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Henry Setright QC and Michael Gration represent successful appellant in Re N (Children) [2016] UKSC 15

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The UK Supreme Court has today handed down judgment on the appeal in Re N (Children) [2016] UKSC 15. The case concerned the proper interpretation of Article 15 of Council Regulation (EC) No. 2201/2003 in the context of care proceedings concerning two Hungarian children.

At first instance the court had decided at the conclusion of a final hearing on an application for care and placement orders to transfer the case to Hungary pursuant to Article 15. This decision was upheld by the Court of Appeal ([2015] EWCA Civ 1112) the Children's Guardian (represented by Henry Setright QC and Michael Gration of 4 Paper Buildings and Martha Cover of Coram Chambers) appealed that decision to the Supreme Court.

In a unanimous judgment, the Supreme Court allowed the Guardian's appeal. In doing so, the court confirmed that consideration of a child's best interests in the context of an application for transfer pursuant to Article 15 must be undertaken separately from (and as an additional factor to) the determination as to whether the foreign court is 'better placed' to decide the case. Further, when deciding whether a transfer is in the child's best interests, the court must consider the impact upon the child or children concerned of the transfer, and what options are available to the two courts concerned when deciding what final order to make. In this case, transfer of the case to Hungary removed the possibility of adoption by the children's current foster carers. That difference was held by the court to be of relevance when deciding whether or not transfer should be ordered.

As such, the transfer request has been set aside and the matter remitted to the High Court for determination of the application for care and placement orders.