Translation from the German language

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Karlsruhe Local Court

FAMILY COURT

Order

In the family matter

[redacted] born on [redacted], nationality: United States, [redacted], America, see United States of America
- Applicant (father) -

Delegated legal counsel:
Lawyer [redacted]

Authorized to act in proceedings:
Federal Office of Justice – Central Authority under the German International Family Law Proceedings Act (*Familienrechtsverfahrensgesetz*) – Adenauerallee, 99-103, 53113 Bonn (Germany), [redacted]

-v-

[redacted] born on [redacted], nationality: United States of America
- Respondent (mother) -

Authorized to act in proceedings:
Lawyers [names redacted]

Further parties involved:

Children:

1. [redacted], born on [handwritten: December XX, 2015], nationality: United States of America

2. [redacted], born on [handwritten: August XX, 2017], nationality: United States of America

Legal counsel in the proceedings:
Lawyer [redacted]

Jugendamt (Youth Welfare Office):
[redacted]

for return of a child under the Hague Child Abduction Convention

on November 14, 2019, Karlsruhe Local Court, as represented by Local Court Judge [redacted], on the basis of the oral hearing which took place on November 4, 2019, decided:

1. The Respondent shall be obligated to return the children [redacted], born on [handwritten, December XX, 2015 and [redacted], born on [handwritten: August XX, 2017], to return the children to the U.S. State of Connecticut within two weeks of this order having had final and binding effect.

2. If the Respondent fails to comply with the obligation stated under point 1, she, and any other such person at whose home the children may be staying, shall be obligated to surrender the children to the Applicant or any person as determined by him for the purposes of their return to the State of Connecticut in the United States of America.

3. The Respondent is hereby made aware that the court may, in the event that she violates her obligations stated under points 1 and 2, order her to pay a coercive financial penalty of up to €25,000 as per Sec. 44 Subsec. 3 International Family Law Procedure Act (*IntFamRVG*) in conjunction with Sec. 89 Act on Proceedings in Family Matters (*FamFG*), and, in the event that such a fine cannot be collected or there were a probability that this would not achieve its intended aim, may order coercive custody of up to six months.

4. With regard to the execution of point 2, the following shall be ordered:

The Court Bailiff shall be ordered and authorized to remove the children whose names are stated under point 1, [redacted], born on [redacted] and [redacted], born on [handwritten: August XX, 2017] from the Respondent or any other such person at whose home the children may be staying and to hand

them over to the Applicant or any person as determined by him.

The Court Bailiff shall be ordered and authorized to use immediate [reasonable] force against any person obligated to surrender and, if appropriate, against the children in a way which complies with Sec. 90 Subsec. 2 Act on Proceedings in Family Matters.

The Court Bailiff shall be authorized to enter and search the residence of the Respondent or any such person at whose home the children may be staying.

The Court Bailiff shall be authorized to execute the enforcement measures mentioned at any time including at night, on Sundays and official public holidays.

The Court Bailiff shall be authorized to call on the local police force for assistance.

The Youth Welfare Office at Ortenaukreis District Commissioner's Office shall be obligated, as per Sec. 9 Subsec. 1 International Family Law Procedure Act to ensure that the children are handed over to the Applicant in safety, and, if necessary, to place the children in the care of a suitable person or institution as a temporary measure in the time between enforcement of the handover and the return being effected.

5. An enforcement clause is not necessary [for this to occur].

6. The Respondent shall bear the costs of the proceedings including the costs of enforcement and of the return.

7. The value of the proceedings shall be set at €5,000.00.

The reasons for this are:

I.

The parents, both of whom are nationals of the U.S.A., married in the United States on September 22, 2014 (file pages 27-31). The marriage resulted in the birth of their daughters, born on [*handwritten*: December XX, 2015] and [redacted], born on [handwritten: August XX, 2017] (file pages 15-25). The divorce of the parents was announced by Fairfield Superior Court in Bridgeport, Connecticut on September 5, 2017. After the separation, the children remained with their mother,

who they had already been living with before then, as the parents did not live together even while married. Both of the parents work in the field of sales and marketing.

Initially, the parents had joint custody of their two children. As far as is apparent, the parents have been to court in the U.S.A. regarding various matters of child custody. The mother brought forward against the father an allegation of sexual abuse perpetrated on [redacted], which is said to have taken place when he had access to the children in December 2017. The U.S. authorities looked into these allegations. Reference is made to the report drawn up by Yale Child Study Center, Psychiatric Clinic for Children dated May 3, 2018 ([redacted]).

On July 2, 2018, the parents agreed to a wide-ranging Parental Responsibility Plan ([redacted]) before the Superior Court Fairfield in Bridgeport, Connecticut , as confirmed by the court.

This states explicitly that both parents share “legal and physical custody” of the children, whose primary place of residence is with their mother. It was determined that both of the parents would have to make important decisions relating to the children jointly and in agreement. If no agreement were possible, neither of the parents would be entitled to make a decision of their own accord, but must instead refer the matter to the Superior Court. Other matters were also ruled upon, such as the father’s rights of access, including during vacations. Further, more detailed arrangements concern any potential travel with the children outside of Connecticut, or any move involving a change of place of residence. Essentially, these arrangements mean that the parent planning a journey or change of residence has to give prior notice of this in writing to the other parent and bring the matter before the court if the parent fails to give his or her consent.

The father had last had contact with his daughters at some time at the beginning of or in mid-September 2018. When he failed to return them to the mother at the time which had been agreed, the mother, on September 11, 2018, applied for and was issued, an emergency, ex parte order of custody, [redacted], that she be transferred temporary custody and the father’s right to have access to the children be temporarily suspended. This decision was made without the father or the children being heard, based purely on the affidavit the mother had submitted by way of an application. The

Judge set a date for a hearing of September 24, 2018. On September 16, 2018, the father returned the children of his own accord.

On September 24, 2018, only the mother appeared at the hearing. The father claims not to have known about the court proceedings and says he did not receive a summons either. As per the order issued by Fairfield Superior Court in Bridgeport, Connecticut dated September 24, 2018 ([redacted] and [redacted]), which is explicitly annotated as follows: “Order concerning application [dated] September 11, 2018 for the issuance of a temporary custody order” legal and physical custody of the children were transferred to the mother after the “hearing leading concerning her affidavit” and it was determined that visits from the father would take place at the mother’s discretion.

The mother had already been planning for some time to move with the children to Germany, where some of her relatives live. At the end of September 2018 she booked flights for the children ([redacted]) and herself. No further communication took place between the parents after the parental arrangement dated July 2, 2018 had been put into place; the mother did not inform the father of her imminent plans to move with the children to Germany. She had in this time terminated the lease on her apartment in Connecticut, fired the nanny and sold some of the apartments’ fixtures and fittings.

On December 13, 2018, an oral hearing took place on the issue of custody before Fairfield Superior Court in Bridgeport, Connecticut, at which both parents were present. The court adjourned until December 28, 2018. The mother applied for the hearing to be postponed until mid-January 2019. The court delayed the hearing until December 31, 2018, but did not agree to any postponement beyond this date. On December 30, 2018 the mother applied once again, this time by fax, for the hearing to be postponed. She said that she had been on vacation since December 22, 2018 and, following on from that, would be on a business trip until January 9, 2019; she therefore suggested a new date of January 19, 2019 for the hearing at ([redacted]). At this point, was already in London with the children, having flown there from New York on December 26, 2018. On December 31, 2018, she flew on to Germany with the children, where they have resided ever since. The Respondent has been working in Germany since February 1, 2019, [redacted] has been attending kindergarten since September 1, 2019 and [redacted] has been doing so since November 1, 2019.

Fairfield Superior Court in Bridgeport, Connecticut, in its order dated December 31, 2018, approved the application for modification of custody for both children and transferred sole legal and physical rights of custody to the children's father. The documents provided do not appear to show any sort of limitation in this regard, i.e. they do not show that the decision is only a preliminary one.

On April 1, 2019, a further hearing took place before Fairfield Superior Court in Bridgeport, Connecticut, at which the father was personally present, as was a Guardian ad Litem for the children. The mother joined the hearing by telephone link. The order issued on April 1, 2019 ([redacted]) it was determined that the father would be transferred the legal and physical custody in respect of both children. It also states: "The court finds the agreement of the parties on the record that the defendant will personally travel to Germany to pick up and travel with the minor children to return them to the United States to be in their best interests.

The parties will set a pickup time and date before April 5, 2019 through the GAL, [redacted].

The parties are ordered "to establish the manner of transition and appropriate details by April 5, 2019".

Further hearings before Fairfield Superior Court in Bridgeport, Connecticut, which the mother also joined by telephone link, took place on April 26, 2019 and in September 2019. A further hearing is scheduled for mid-November 2019.

The father did not make any criminal complaint in the U.S.A. against the mother for abducting the children.

The application for return under the terms of the Hague Child Abduction Convention made by the Applicant on September 26, 2019 was received by the Court on September 30, 2019 and was served on the Respondent on October 5, 2019 ([redacted]).

The Applicant claims:
That he has never committed sexual abuse of any kind upon [redacted]. And that the children do not call him "brown daddy". That he did not know about the court proceedings which took place in

September 2018 and was not summoned to the hearing. That the mother consented to an agreement at the hearing on April 1, 2019 under which she would hand over the children to him for the purposes of their return to the U.S.A. That the Respondent, acting alone fabricated a false version of events and thus deceived both him and the Court in the U.S. That it was only after the hearing on December 13, 2018 that she booked the flights so as to ensure that she and her children were overseas at the time any modification was made to the decision on custody. That both of the children were said to have a close relationship with him. That the Respondent was said not to have allowed any contact on his part since September 16, 2018. He is said to have been in a position to provide for the emotional and material needs of the children. In this respect, he was planning to take on the services of a nanny. It is claimed that the Respondent would be able to see her daughter as often as she wanted.

The Applicant brings a motion to the court that

it decide as recognized.

The Respondent brings a motion to the court

to reject the application.

She claims:

That he sexually abused [redacted] when he had access to her in December 2017. That he received the court order dated September 11, 2018 and the summons to attend the hearing on September 24, 2018. In this respect, she refers to the extract from the process server dated September 20, 2018 ([redacted]). That the Order dated September 24, 2018 was a final order, not just a preliminary one. That he suspended the Parental Responsibility Plan dated July 2, 2018 and allowed the mother to leave the U.S. for Germany on December 25, 2019. That, in actual fact, she had planned to return to the U.S.A. on January 9, 2019 to retrieve items of personal property from her apartment, but ultimately did not do this. That she in no way consented to an agreement at the hearing on April 1, 2019 under

which she would hand over the children to him for the purposes of their return to the U.S.A. She presumes she was misunderstood. That the return of the children to the father in the U.S. would represent a severe risk of physical or mental harm and would place them in an intolerable situation as neither of the children had seen their father for more than a year, [redacted] no longer knew their father, and that [redacted] was scared of him. That the retention of the children during the access visit of September 2018 led to a strong feeling of insecurity on the part of [redacted]. That she was scared she wasn't going to be allowed to go back to be with her mother. That on November 3, 2019, i.e. a day before the proceedings under Hague Child Abduction Convention, [redacted], having been asked by her maternal grandmother, opened up to her and told her who had abused her in December 2017: That this was "brown daddy", i.e. the Applicant, and that he had abused her ten times.

Reference is made, with regard to the further status of the dispute and the matter, to the written submissions exchanged and annexes thereto, the report drawn up by the legal counsel dated October 30, 2019 (p. 245-249), her letter dated November 12, 2019 (p. 403) and the report from the Youth Welfare Office dated October 22, 2019 (p. 251-253). Furthermore, reference is made to the record of the oral hearing on November 4, 2019 (p. 287). During said hearing, the parties concerned were questioned in person, including the legal counsel. On the same day, the child [redacted] was questioned by the presiding judge in the presence of the legal counsel, and the child [redacted] was present in the room set aside for the questioning of children. In this respect too, reference is made to the record of questioning. Finally, the mother of the Respondent was questioned at the oral hearing on November 4, 2019 and was questioned as a witness without submitting an oath (p. 296 et seq.).

II.

The decision arises from Art. 3, Art. 12 of the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980.

The Hague Child Abduction Convention applies in each of the countries in question. In both Germany and the U.S.A., the Convention entered into force on December 1, 1990. The Hague Child Abduction

Convention is thus applicable.

Neither of the children has yet reached 16 years of age (Art. 4 sentence 2 of the Convention).

The deadline of one year by which an application for return has to be made has not yet passed (Art. 12 para. 1, Art. 12, para. 2 of the Convention). The “removal” took place on December 26, 2018.

In any case, it is the presumption of the court that the Respondent breached in the sense used in Art. 3 of the Convention, the joint or sole rights of custody of the Applicant by wrongfully having retained the children in Germany, and thus outside their State of habitual residence, which for these purposes is Connecticut, U.S.A., since December 31, 2018, but at the very latest since April 1, 2019.

According to Article 3 sentence 1a) of the Convention, the removal or retention of a child is to be considered wrongful where it is in breach of rights of custody attributed to a person, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal.

Neither the Convention nor any other provision of international law defines the term “habitual residence”. The prevailing view is that it depends on the actual center of vital interest, i.e. where the child’s day-to-day activities take place. In this respect, it concerns the place where the child is, to a greater extent, shown to be integrated into social and family life; however, it remains the task of the national courts to decide, taking into account the entirety of the actual circumstances, which place constitutes the “habitual residence” of the child. Additionally, it needs to be considered that, with regard to the protection of the child the Convention sets out to achieve, a minor child’s habitual residence is determined independently of that of the person with custody. Any stay in a place which lasts longer than 6 months is often presumed to constitute “habitual residence” (Superior Court *FamRZ* (*Zeitschrift für das gesamte Familienrecht* – Magazine on all Aspects of Family Law) 2014, 495, Hamm Higher Regional Court FamRZ2013, 52, Hamm Higher Regional Court *FamFR* (*Familienrecht und Familienverfahrensrecht* – Magazine on Family Law and Family Procedure Law) 2012, 141, *Hausmann, Internationales und Europäisches Ehescheidungsrecht* (International and European Divorce Law), 2013, pages 1236, 1237).

It is thus beyond dispute that the children had their habitual residence in Connecticut, U.S.A. There,

they lived in the same home as their mother, were socially integrated and had “put down roots”, and had regular contact with their father.

Any wrongfulness of the removal or retention and a violation of custody rights are to be judged under the local law of Connecticut, U.S.A. (unpublished article from *Bergmann/Ferid/Henrich, Internationales Ehe- und Kindschaftsrecht* (International Family and Child Custody Law).

According to the court-confirmed Parental Responsibility Plan dated July 2, 2018, point 5 (moving and change of residence), the mother would have had to have informed the father in writing of her plans to move to Germany. [This provides that] if there is no consent, the matter would have to be taken to court. None of this occurred. The mother quotes the Court Order dated September 24, 2018 by means of which she was transferred parental custody. The court reviewing the matter doubts that the mother was actually authorised on the basis of the aforementioned judgment, under the law of Connecticut, U.S.A., to move with the children to Germany without the prior consent of the father or a further court decision. The explicit wording of the judgement states that it is a provisional judgment which was taken in expedited proceedings; additionally, the father was not heard in person by the court. Furthermore, the court is aware that, in the U.S.A. there are much more stringent rules in operation than those in Germany concerning moving with the children. Whereas in Germany, if one of the parents is awarded parental custody (the right to decide on the child’s place of residence), he or she is also is able to decide, without the prior consent of the other parent, to move within Germany or abroad with the children, the U.S.A. considers ensuring the retention of bonds between the child and the parent without custody and ensuring regular contact between them to be of greater importance. So as to ensure the right of access, the parent without custody of the child generally, and in the view of a number of courts, has a right of veto with regard to any move by the parent with custody and the child to any other U.S. State.; however, such rights of veto are awarded by the courts there with increasing rarity (Bergmann/Ferid/Henrich, *Internationales Ehe- und Kindschaftsrecht* (International Marriage and Child Custody Law), USA, margin No. 62r). This applies all the more in cases – like the one in question – which concern a move abroad, where the parent planning to move away with the child has only had custody awarded as a result of an application for emergency, ex parte order of custody and it doesn’t concern a final right of veto on the part of the parent who remained in the U.S.A., but only concerns the previous court decision as applied for on the issue of a move abroad? Or to put it another

way: Following on from the father's failure to return the children at the arranged time after an access visit in September 2018, the court awarded the mother custody after she made an application for emergency, ex parte order of custody, it was the court's aim to ensure that the children were factually placed back into the care of their mother. It is not apparent that this decision also contained any associated permission to move with the children to Germany. The mother did not mention this issue before the decision was issued on September 24, 2018; in any case her testimony did not contain any reference to it. Also worthy of mention is the fact that the court resumed proceedings on the matter in December 2018, apparently for the purposes of assessing whether the tenets of the urgent, ex parte decision dated September 24, 2018 should remain in place or were in need of modification.

The mother evaded this and, under the pretense of undertaking a temporary vacation and, straight after, a business trip, applied for the hearing to be postponed and, in the meantime, that is to say, during the ongoing custody proceedings, she left the U.S.A. once and for all with the children on December 26, 2018.

In any event, the court is satisfied that that, since the issuance of the court order dated December 31, 2018, but at the very latest since April 1, 2019, when the mother partook in proceedings via telephone link, she, the Respondent, has been unlawfully retaining the children in Germany, as the U.S. court with international jurisdiction, Fairfield Superior Court in Bridgeport, Connecticut, transferred the custody of both children to the father, who is not in agreement with the children residing in Germany. In contrast to the decisions dated September 11, 2018 and September 24, 2018 the court is unable to see any indications in either of the decisions from 2019 that there are limitations rendering their effects temporary, i.e. it cannot be seen that these decisions are urgent, ex parte decisions. In the short period of 3 months, it is not possible for the children to have established a habitual residence in Germany (see above). Especially given the fact that the mother was aware of the ongoing custody proceedings in the U.S.A. and knew that there was a possibility that the ex-parte decision dated September 24, 2018 would be modified; something which then occurred as by means of the order dated December 31, 2018 (at which point she may or may not have arrived in Germany from London) and, again, as a result of the order dated April 1, 2019. European Court of Justice precedent also views the retention of a child as wrongful if the parent is unable to form a new habitual residence with the child in another state signatory due to a preliminary decision which is later rescinded (ECJ decision

dated October 9, 2014, *FamRZ* (Family Law Magazine), 2015, 107, Commentary from Jörg Dimmler, *FamRB* (Information Service on Family Law), 2015, 128). In light of these facts, the question as to recognition of the return of the children by the Respondent, as mentioned in the order dated April 1, 2019, is in need of no further consideration ("Recorded Agreement between the Parties").

The court is of the view that the Applicant had joint custody of the children in the sense used in Article 3 sentence 1b of the Hague Child Abduction Convention and at the time the children were taken or retained "actually exercised" such rights. The prevailing view is that the barriers placed on meeting the conditions of having "actually exercised" rights of custody are not particularly difficult to overcome. This requirement intends only to exclude such persons from custody who do not comply with or exercise their legal or contractual rights and obligations at all, i.e. even a failure to comply repeatedly would not lead to such an exclusion (Hamm Higher Regional Court *FamFR* 2013, 380, Hamm Higher Regional Court FamFR2012, 141, Hausmann, ibid, page 1233, 1234).

The Applicant exercised his rights of access with the children until at least mid-September 2018, since then the Respondent has been denying him rights of access. The mother even refused him access in the presence of the legal counsel following on from the oral hearing on November 4, 2019. She re-iterated her view that video calls would have to take place first. Thus, he can be said to have "actually exercised" his rights of custody in respect of the children.

The legal consequence of Article 12 para. 1 of the Hague Child Abduction Convention to order the "immediate return" of the children therefore takes effect. The prevailing understanding is that this means the children are to be returned to the country where they had their previous habitual residence. The aim of the rules set out in the Hague Child Abduction Convention is to prevent the parties from taking their children abroad wrongfully. This is to ensure the decision on custody is made in the children's former place of habitual residence. The strict nature of the rule, according to which the court with international jurisdiction, taking into consideration the children's wellbeing, has to decide on rights of custody, is intended to prevent states of affairs from predominating which themselves were brought about by the abduction. In doing so, the Hague Child Abduction Convention presumes that the immediate return of the child to their previous place of residence usually corresponds to the child's best interests, because this ensures continuity of their living conditions. The aim is to restore the "status quo ante", so that the child is returned to their previous linguistic and cultural environment,

and therefore to their previous place of habitual residence (Karlsruhe Higher Regional Court, Order dated December 16, 2014, 2 UF 266/14 - juris -, Stuttgart Local Court *FamRZ* 2014, 495, Schleswig-Holstein Higher Regional Court, *FamRZ* 2014, 494; Karlsruhe Higher Regional Court *FamRZ* 2008, 2223; Hausmann, ibid, page 1222, 1225, 1253; Munich Law Commentary – Siehr, 4th edition, International Private Law, Art. 21 Introductory Act to the Civil Code, Annex II margin No. 65).

The conditions are not fulfilled for any of the exceptions on the principle of return under Art. 13 Hague Child Abduction Convention. This applies initially to the exception allowed by Art. 13 para. 1 a) Hague Child Abduction Convention: There was no consent or subsequent acquiesence on the part of the Applicant to the [children's] moving away to Germany, as stated above.

In accordance with Art. 13 para. 1b) Hague Child Abduction Convention, one of the exceptions from an obligation to order the return of the child exists when the return would be associated with a grave risk of physical or psychological harm for the child or the child would otherwise be placed in an intolerable situation. As this provision contradicts the main aim of the Hague Child Abduction Convention, i.e. to prevent the parties from wrongfully removing their children and to ensure a decision is made on custody in the location of the children's habitual residence, it is appropriate that this provision be construed narrowly.

Specifically, a decision on custody rights, which is to be taken only once the child has been returned to his or her original circumstances, i.e. the status quo ante, restored, may not be pre-empted during an assessment under Art. 13 para. 1b) Hague Child Abduction Convention. The application of the exemption clause is not justified in the case of every hardship. Rather, it is only unusually severe threats to the child's wellbeing, i.e. that are especially significant, specific and current, and which go beyond the usual difficulties associated with a return (such as living with a different parent, living in a different place, changing school or kindergarten, loss of contact with friends or relatives in the new country, etc.) , which can stand in the way of the child's return (Federal Court of Justice, *Neue Juristische Wochenschrift* (New Legal Weekly Journal) 1996, 1402, 1403; Federal Court of Justice *FamRZ* 1999, 85, Karlsruhe Higher Regional Court FamRZ 2010, 1577, 1578) It is possible for a return to be dispensed with if, for example, it can be shown that a child has been abused or maltreated and a repeat thereof is reasonably feared (Karlsruhe Higher Regional Court, *FamRZ* 2002, 1141), if the parent making the application has severe addiction problems, the return applied for is to a warzone or

the return would be associated with an acute risk of the child attempting suicide (Federal Court of Justice, *FamRZ,* 2005, 1657). In interpreting this, we note that the Hague Child Abduction Convention refers to a grave risk for the child, not the parent (Hamm Higher Regional Court FamRZ 2013, 52 and *FamRZ* 2012, 727, Stuttgart Higher Regional Court 2009, 2017).

For this reason, only severe threats to the child's wellbeing can stand in the way of a return (see for example Nuremberg Higher Regional Court *FamRZ* 2004, 726). The "Neulinger" decision of the European Court of Human Rights (decision dated July 6, 2010, No. 41615/07) does nothing to change this. The European Court of Human Rights concluded in this decision that under Article 8 of the European Convention on Human Rights, the child's return could not be ordered automatically when the 1980 Hague Convention was applicable, but would depend on a variety of individual circumstances which had to be assessed in each individual case. Article 13 of the Hague Child Abduction Convention provides for an assessment to be carried out of the child's best interests taking into account his or her individual circumstances (Hamm Higher Regional Court Fam-FR 2013, 143 Hausmann *Internationales und Europäisches Ehescheidungsrecht* (International and European Divorce Law), 2013, p. 1260 see also Stuttgart Higher Regional Court *FamRZ* 2012, 238).

There are no specific indications that the return of the children would result in any risks to the children's best wellbeing that go beyond those usually experienced by children in such an abduction situation.

During the oral hearing, the mother was obstinate and responded when asked as to whether she would return at least temporarily with the children to Connecticut, U.S.A., or allow them to return on their own that she would allow "neither of these options". Given that the children have not seen their father since September 16, 2018, it is not certain how they would react to moving from the care of their mother to the care of their father without a period of adjustment.

The court shares the concerns which have been raised in this respect by the legal counsel and the Youth Welfare Office. When the matter came before the court on November 4, 2019, the mother was not initially present. A few minutes later she entered the court room along with her sister, who was carrying both of the children. The children did not respond to their father in any way whatsoever. However, it is unclear whether they, consciously or unconsciously, actually noticed their father in the

unfamiliar surroundings of the courtroom, especially given the fact that the sister made a point of turning the children away from their father and stopped briefly at the judge's bench at the front of the courtroom, before making an exit. The mother did not allow the children the opportunity to see their father briefly in the presence of the legal counsel after the court hearing; had she done so, we may have been able to gain an impression of the quality of the relationship between the father and the children. However, the family has been known to the Fairfield Superior Court in Bridgeport for a number of years, and in a number of hearings since July 2018, it has come to a number of different arrangements on the issue of custody (first awarded jointly, then solely to the mother, then solely to the father). The fact that another three hearings have taken place after the decision was issued on April 1, 2019 would appear to demonstrate that the court is not restricted to a single view on the matter and makes its decision according to the children's wellbeing. In this respect, the children were appointed a Guardian ad Litem and the report dated May 3, 2018 was commissioned from the Yale Child Study Center, Psychiatric Clinic for Children to thoroughly investigate the allegations of sexual abuse. It is apparent that transferal of custody to the father in the decisions dated December 31, 2018 and April 1, 2019 are influenced in no small way by the fact the mother left the country with the children of her own accord and thus intentionally avoided the court proceedings in the U.S.A. by applying for the proceedings to be postponed with what she knew was false testimony. Given these facts, the U.S. Court had barely any choice but to transfer custody to the father. However, the mother now has an opportunity to restore the trust lost by returning the children of her own accord to their place of habitual residence in the United States of America. Providing she prepares the applications as appropriate, it is by no means certain that the children would be taken off her when she entered the U.S.A. There is, after all, a further hearing planned for mid-November. As was made clear in the oral hearing, the mother has a number of relatives who live in Connecticut, and her mother owns a house in the State. She therefore has adequate accommodation available should she have to be there on at least a temporary basis until such time as the court proceedings in the U.S.A. have reached a conclusion. While the mother, in the hearing on November 4, 2019, dismissed these accommodation options as unrealistic, it was apparent that she was not willing to give the issue due consideration. It should also be pointed out that it is not the Court's role to explore the mother's possible accommodation down to the last detail, as the burden of demonstration and proof in relation to her claims that the return should be refused in accordance with Art. 13 para. 2 Hague Child Abduction

Convention lie with the mother; in the case of doubt, the return is thus to be ordered (Hausmann, ibid, page 1264).

The mother thus has the option of returning to Connecticut, U.S.A. with the children on a temporary basis, until the court into whose international jurisdiction the case falls, Fairfield Superior Court in Bridgeport, Connecticut, has decided on the matter of the move to Germany.

As far as the question of sexual abuse on [redacted] by the father in December 2017 is concerned, the court wishes to point out that, after submission of the report by the Yale Child Study Center, Psychiatric Clinic for Children of May 3, 2018, the Parental Responsibility Plan dated July 2, 2018 was upheld by the U.S. Court; according to this, joint custody is to remain in place and the father is to be allowed regular, unsupervised contact with his two daughters. It is apparent that the allegations of sexual abuse were without foundation; otherwise, the Parental Responsibility Plan would not have been agreed, and the court would not have upheld it.

The witness statement of the paternal grandmother [of the children] of November 4, 2019 leads to the same conclusion. It is at the very least odd that it was only on November 3, 2019, i.e. the day before the hearing under the Hague Child Abduction Convention, that [redacted] first revealed the identity of the perpetrator, “brown daddy”, by which she meant the Applicant, according to the testimony of the child’s mother and grandmother. In the estimation of the police officer who was called upon by the children’s mother, *Kriminalkommissarin* (Inspector) [redacted], having been in charge of investigating such cases for a number of years, it was highly improbable that a child who was 2 years old at the time of the [alleged] offence would remember it or report on it coherently nearly two years later. The legal counsel registered significant doubts as to the veracity of this version of events, doubts which are shared by the Court. The Public Prosecutor declined to initiate investigation proceedings in Germany. When questioned by the court, the witness admitted that the questioning of [redacted] on November 3, 2019 had been staged to improve the mother’s chances in the proceedings under the Hague Child Abduction Convention. The witness said she was afraid that it was the last time she would be able to see [redacted] as she [the child] would have to go back to the U.S. The fact that the child reported having been abused “ten times” raises the suspicion that the child was asked leading questions and answered the questions as expected to [by the adults].

In sum, the requirements of Art. 13 para. 1b) of the Hague Maintenance Convention are not fulfilled.

The decisions on enforcement are based on Sec. 44,. International Family Law Procedure Act (*IntFamRVG*); Sec. 88 et seq. Act on Proceedings in Family Matters (*FamFG*)

III.

The decision on costs arises from Sec. 20 Subsec. 2 International Family Law Procedure Act, Sec. 81 Subsec. 1 Act on Proceedings in Family Matters and is appropriate. The Respondent violated the Applicant's joint custody rights by removing the children, without the Applicant's consent, of her own accord, from their place of habitual residence (U.S.A.) to Germany on a permanent basis and/or by retaining them unlawfully in Germany. She therefore brought about the circumstances which made the initiation of these proceedings necessary. It thus seems appropriate that she be made to pay the full costs of the proceedings. The value of the proceedings will be set as per Sec. 42 Subsec. 3 Act on Court Fees in Family Matters (*FamGKG*).

The above decision will only take effect once it has become legally binding (Sec. 40 Subsec. 1 International Family Law Procedure Act).

Given that the six-week time limit (Art. 11 para. 2 Hague Child Abduction Convention, deadline on November 11, 2019) has already elapsed and to avoid any further delay and given the need for expedient action (Art. 11 para. 1 Hague Child Abduction Convention), the Court has decided against any further adjournment, especially given that a decision is due in the matter. The written submission from both parties dated November 11, 2019 has been taken into consideration.

Remedies:

The decision may be appealed by means of a **complaint** (*"Beschwerde*") appeal.

The complaint appeal shall be subject to a time limit of two weeks, and must be submitted to

Karlsruhe Local Court
Schlossplatz 23
76131 Karlsruhe, Germany

and must contain the **reasons** for its being lodged.

The time limit shall be calculated from the day written notice of the order is given. If written notification of the order is effected by service under the terms of the *Zivilprozessordnung* (Code of Civil Procedure), the time limit shall be calculated from the date of service. If notification in writing of the order is effected by submission to the postal service and the notification is to take place within Germany, the service of the notification shall be deemed to have been carried out three days after its being submitted for sending via the postal service, unless the party involved is able to demonstrate credibly that s/he has not received the document or that s/he only received it at a later date. In the event that service on any of the parties involved cannot be effected, the time limit shall begin at the latest five months after the order was issued. In the event that the deadline is on a Sunday, an official public holiday or on a Saturday, the deadline shall be extended until the end of the next working day.

Any complaint shall be made by submitting a notice of appeal or declared for recording at the registry. The complaint may be declared for recording at another Local Court; however, said record must be received by the court to which the complaint is to be submitted within the period for complaints. The notice of appeal or the record by the registry must be signed by the complainant or a person who is authorized to represent her/him.

The complaint appeal must contain the official title of the decision being contested and a declaration to the effect that a complaint appeal is being lodged against the decision.

The complaint must contain the reasons for its being lodged.

Appeals may also be submitted as electronic documents. It is not legally admissible to lodge an appeal by e-mail. Please see www.ejustice-bw.de for more details on how to submit documents electronically to the court in a legally effective manner.

Local Court Judge

Issuance of the judgment (Sec. 38 Subsec. 3 sentence 3 Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (*FamFG – Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*)):
Delivered to the registry
November 14, 2019

Judicial Employee
Clerk of the registry at the Local Court

Certified
Karlsruhe, November 14, 2019 [seal]

Clerk of the registry at the Local Court

Certified by machine processing
– valid without being signed

AVS-Nr. 6214-2020
Sprachendienst Bundesamt für Justiz