sole custody of Dunja and Mila to the mother. The Judge directed that the children were to spend every weekend with their father. Article 78(3) of the Serbian Family Law states that the parent who does not exercise independent parental rights has the right to decide on issues that significantly affect the child's life, including changing the child's residence.



22. On 11 December 2015, the 2013 order was amended “in the part which relates to the way of maintaining of personal relation of minor children ... with the father ...” to better regulate how the father and mother arranged the father’s access to the children.
23. On 15 June 2018, the mother through her lawyer Milos Antic, asked the First Basic Court in Belgrade to deprive the father of his right to contribute to decisions on important issues in the children’s lives. Important issues include change of residence. The Court then requested the opinion of the Belgrade City Centre for Social Work – Zvezdara Department which is where the children lived with their mother and her new husband Robert Miljkovic. The opinion was issued on 3 August 2018 and is summarised by Judge Petricevic in her judgment of 13 June 2019:

“From the finding and opinion of the City Social Care Centre in Belgrade – Department of Zvezdara of 3 August 2018, ... moving to Australia presents a high risk and physical separation of the children from their father will represent a termination, i.e. weakening of emotional links with father and father’s family and close persons. Subsequently, in the relation between minor children to father, as well as father’s relation to children, there are no elements which would indicate that father is abusing the parental right ...”

24. On 13 September 2018, the 2013 order was amended to provide for the children to visit their maternal grandparents on the second Sunday of every month.
25. On 30 October 2018, the father asked the court for independent custody of the children and a partial deprivation of the mother’s parental rights. The same procedure took place. The City Centre for Soci Sijral in Belgrade, New Belgrade Department (which is where the mother the children and Robert Miljkovic now lived), observed the children’s relationships with their mother, father, close relatives and their stepfather Robert Miljkovic between October 2018 and March 2019.
26. The First Basic Court of Belgrade merged the proceedings brought by the mother and the father on 4 December 2018, “for the purpose of mutual discussion and making decision”.
27. Following the observations made by the social workers, on 25 March 2019, the City Centre for Soci Sijral in Belgrade, New Belgrade Department reported that
- a. during the field visit, “no usual personal and family items were observed in the [mother’s] apartment, which would indicate the expected dynamics of the family (pictures, keys, mobile phones, things that have no special purpose but represent decoration in the space or a memory of some situation”;
 - b. the father reported that the mother had “an extramarital union with a person who is not a citizen of Serbia, but from Mexico, and that during this period he also submitted a complaint that the mother was not adequately taking care of the children, with the suspicion that she was physically punishing them;”
 - c. the maternal grandparents complained about a change in the mother’s behaviour since she began her relationship with Robert Miljkovic;
 - d. the father was concerned that the mother would emigrate with the children;



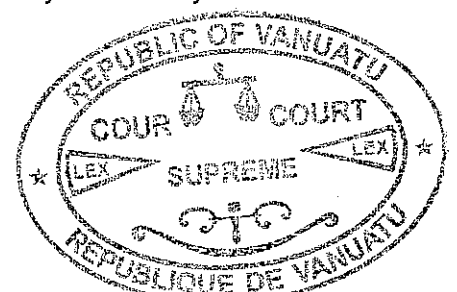
- e. the mother brought proceedings to deprive the father of parental rights in order to move abroad “even though the children have had continuous contact with the father since the divorce;”
- f. the mother said if the Court decided to entrust the children to their father, she would not leave Serbia;
- g. the girls mention their father negatively in their mother's presence, but when they are with their father, “they behave with a greater degree of spontaneity, express both happiness and displeasure, seek physical contact with their father, address him with ‘Dad’, they state the plans they have for the time they will be with him ...”.
- h. there were “no indicators of resistance to the relationship [with the father], no impatience and no contact rejection.”

28. The same report records that the maternal grandparents filed a complaint:

Zorica's parents filed a complaint about the change in the mother's behaviour in terms of alienation from the family of origin, and consequently alienation of minor children from relatives, stating that everything started happening since their daughter was in a relationship with Robert Miljkovic. They state that they often and continuously looked after the children until that period, for example, so full 3 months during the period that the mother served military service in the Armed Forces. Contacts with granddaughters weaken during the beginning of 2018, and are interrupted in the second half of 2018. They point out that they are not able to communicate with their daughter, that they are worried about her functioning and that is why they asked the court to regulate their personal relations with their granddaughters. They state that they started seeing each other briefly during the periods when they are with their father, and that the former son-in-law mediates these contacts.

29. As a result of these and other observations, the social services report stated “it is necessary to carry out a forensic medical examination of the parents and their relationship with [the] children” in order to consider “the best interests of the children” in proceedings brought by the father to change the 2013 order and to obtain custody of the children. Specifically, the questions the City Centre for Soci Sijral in Belgrade, New Belgrade Department, wanted answered were:

- *“does the mother psychologically alienate the children from the father and if this is present, to what extent is the psychological alienation of the children from the father expressed and reflects on the current emotional functioning of the children and other close persons ...”;*
- *whether and to what extent the capacity of parents to exercise parental rights has been reduced especially with the mother because she persists in the request to deprive the father of parental rights because of the plan for emigration and a complete change in the living circumstances of children, and how it affects the care of children (understanding of their needs, development, and the special need to preserve the continuity of relations with close and significant persons).*
- *do the parents have the capacity to change in regard to the above in order to preserve the continuity of the children's functioning so far and ensure the stability of the family and wider environment.”*



30. The mother and the children left Serbia without the knowledge and consent of the father three days before the date of this report, in the middle of the school year, on 22 March 2019.
31. On 23 April 2019, Olivera Bulatovic, psychologist and case manager in the City Centre for Social Work in Belgrade, at Judge Milenija Petricevic's request, filed a report with the First Basic Court in Belgrade. The report recorded that the father reported that Zorica, Dunja and Mila "have disappeared." In the case manager's opinion, "the mother implemented her plan to move out without notice, without preparation, suddenly, without consent and consultation with the children's father, since the children had regular contact with Predrag Popovic and other members of the extended family until that moment." The case manager said "In this way the mother severed all family and peer ties, which represents a trauma for the children, and thus grossly neglected her duties as part of parental rights." The case manager said, "We are of the opinion that the conditions have now been created for changing the decision on custody and we suggest that the court temporarily entrust the children to the father ...".
32. On 8 June 2019, Judge Petricevic of the First Basic Court of Belgrade amended the decree of 27 March 2013. The Court entrusted Dunja and Mila to the father, "who is going to exercise the parental right independently;" "obliged" the mother to transfer Dunja and Mila to the father, and "partially deprived" the mother of parental rights concerning Dunja and Mila, "namely in the part in regard to ... change of place of residence of the children ...". The Judge said:

"The position of the Court is that it is in the best interest of children to be entrusted to the Respondent [father] who would exercise the parental right independently, having in mind that the Respondent-Plaintiff [father] as the parent is able to protect the best interest of minor children in the view of preserving the continuity of their past growing up and functioning relationship with other important persons and enabling the continuation of education in their mother tongue as well as providing the required stability and safety in the functioning of the children. Having in mind that the Custody authority in its Finding and opinion of 3 August 2018 took the position that moving to Australia, i.e. physical separation from father, close persons and environment, represents a risk of termination and weakening of emotional links with father, as well as with father's relatives and close persons, and the mother however realised her plan on emigration without announcement, without preparing the children, suddenly and without consent and consultations with father of children and competent Custody authority, the Court estimates that such behaviour may qualified [sic] as unconscientious exercise of rights and duties from the content of parental rights, in the sense of Article 82, Paragraph 1 of the Family Law of Republic of Serbia."

33. On 16 April 2021, Judge Jovana Obucina of the First Basic Court of Belgrade, in a comprehensive judgment, rejected the mother's request to deprive the father of the right to make a decision on any change of residence of the children and approved the father's request to fully deprive the mother of parental rights. The Court awarded custody of the children to the father "who will exercise parental rights independently." The Court "obliged" the mother to immediately transfer the children to the father, and obliged the mother to pay child support.
34. The Court reviewed the extensive reports of the social service agencies and found:

"... it was established without any doubt that [the mother], by taking children from Serbia without consent of other parent, in spite of ongoing court proceedings, harshly neglected duties from the content of parental right and abused the trust of children and in such manner by her own initiative deprived father of all his rights from the content of parental rights and deprived children of contact with other parent and other close



persons, which is interrupted for almost two years now, right to grow up with other parent and wider family, i.e. right to keep personal relations with family members, friends and peers."

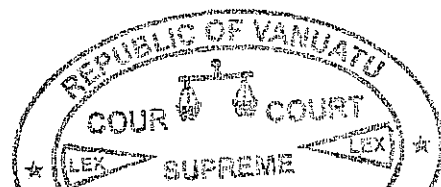
35. The Court concluded, "it is in the best interest of the children that mother is deprived of the parental right."
36. Several conclusions can be drawn from the Serbian reports and judgments. There can be no doubt that the Serbian social service reports are thorough, comprehensive and based on first-hand observations over significant periods of time. They are prepared by qualified experts whose objective was to ascertain the best interests of the children. Judge Milenija Petricevic of the First Basic Court of Belgrade referred to the contents of the reports as "reliable evidence" in her 2019 judgment. Between 2013 and 2021, these reports and judgments shifted parental and custodial rights from the mother to the father, culminating in Judge Jovana Obucina of the same Court awarding the father full custody in the best interests of the children, on the basis of these reports.

Viva voce evidence

37. I turn now to the evidence of the witnesses. Although not directly related to the issue of jurisdiction, this evidence is relevant to an assessment of what is in the best interests of the children, an assessment which must be made in deciding the jurisdictional issue. In that respect, this evidence supplements the Serbian judgments and social services reports.

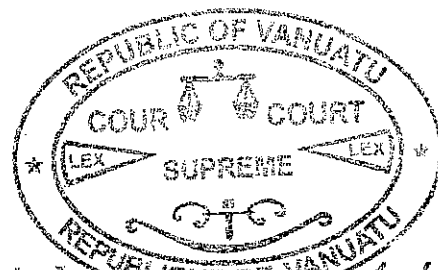
The father

38. Predrag gave evidence. He described what his relationship with Zorica was like in the last year of their marriage. He said they argued because they had different ideas about how to raise the children, but the main reason they argued was because he said when his wife was a stay-at-home mum, he expected her to look after the children by doing the cooking and washing, and not rely on his parents and her parents to look after them. He said when they argued it usually ended up with him leaving the house because he did not want the children exposed to the arguments.
39. Before Zorica and the children left Serbia, he said he had the children every Wednesday and every other weekend. He said when he had them, they had a good time together.
40. He said he first noticed they had left Serbia when he went to pick up the children on the weekend. As usual, he texted Zorica to say he was coming, but this time the message was not delivered. He said he called the school but was told they had not been at their school for days. He found out 10 days later from the border police that they had left Serbia but the border police could not say where they went. It was his understanding that they had left with Robert Miljkovic, and likely went to Australia. He said he went to the police, social services, the courts and other authorities for help to find where the mother and her new husband had taken the children.
41. He said after a year, Interpol told him they might be in Vanuatu. He continued to search and found out for sure this year that they were in Vanuatu when he met a ni-Vanuatu woman in a Belgrade gym who put him in touch with a Serbian living in Port Vila. A person from Interpol Port Vila made contact with Zorica and urged her to contact Predrag, Zorica called him on WhatsApp. He said that started 15 to 20 days of good-natured catch-ups and chats with the children about life in Vanuatu and Serbia until Dunja abruptly delivered what he called an ultimatum, that if he did not remove the Interpol red alert, she would never speak with him again. He said he explained to Dunja that the warrant was only for Zorica's arrest,



not for the children's arrest, and it was issued by Interpol because she removed the children from Serbia without his knowledge or consent. He said it was out of his power to remove the warrant. He said he has had no contact with the children since that call.

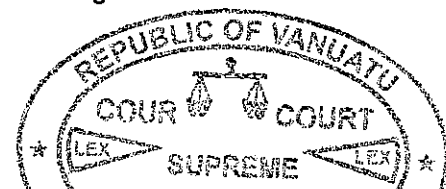
42. The Report from the Children's Counsel was referred to him. He denied he was manipulative and denied telling the children their mother was to blame for not letting him spend time with the children. He said he was just being honest when he said he could not influence Interpol to remove the warrant that was the subject of the ultimatum. He denied threatening to kill the mother in order to take the children back to Serbia. With respect to the children's statement that they felt neglected and had no fun when they were with him, he said he was always mindful to use his allocated time to spend quality time with them.
43. Under cross examination by Mr Mesao, he said the grandparents lived close by and could step in to help with the children and household. He said Zorica was employed at the beginning of the marriage, but when she became a stay-at-home mum, he expected her to be more engaged with the children and the household. He said he would come home from work to find the children had not been changed or cleaned, and that they often ate takeaways because dinner had not been prepared. He said at bedtime, she would let the children cry themselves to sleep. He said they argued about expectations. She wanted to travel, but he said that was not financially viable because they did not yet even own a house. He said Zorica's relationship with the grandparents was good at the start, but both sets of grandparents began to notice the children did not seem adequately cared for. He said after the divorce, sometimes the clothes they needed were not ready when he picked them up from their mother's, and sometimes he needed the help of a social worker when the mother did not make the children available for pick up.
44. Mr Mesao put to him that he did not take care of the children when they were in his care. The father referred Mr Mesao to the Serbian Social Services reports that said he did. He agreed with Mr Mesao that the mother's parents were supporting him because the mother restricted her parents' access to the children.
45. Mr Mesao put to him that he waited to start proceedings against her until she left the country. He said they each started proceedings against the other when they were both in Serbia – she to remove parental rights from him so she could emigrate with the children and Robert Miljkovic, he to remove parental rights from her to prevent her removing the children from the country and isolating them from their friends and relations on both sides – and they were merged into one proceeding. He said she left part way through the proceeding, and even after she left, her lawyer appeared and represented her in subsequent proceedings.
46. Ms Malites asked why he stopped paying maintenance for the children. He said after he discovered they had left, he did not know where they went or the circumstances of their departure. He consulted his lawyer, and accepted his lawyer's advice to stop the payments. Ms Malites put to him that the children did not complain about how their mother was looking after them when he spoke with them this year. He said parents talk about these matters, not children. He said he cared about the relationship the children had with their mother, but he noticed the children always looked beyond the screen for answers when he asked them questions. As he did not want to compromise the children's position with their mother, he avoided deeper conversations with the children.
47. He denied his new wife Tanya mistreated his children. He has no recollection of her pulling the children's hair. He said Tanya is a firm believer in the power of talk and never uses violence.



48. He said he worked 8 to 4 or 5 on working days and sometimes Saturday mornings, but as the owner of his business his hours were flexible. He said when the children were with him, he would minimise appointments. He said he was not always on his phone when the children were with him, and he did not use it to play games, but he would answer when it rang. He denied he would only take them to McDonalds when he was with them and said he made a conscious effort to meet up with their cousins, attend family birthdays and keep them in touch with their extended family.
49. He said he was aware the children said they wanted to stay in Vanuatu with their mother, but he is not sure if this is what they really want because he has had no opportunity to connect with them while he has been in Vanuatu. He said he was not sure if the children really did not want to meet with him, or whether they were being influenced to say this by the mother. He said four years away from Serbia at their age is a significant period of time and is enough time for the children to become estranged from their father.
50. He said he would comply with the Court's decision if the Court decided it was in the best interests of the children to remain in Vanuatu. However, he said before he agreed to let them live with their mother, he would like to have an independent psychologist meet with him and with the children to assess the genuineness of their statements. He said this had been done in Serbia and the Serbian Court used the psychologist's assessment as a basis for awarding him custody.
51. He said he would pay for the children's trips to Serbia if he were given access rights. He agreed the children should be kept together. He said he would ideally like the whole family to go back to Serbia. He asked rhetorically how would the mother feel if it were the other way around and he did not let her see the children for four years. He said he has no control over what the authorities would do if she returned to Serbia.

The maternal grandparents

52. The mother's parents, Zoran and Marina Jovic, gave evidence together in support of the father, by zoom from Serbia.
53. They were shown two photos showing a child's bruised buttocks. Marina identified the child as Mila who was about 4 at the time, and explained why she took the photos. She said when the girls came to visit, Mila would normally ask for help to go to the toilet. This time, Mila refused help and went to the toilet by herself. Marina followed and saw bruises on Mila's buttocks. She said Mila cried, and asked Marina not to tell her mother that she had seen the bruises because if she found out, Zorica would punish her. Marina said she took the photos to obtain evidence because she was considering contacting social services, but decided to talk about it with Zorica instead. She said she thought Zorica was too strict and not always a responsible mother. When she was told Mila did not remember this incident, Marina said she was young, distressed, and her mother might have told her not to admit it. She said the children were usually scared of their mother then, and they are possibly still afraid of her now. She said the children knew there would be consequences if they did not behave in a way their mother thought was appropriate. She said the children know there will be consequences following this trial if they were to speak out against their mother (Zorica said the children were free to say whatever they wanted).
54. The maternal grandparents said their daughter became more irresponsible towards the children whenever she entered a relationship with a man. She said they visited once in the winter and discovered the children sleeping outside on the balcony (Dunja denied this), that they were denied water after 6pm (Dunja said so they would not wet the bed), they would get calls from the kindergarten when Zorica did

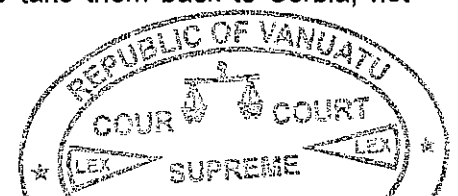


not pick up the children even though she was not working at the time (Dunja said Zorica was always on time and sometimes early), they would see Dunja's fingers bitten from anxiety so much they bled (Dunja said this was not anxiety, it was just a habit that she has now grown out of), and they stayed silent when their mother was around during visits with the grandparents (Dunja said they were free to say what they wanted, even if Zorica did not like it).

55. They said in Serbia, the children would initially be reluctant to go with their father, but after 15 or 20 minutes, they became more relaxed, and after one or two days with their father, they would cry when they went back to the mother. The children said they did not remember crying when they returned to their mother's. They said their father usually gave them to family members to look after so he could go out with his friends. When it was put to her that the children did not want to visit with their maternal grandparents because they did not like them badmouthing Zorica, Marina described a time when the children were excited to see their grandmother in a shopping mall after Dunja had earlier told her grandmother, at their mother's instigation, they no longer wanted to visit.
56. Marina said the visits of the children became rarer after Zorica met Robert. She said they looked after the children when Zorica and Robert honeymooned for ten days in Costa Rica, but when they returned, they did not see the grandchildren for three months. She said Robert did not like the children seeing their grandparents. She said she and Zoran arranged a meeting in the city with Zorica to ask her if she could bring the children to them more frequently, but Zorica refused saying she had no time to do that. When they went to the social worker for advice on how to obtain greater access to the children, they did not mention the physical abuse because they were worried they would never see their grandchildren again. They sought the advice of a social worker, who advised them to go to court, which they did, to obtain more frequent access to their grandchildren.

The elder daughter Dunja

57. Dunja is now 12 years old. She said she was afraid of being taken away from her mother. She said she told her father multiple times she did not want to go to Serbia but he did not listen. She said this was her own wish, and not her mother speaking through her. She said her father was lying and badmouthing her mother to social services in Serbia. She said he does not care what she wants, he only cares about what he wants. She said she does not hate her father, she merely dislikes him because she feels he is using them. She said he was violent, would break stuff, and she and her little sister Mila felt unsafe with him.
58. Dunja said the calls with her father ended this year soon after they began because he said he wanted to take them back to Serbia. She said he told her that he knew she did not mean to say she did not want to return with him to Serbia but she could not say that in her mother's presence. She said she was aware of the red alert against her mother. She said her mother told her it was entirely up to her and Mila to decide if they wanted to see or communicate with their father.
59. She said she felt sad when their father put the red alert on her mother because it made her feel trapped in Vanuatu. She said she did not want to go anywhere with her father because he hurt her emotionally so much. (She was not aware that her father did not, and could not, issue or withdraw an Interpol red alert, and she was not aware that Interpol can only act on the request of a member country, in this case, Serbia.) She said the calls this year with the father started out well, but then deteriorated. She said she thought initially their father had changed for the better, but she said she then decided he did not care who she and sister wanted to be with, and that he was trying to manipulate them when he said he knew they wanted to go with him but they could not say that in the presence of their mother (who was not in court when she gave this evidence). She said their father wanted to take them back to Serbia, not

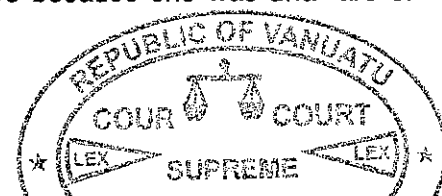


because he loved them, but to hurt the mother. She said she did not know why he wanted to hurt their mother, but that he has not been present in their lives. In Serbia, she said he took them to visit other people such as aunts, uncles and grandparents, and she got the impression he just wanted to get rid of them.

60. She described the circumstances of their departure from Serbia. She said the mother sat the girls down and asked them who they wanted to be with. She said the mother told them she would not get angry if they said their father, but they chose their mother. Their mother then told them they would be leaving soon, not to tell anyone, and she offered them no explanation. She said neither she nor her sister knew where they were going. Dunja said she did not really think about missing her grandparents because they had said mean things about her mother, and she did not really care, or have any feelings about, missing her friends and family, again because of the bad things they said about their mother. She said up until then, social workers would visit them frequently to ask the same questions every time. She said when the social workers visited the father, he would take them to the zoo or McDonalds, but when the social workers were not there, their father was "nowhere to be seen."
61. Dunja talked about her life in Vanuatu. She said she was getting As at school, and this was verified with copies of her school reports. She said she also got As at school in Serbia.
62. Dunja was shown a video taken from either her mother's or Jordan's phone of Mila slapping her face, and of her slapping Mila's face in return with sufficient force that Mila began to cry while an adult continued to film her. She said she apologised to her sister and they then made cupcakes. She said this was the "slap challenge" on YouTube in which both children and adults could participate.

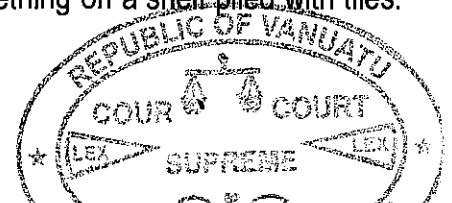
The mother

63. Zorica was taken through the Serbian judgments and social services reports. She agreed that the recommendation in the 2019 report of the City Centre for Social Work in Belgrade that she and the father undergo a forensic medical examination did not happen because she left the country with Robert Miljkovic and the children. She said she was not aware of the comments about her in the report, but she also said the reports were based on lies her parents told to the social workers. She said she met with the father a week before she left Serbia for Vanuatu to ask him to agree to her moving the children to Austria, not Australia, with Robert Miljkovic but he did not agree. She agreed that she brought the children into the decision-making about leaving Serbia even though the social services reports said they were too young to make such a decision.
64. She said Robert Miljkovic paid for Mr Antic to represent her interests in the Serbian courts. She said she gave Mr Antic no instructions to represent her in the court proceedings after she left. She also agreed that she did not withdraw her instructions either. Mr Antic's name appears on the judgments as her representative. She said she did not know about the Serbian judgments depriving her of custody, she did not know about the charges she was facing in Serbia, and only found out about the Interpol red notice after she found out a similar notice had been issued against Robert. She said the Serbian authorities knew where she was and could have served her with the reports and judgments but did not. She said the Serbian authorities knew where she was because she said an official from the Serbian embassy in Canberra rang Robert Miljkovic's phone to inquire about the children well after they arrived in Vanuatu.
65. She was taken through her application for permanent residence in Vanuatu. It was put to her that she misled the Vanuatu immigration authorities. She said she answered the questions about the existence of custody proceedings brought by the father in Serbia in the negative because she was unaware of



them. She left answers to the questions about their father, including his name, blank. She said she filled in the application form to the best of her knowledge and belief at the time. When it was put to her she was not served with documents related to the proceedings because no one knew where she was, she said it was necessary to protect the children.

66. It was put to her that she misled Vanuatu courts. When she applied for custody of the children in the Supreme Court on 5 April 2023 and for a restraining order against the father in the Magistrate's Court on 28 August 2023, she only disclosed the 2013 order giving her custody of the children. She again said she was unaware when she made these applications of the 2019 order giving the father partial custody and the 2021 order giving the father full custody. She denied seeing the 2019 and 2021 judgments even though they were disclosed to her lawyer Mr Mesao in May 2023. She said she had no interest in reviewing those judgments now.
67. She said her parents lied to the social services authorities in Belgrade. She said she knew her mother was cheating on her father, and she took pictures of her mother naked in bed with her lover to prove it and force her mother to tell her father. She said this was the reason her parents turned against her. She said she left Serbia because she was not going to allow her parents' lies to result in her losing custody of her children. She said Robert Miljkovic wanted them to go to Vanuatu instead of Australia because it has no income tax. She said her lawyer advised her that if she wanted to keep the children, then she should leave Serbia and go to a non-Hague Convention country. He told her this would breach the father's parental rights, but that breaching the father's parental rights was not a criminal offence.
68. When Dunja told her Robert Miljkovic had been indecently assaulting her, she confronted him and slapped him four times on his face. She said she feared for their lives, phoned Robert Miljkovic's brother, and told him if anything happened to them, Robert did it. She said she believed Dunja, but she did not go to the police because she said she needed more evidence. She said he moved into the garage and she cooked meals for him. She said he left the garage and began work at a resort. She said when he threatened to stop financially supporting her and the children, she considered returning to Serbia because she had no money and the girls' passports were about to expire. She also said it took her a year to collect the evidence against Robert. She then went to the police after she felt she had gathered enough. This was within two days of receiving notice from Robert's lawyer that he was about to stop financially supporting her. She said she was blindsided by what Dunja told her, and she was not aware it was happening until Dunja told her. She said she will fight to put Robert in jail, and if they have to leave Vanuatu, she said there will be no evidence against Robert and he will get away with it. (This of course is not true).
69. She denied giving an ultimatum to the father via Dunja to remove the red alert. She said she found out there was a red alert against her about two years after arriving in Vanuatu. She said she went to the Interpol office in Vanuatu to confirm there was a red alert against her and to ask how it could be removed. She said she was told Interpol was not concerned with civil cases and that she should contact the father to resolve it that way. That is when she contacted the father. When he arrived in Vanuatu to see the children, she said she told the children this was their chance to see their father, and they refused every time. She said she did not push them to decide one way or the other. She said she was guided by their wishes.
70. She explained the photos of the bruised buttocks. She said at the time she was working 20 hours a day to make ends meet as a single mother. She said she would pick up the children from day care and bring them to work. One day she noticed the children were unusually quiet, so she went to investigate. She said she found Mila standing on Dunja's shoulders trying to reach something on a shelf piled with tiles.

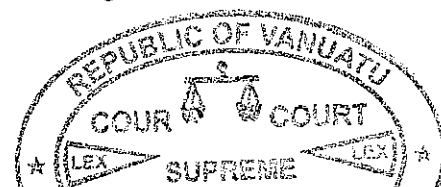


She said the tiles were about to fall, and she “lost it.” She said she smacked both of them and told them they could have died.

71. She said she talks to her daughters all the time and they are her best friends. She said they have a respectful relationship and she is proud of them. She said she would assist the children to have contact with their father but she would not force them to. She said she does not influence the children’s decisions concerning their father. She said if the Court orders the children to communicate with their father, she will do whatever she can but she cannot promise they will communicate with him without making them angry with her. She said if the Court orders the children to go to Serbia, she does not know if she will go with them or stay in Vanuatu. She said she will cross that bridge when it comes and she would want the criminal case against Robert Miljkovic to finish first.

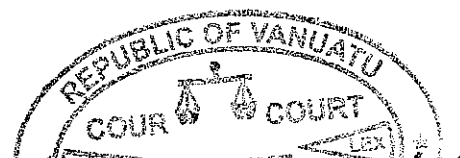
Discussion

72. I will now consider whether the courts of Serbia or Vanuatu should determine which parent should have custody of the children. Having agreed with Sapolu CJ in *Wagner v Radke* [1997] WSSC 6 that the principles of the Hague Convention should apply, I will do so applying those principles.
73. First, I find the children were wrongfully removed from Serbia on 22 March 2019, and have been wrongfully retained since. The mother through her lawyer applied to the Serbian court on 15 June 2018 to remove the father’s parental right to decide on important issues in the children’s lives including changing residence. She also sought a meeting with the father to obtain his agreement to a change of residence. This indicates she knew the father had a say in any change to the children’s residence and that she had to go to court to amend the 2013 order to remove it. In light of the social service reports, it also indicates she had formed a plan to emigrate with her children and new husband, and it indicates resistance to that plan from the father who applied to the Serbian court on 30 October 2018 seeking independent custody of the children and partial deprivation of the mother’s parental rights.
74. I also find the mother knew the writing was on the wall so to speak. She knew from the social services reports, and from having signed a consent on 13 March 2019, nine days before leaving Serbia, in which she agreed to be forensically medically examined on the issues of her capacity to exercise parental rights and the extent to which she was psychologically alienating the children from the father, that both issues were alive and needed to be resolved. The need for resolution of these issues was particularly acute because of the speed and subterfuge in which she engaged in order to leave Serbia with the children.
75. With that knowledge, it seems to me disingenuous for her to say it was not for her to inquire about proceedings, some of which she started, and in which she was represented after she left, but then to say as a result of her departure she was not aware of the Serbian court orders in 2019 and 2021 transferring custody of the children to the father.
76. I have no doubt that the children were wrongfully removed from Serbia and have been wrongfully retained in Vanuatu since 2019.
77. The next question is whether or not the father was actually exercising his rights at the time of removal or retention, or had acquiesced in their removal or retention. The father always had a right to decide on important issues in the children’s lives which include their place of residence. At the time of the children’s removal, this remained the case and was the reason the mother brought suit to deprive the father of this right. The prospect of the children’s emigration was the reason the father applied for independent custody. The father was actively exercising his rights at the time of the wrongful removal. He continued



to exercise them during the children's wrongful retention, first by actively searching for them and enlisting the help of the authorities to find them, and second by obtaining orders of the Serbian courts granting him custody of the children while they were being wrongfully retained.

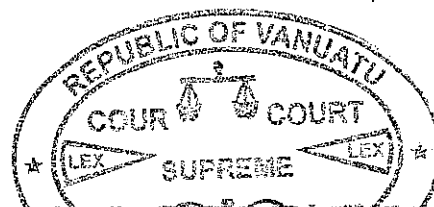
78. I will consider the next three questions together. They are whether there is evidence the children are settled in their new environment; whether the children object to being returned to Serbia (a question which depends on their attainment of an age and maturity at which it is appropriate to take account of their views); and whether there is a grave risk that their return would expose them to physical or psychological harm or otherwise place them in an intolerable situation.
79. The younger child, Mila, was nine months old when her parents divorced, 5 years old when her mother married Robert Miljkovic, and 6 years old when she was removed from Serbia. She is now 11 years old. She has written a letter saying she does not want to stay with her father. The older child, Dunja, was 2 years old when her parents divorced, 6 years old when their mother married Robert Miljkovic, and had just turned 8 when she was removed from Serbia. She is now 12 years old. She has also written a letter saying she does not want to stay with her father, and gave evidence in Court. Having talked with Dunja and read her and Mila's letters, I have no doubt the children believe what they have written.
80. Mila's letter says her mother "makes me feel special" and her mother's new partner Jordan "treats us really nice". Dunja's letter says she is "very happy with my mum" and that "Jordan my mum partner is very nice to us he always buys us treats and makes us feel special." Both letters purport to recall memories of life in Serbia with their father. Mila writes "he was never there with us so it felt like he was giving us around to his family so that he doesn't have to take care of us." She writes "another thing that really bothered me about my dad is that he always lied to me". Dunja writes "he would leave me with other people so that he can go out with his friends, that she "always felt like he didn't love me because he always chose to do everything else rather than spending time with me" and that since she got back into contact with her father this year, "he has been lying and manipulating me into saying that I want him to come here and take me." Both say their "best interest" is to stay in Vanuatu with their mother and her new partner. The use of the legal term in both letters suggests the possibility that some direction was given to them.
81. I attach some caution to my assessment of the children's evidence for several reasons. First, four years, or approximately one third of their lives, have passed since their last memories of life in Serbia. There is no doubt that in ordinary circumstances, children can accurately remember and report things that have happened to them in the past, but because of developmental differences, children may not report their memories in the same manner or to the same extent as an adult would. This does not necessarily mean that a child witness is any more or less reliable than an adult witness. One difference is that children typically say little without help to focus on the events in questions. Another difference is that, depending on how they are questioned, children can be more open to suggestion than adults. Dependent children, knowing their parents, want to please the parent with whom they are engaging at the time and will often take the path of least resistance to questions no matter how much a parent assures them there is no wrong answer. The reliability of children's evidence depends on how they are questioned, and it is important in determining what weight to give their evidence, to distinguish between open questions aimed at obtaining answers from children in their own words from leading questions that may put words into their mouths. In this case, given the live unresolved issue identified by the Serbian authorities as to the mother's psychological alienation of the children, the possibility that four years of uninterrupted influence by the mother cannot be ruled out as a factor contributing to the accuracy of their memories of life in Serbia, and the impression they have evolved of their father. The memories recounted in the letters may also have been influenced in their recall. As one example, what the children remember as their father



leaving them with other people may be how they now recall their father ensuring they stayed in contact with their extended families on both sides. Four years has given time for the recall of these memories to have been shaped by the mother. I will therefore reduce the weight I would otherwise give to the probative value of their statements that they do not want to stay with their father.¹

82. I have considered the reports of counsel for the children, Ms Malites. She submits that they are doing “exceedingly well” in school and that they have made friends. The school reports of the children show that they are indeed settled in school in Vanuatu. Dunja said they also did well at school and day care in Serbia. Having spoken with Dunja, I am reassured that this bright girl will do well in any educational establishment in any country. Doing well in school, however, does not determine how settled the children are in other aspects of their lives. The mother said she left Serbia because she did not want to lose custody of the children as a result of her parents’ lying to the social workers who prepared the reports used by the Courts. The judge, however, referred to those reports as “reliable” and my reading of them is that their recommendations are based on first-hand observations. The mother also said she left Serbia because she said Robert Miljkovic wanted to go to a country that had no income tax and because her lawyer said Vanuatu was not a Hague Convention country. Denigrating the reliability of the Serbian social services and court processes, and emigrating for tax purposes to a non-Hague Convention country, indicates rather less concern about the best interests of the children being located in Vanuatu.
83. There is no such thing as a perfect parent, but the mother has criminal charges and an Interpol red notice against her for abducting the children. This could significantly affect how settled the children are in Vanuatu and the mother’s ability to respond to anything that may be in the best interests of the children outside of Vanuatu. The mother’s omissions in her visa application at least in theory raise the possibility that her visa could be revoked, a possibility that tends against a settled situation for the children. There is also evidence that the mother takes what might be described as a more casual attitude to violence. Recording the “slapping” contest is evidence of this – pitting daughter against daughter to the obvious amusement of the adults – as is the spanking of the girls on an occasion in Serbia to the extent they were left with purple bruising. And it is difficult to say a child is settled when the child has been allegedly sexually and physically abused by the mother’s new husband to the extent he is now bailed into the community facing six indecency and assault charges against the elder daughter arising six months after they arrived in Vanuatu. The mother said she and her daughters are best friends and they can tell each other anything, but she did not know about her husband’s alleged ongoing sexual abuse of her daughter until her daughter told her much later. Then, having found out, not reporting it to the police for a year to my mind not only indicates a lack of settlement, but an exposure of the children to unnecessary risk.
84. Finally, I do not consider there is a “grave” risk of physical or psychological harm, or that the children would be placed in an intolerable situation, if the Serbian courts were to determine which parent should have custody. I do not think whatever risk to the children’s psychological health arising from a return to Serbia for the Serbian courts to determine custody reaches the threshold of being an intolerable situation. I am told the mother’s brother, Marko Jovic, is prepared to take the children while the Serbian court processes take place. There is no evidence before me that indicates a grave risk of physical or psychological harm, or that they would be placed in an intolerable situation if they were returned to Serbia for the Serbian courts to determine custody. Indeed, the evidence before me indicates the Serbian social service and judicial authorities are well able to assess what is in the best interests of these children, and that those authorities are the best hope to provide a framework in which this family can be healed.

¹ The principles set out in this paragraph are adapted for this case from the standard directions found in the New Zealand Jury Trials Benchbook and the Evidence Regulations 2007.



Result

85. For the reasons above, I make the following orders to have effect from the date of this judgment:

- a. The appropriate court to determine the questions of custody and access rights of Predrag and Zorica Popovic with respect to their children Mila and Dunja Popovic is the court with family law jurisdiction in Serbia;
- b. Mila and Dunja Popovic are to be returned to Serbia so that the Serbian court can determine those questions;
- c. The father Predrag Popovic is granted interim custody for the purposes only of uplifting the children from Vanuatu and returning them to Serbia;
- d. This judgment and these orders will be made available to the court of competent jurisdiction in Serbia;
- e. Leave is granted to either party to apply for further orders as may be necessary to give full effect to these orders.

86. Costs are awarded to the father, to be taxed if they cannot be agreed.

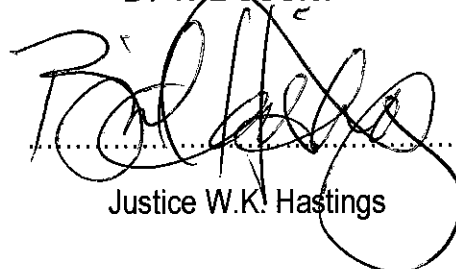
Addendum for Mila and Dunja

Dear Mila and Dunja, I want to explain to you what this decision means in clear words. I have decided that the Judge in Serbia is the best Judge to decide whether your mother or your father should have custody of you. Custody means taking care of you. The Judge in Serbia might say your father should have custody. She might say your mother should have custody. I have decided that decision is for the Serbian Judge to make, not for me to make.

I have given your father short-term custody of you both only to take you back to Serbia. Once you are there, your uncle Marko will look after you until the Serbian Judge decides whether your mother or your father should have custody of you.

Dated at Port Vila this 7th day of November 2023

BY THE COURT


Justice W.K. Hastings

