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# Hearing children in family proceedings: Ireland

## 1. General Obligation to hear children

- The Child Care Act contains a general rule that courts must take due account of the wishes of the child. However, currently in Ireland children do not have a general right to be heard in all matters affecting them. Since it entered into force in April 2015, there is some recognition in the new Art. 42A of the amended Constitution, limited to guardianship, custody, adoption and access cases (i.e. not in child abduction cases) (Ballesteros et al., 2013). The opportunity to address this lacuna was taken in the Children and Family Relationships Act 2015 with the insertion of Part V into the Guardianship of Infants Act, 1964 (particularly sections 31 and 32) which places the best interests of the child at the forefront (Phelan, 2015, p. 30).
- The overall strategy in Ireland is to minimize the child's exposure to the court process, which, on occasion, occurs at the expense of ensuring that the child is adequately represented in court (CEFL, 2005, p. 33). At best, the Irish child's right to be heard in matters of parental responsibility is discretionary. The net result of such discretion is a chaotic system of representation for children with significant variations as to the operation of the provision of representation throughout Ireland (CEFL, 2005, p. 7).
- While a child may apply to be present at a hearing, the court may exclude such child if, having regard to his or her age and the nature of the proceedings, it feels that it would not be in the child's interest to allow him or her to be present (CEFL, 2005, p. 32).

## 2. Minimum age

The Irish High Court in March 2004 held that children aged 13 and 14 years of age were of an age and maturity to have their wishes taken into account (CEFL, 2005, p. 6).

## 3. Who hears the child?

- Section 32 of the Guardianship of Infants Act 1964 (as amended) empowers the Court to appoint an expert to determine and convey the child's views (Phelan, 2015, p. 30; CEFL, 2005, p. 33). The child is heard indirectly through this report



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prepared by an independent expert (Country Profile, 2011). However, the report deals with welfare issues rather than with the views of the child (Phelan, 2015, p. 31).

- However more recently, the Irish Supreme Court has noted the “growing understanding of the importance of listening to the children involved in children’s cases” (European Parliament Study, 2013, p. 172).

#### 4. Specific rules for hearing children in child abduction cases?

- Hearing children in return proceedings is at the discretion of the judge or competent authority. Criteria are the age and degree of maturity of the child, as well as whether it concerns EU or non-EU cases (Country Profile, 2011).
- It is not possible to appoint an attorney/guardian ad litem (Country Profile, 2011), unless special circumstances apply (which is hardly ever the case) (CEFL, 2005, p. 33).
- When a child objects to return, the Courts are aware of the obligation to take into account the views of the child but there is no obligation on the Court to implement those views (European Parliament Study, 2013, p. 172).
- The Court has noted that hearing the child could be “dangerous” if it were applied to young people who “have a clear grasp of the situation but could be suffering from psychological harm if they think they are being forced to choose between two parents.”

The Irish Courts are of the opinion that - according to the Hague Convention on Child Abduction - a child, who is of a certain age and maturity, is entitled to have his or her view taken into account and that the trial judge can rely on the child's view. The decision concerning whether or not to return a child to its habitual residence is a decision of the Court and care should be taken that it is not, nor does it appear to be, the decision of the child (European Parliament Study, 2013, p. 169).

- The Court noted the three stage approach adopted in the case of C.A. v. C.A. (otherwise C), when considering a child's objections as set out by Potter P. in Re M. (Abduction: Child's Objections), where he stated: “[60] Where a child's objections are raised by way of defence, there are of course three stages in the court's consideration. The first question to be considered is whether or not the objections to return are made out. The second is whether the age and maturity of the child are such that is appropriate for the court to take account of those objections (unless that is so, the defence cannot be established). Assuming a positive finding in that respect, the court moves to the third question, whether or not it should exercise its discretion in favour of retention or return.” (European Parliament Study, 2013, p. 173).



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- “[27] A court, in deciding whether a child objects to his or her return, should have regard to the totality of the evidence. [28] The range of considerations may be wide. As was stated in *In re M. (Abduction: Rights of custody)*: “[46] In child's objections cases, the range of considerations may be even wider than those in the other exceptions. The exception itself is brought into play when only two conditions are met: first, that the child herself objects to being returned and second, that she has attained an age and degree of maturity at which it is appropriate to take account of her views. These days, and especially in light of article 12 of the United Nations Convention on the Rights of the Child, courts increasingly consider it appropriate to take account of a child's views. Taking account does not mean that those views are always determinative or even presumptively so. Once the discretion comes into play, the court may have to consider the nature and strength of the child's objections, the extent to which they are: “authentically her own” or the product of the influence of the abducting parent, the extent to which they coincide or are at odds with other considerations which are relevant to her welfare, as well as the general Convention considerations referred to earlier. The older the child, the greater the weight that her objections are likely to carry. But that is far from saying that the child's objections should only prevail in the most exceptional circumstances”. In the instant case, Ms. Justice Finlay Geoghegan agreed with this analysis. While the court in this case did take the views of the child concerned into consideration, it did not in fact agree with these views and ordered the return of the child to the country of his habitual residence (European Parliament Study, 2013, p. 173).

## 5. Cross-border element (i.e. hearing a child who is abroad in second-chance procedure Brussels IIbis?)

No information available.

## 6. Other relevant matters

- In its concluding observations of 2016, the UNCRC is concerned that legislation on children's right to have their views heard is not effectively implemented (p. 7).
- The Country Profile (2011) suggests a difference in hearing EU and non-EU return cases. Brussels II bis is very important in the Irish context. The voice of the child is heard more often in child abduction cases than in domestic cases on custody and access (Parkes, 2016).

## 7. Legal sources on hearing the child

- Children and Family Relationships Act 2015



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- Child Abduction and Enforcement of Custody Orders Act 1991 (Section 6)

## 8. Sources in literature

- [Ballesteros et al.](#), 2013, pp. 181-192
- [Concluding Observations UNCRC](#), 2016
- [European Parliament Study](#), 2013
- [Hague Convention Country Profile](#) section 10.4 (last updated May 2011)
- [Phelan](#), 2015
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