

File No.:
2UF20CK13
2 F1701/19 Karlsruhe Local Court

[crest]

Karlsruhe Higher Regional Court

2nd CIVIL CHAMBER – CHAMBER FOR FAMILY MATTERS

Order

In the family matter

[Name redacted], Brooklyn New York, United States of America
- Applicant -

Legal counsel:

Lawyer

Legal counsel [redacted]

-v-

[Name redacted], Kippenheim
- Respondent and Complainant in the Appeal -

Legal counsel:

Lawyers [redacted]

Further parties involved:

Children:

1) [Name redacted], born on [handwritten: December XX, 2015]
Guardian ad litem: [redacted]

2) [Name redacted], born on [handwritten: August XX, 2017]
Guardian ad litem: [redacted]

Jugendamt (Youth Welfare Office):

[redacted]

for the return of a child pursuant to the Hague Child Abduction Convention
concerning: Enforcement procedures

Karlsruhe Higher Regional Court – 2nd Civil Chamber – Chamber for Family Matters – represented by

Presiding Higher Regional Court Judge [name redacted], Higher Regional Court Judge [name redacted] and Local Court Judge [name redacted] has decided:

1. It is ordered that the Respondent [name redacted] be placed in coercive detention for 10 days.
2. The Respondent can avert enforcement of the detention by voluntarily handing over the children to the father, a person nominated by him or a person nominated by *Ortenaukreis* (Ortenau District) Youth Welfare Office.
3. To supplement the enforcement of the order for the return of the children as laid down in the order issued by Karlsruhe Local Court dated 4 November 2019 (2 F1701/19), it is further ordered that:

The Youth Welfare Office of *Ortenaukreis* Commissioner's Office (*Landratsamt*) be entrusted with the following tasks:

- a. Taking the necessary measures to ensure the safe return of the children [name redacted], born on December XX, 2015 [month handwritten] and [name redacted], born on August XX, 2017 [month handwritten] to the father, including but not limited to:
 - b. Placing the children in the care of a suitable institution or person from the time their handover is enforced until they are collected by their father.
3. The Respondent is warned by the court that any further such violations will be punished by coercive detention of up to two months.
 4. The Respondent shall bear the costs of the proceedings.

The reasons for this are:

The Complainant culpably violated the enforcement order issued by Karlsruhe Local Court dated November 4, 2019, File No. 2 F 1701/19, in connection with the decision issued by Karlsruhe Higher Regional Court dated February 3, 2020, File No. 2 UF 200/19, concerning the handover of persons.

In the enforcement order it was ordered that the children [name redacted], born on [redacted] 2015 and [name redacted], born on [redacted] 2017 be returned to the State of Connecticut, United States of America. Furthermore, it was ordered that in the event that she had not returned the children to the USA within two weeks of the order becoming final and binding, the Respondent and Complainant would be obliged to hand over the children to the father or a duly authorized third party. In the order issued by Karlsruhe Local Court, she was warned of the consequences of any violation of this

enforcement order. The order became final and binding. The mother even received assurances that no enforcement measures would be put in place in the four weeks between the oral hearing in the Chamber and February 29, 2020, in order to give her sufficient time to return the children to the U.S.A. Due to the Covid 19 pandemic, enforcement was then deferred until April 29, 2020. By way of an order dated June 15, 2020, she was once again given the opportunity to prevent enforcement by returning the children to the U.S. State of Connecticut. This did not happen.

After the father had announced that he would travel to the Federal Republic of Germany to receive the children, an attempt was made to enforce the order to remove the children from what was then their place of residence and that of their mother, the Respondent; this was not successful. The mother could not be found with the children at either location. Both her whereabouts and those of the children are unknown. Further police investigations into their whereabouts were without success. As an attempt to come to an agreement concerning the return of the children to the U.S.A. between the parents was also unsuccessful, there is no other option but to enforce the mother's obligation to hand over the children.

She has not presented any reasons which would mean that she was not responsible for her violation [of the terms of the return order]. She did, however, point out that the handover of the children to the father would pose a risk to the children, as she is of the view that the father sexually abused the daughter at the end of 2017. With regard to this, in its order dated today, the Chamber rejected her application for deferment of enforcement. Reference is made to the reasons.

Setting a coercive financial penalty will probably not achieve its intended aim as the Complainant stated herself that she had lost her job and no longer had any income. Furthermore, the Respondent has stubbornly refused to return the children, and for this reason too, an attempt at enforcement by means of a coercive financial penalty would most probably not achieve its intended aim.

According to Sec. 44 Subsec.1 of the German Act to Implement Certain Legal Instruments in the Field of International Family Law (*IntFamRVG – Gesetz zur Aus- und Durchführung bestimmter Rechtsinstrumente auf dem Gebiet des internationalen Familienrechts*), in cases such as these, coercive detention can be imposed. In this case of stubborn refusal to hand over the children and to make their whereabouts known, the imposition of coercive detention is not to be deemed inappropriate (see ECHR, *FamRZ (Zeitschrift für das gesamte Familienrecht – Magazine on all Aspects of Family Law)* 2008, 1317; Stuttgart Higher Regional Court, *OLGR (OLG-Report – Higher Regional Court Report)* 2007, 15), even though the children have not seen their father for more than a year and a half. The mother's obligation to hand over the children had already been stated in the orders issued by the Local Court and the Family Chamber following extensive consideration of the children's best interests. The reasons given for not handing over the children were only stated after the issuance of the orders; these have been given due consideration and rejected with today's order. They do not preclude the

mother's obligation to hand over the children. Taking into account all circumstances of the case in question, the duration of the coercive detention imposed is reasonable.

The decision on costs has been made as per Sec. 14 No. 2 *IntFamRVG* and Section 81 *FamFG* (Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction – *Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*).

Remedies:

This order may not be appealed.

Presiding Higher Regional
Court Judge

Higher Regional Court Judge

Local Court Judge

Issuance of the order (Sec. 38 Subsec. 3 sentence 3 *FamFG*):
Delivered to the registry
On June 25, 2020.

Clerk of the registry at the Court

Issued

[seal]

Clerk of the registry at the Court

Arrest Warrant:

According to the order issued by Karlsruhe Local Court dated November 4, 2019, confirmed by the order issued by Karlsruhe Higher Regional Court dated February 3, 2020, coercive detention of 10 days is to be enforced against Ms [name redacted], Kippenheim.

Ms [name redacted] is to be taken to closest prison.

I kindly ask you to inform me of the execution of the warrant.

If the person concerned claims that she has already served the coercive detention or if she claims that enforcement is inadmissible for other reasons, or if she requests postponement or a pardon, we kindly ask that Karlsruhe Higher Regional Court be informed immediately, preferably by phone or fax.

The arrest warrant shall not be executed if the person concerned proves – or another check which can be carried out on the spot, shows – that she has already served the coercive detention or that a court order forbidding enforcement of the coercive detention has been issued.

The person concerned shall be made aware of the existence of the arrest warrant.

Presiding Higher Regional
Court Judge

Higher Regional Court Judge

Local Court Judge

Issued

[Seal]

Clerk of the registry at the Court