

THE VOICE OF THE CHILD IN CASES OF INTERNATIONAL CHILD ABDUCTION

POSITION PAPER

Approximately 130 000 international couples file for divorce annually in the EU. Children are involved in many of these cases. When a family conflict escalates, it may lead to an international child abduction.

Every year, thousands of children in the EU become victims of an international child abduction by a parent. This situation will, to a great extent, influence the lives of these children: the country they will live in, the language they will speak, the family members and relatives they will have regular contact with. All this has an influence on the wellbeing of these children.

While it is the right of every child to get the opportunity to be heard in court under the UN Convention on the Rights of the Child (Art. 12), children are not always heard by the judge. This may be because the judge considers the child too young or too immature.

Therefore, Missing Children Europe, in collaboration with the Universities of Antwerp, Genoa and Ghent, with Centrum IKO (the Netherlands), MiKK (Germany) and Child Focus (Belgium), conducted research in 17 EU Member States.¹ This research allowed the partners to analyze how the best interest of the child is taken into consideration by judges, whether children in Europe are given the opportunity to be heard and what weight was given to their opinion.

The results of this research showed that in the EU a lot is still to be done to ensure that children's rights are respected in procedures that affect them.

Of the almost 1000 analyzed cases (N=938), reference to the **child's best interest** was found in only 52% (explicit or implicit: wording such as wellbeing, growth, balance,...). This is very remarkable because it is clear that these proceedings will affect to a large extent, the daily lives of these children.

⇒ *Missing Children Europe is convinced that it is of vital importance that the best interest of the child is explicitly considered in every return decision.*

But it is not enough in itself. The case law analysis showed us that the concept of best interest of the child is used by judges both to decide to hear children and to decide not to hear children. There is no coherence in the way the concept in itself is interpreted and there are great differences between member states.

The same goes for the concept of **maturity** which is used as an argument both to hear or not to hear children. Unfortunately, maturity is seldomly explained in court decisions and it seems difficult to agree on a common definition of the concept. And where it is explained, the concept of maturity is often misinterpreted as communication skills although the ability to express oneself is not a sign of maturity nor is vice versa maturity a guarantee that someone can express himself.

¹ Belgium, Bulgaria, Czech Republic, Croatia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Malta, the Netherlands, Poland, Romania, Sweden and Spain.



- ⇒ *Missing Children Europe strongly urges for a common interpretation of the concept of best interest of the child and of maturity to assure that all children are treated equally and correctly in cases that affect their life.*

Only in a minority of cases (194 of 938 cases) the child had been given **the opportunity to be heard**. This means that this right of the child (Art. 12 of the UNCRC) is often not respected within the European Union.

- ⇒ *Missing Children Europe urges the EU to ensure that every child has the right to be heard in every procedure that affects him/her.*

Unfortunately, our research further revealed that when children get the opportunity to be heard in court, this didn't influence their wellbeing in a positive way. This is because children are generally very unsatisfied with the way this hearing was conducted. They were not prepared for the hearing, did not know what to expect and were intimidated by the hearing. Additionally they did not receive any feedback on the final decision. Furthermore, they complained about a lack of confidentiality, a high level of stress related to the hearing and to the length of the proceedings.

- ⇒ Missing Children Europe recommends Member States to implement a system whereby each child is supported by a neutral person, a guardian ad litem throughout the proceedings to prepare the child before the hearing, to assist the child during the hearing and to give feedback on the final decision and the impact the child had on this decision.