INTERNATIONAL CHILD ABDUCTION – LEGAL FRAMEWORK AND LITERATURE STUDY

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by Sara Lembrechts (University of Antwerp) and Francesca Maoli (University of Genoa)

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Introduction

An international child abduction is the situation in which a person takes a child to another country without the consent of the child's parent. The perpetrator is often the other parent of the child. Hence, the phenomenon is often referred to as 'parental abduction'. Usually, this is the result of a profound family conflict between a bi-national couple or a couple living abroad. After the dissolution of sentimental ties, separation or divorce in cross-border relationships may bring about a complex and often competing jumble of legal and administrative requirements (Stalford, 2012, p. 156; Lembrechts et al., 2019). When a stranger abducts a child, the criminal law mechanisms usually kick in, rather than the mechanisms discussed in this study.

A large-scale study involving 76 countries shows that in 2015, around 2.191 applications were filed following a parental abduction (Lowe & Stephens, 2018). The majority of applications (70%) involved a single child and most (78%) were under 10 years old (the average age was 6.8 years). Boys and girls are affected more or less equally, with 53% of the children being male and 47% female (ibid.).[1]

Abductions may considerably impact family relationships and child development. When one parent takes or keeps the child abroad without consent of the other parent, this may constitute an interference with the child's as well as the left-behind parent's right to enjoy family life. In addition, an international parental abduction may confront a child with an abrupt change of environment, often involving a different language, a foreign culture, new day-to-day contacts, a sense of isolation and a rupture of contact with the left-behind parent. Whereas a parental abduction does not always constitute a negative experience for children, its long-term effects may be traumatising – especially in situations where the child experiences pressure, distress or loyalty conflicts as a result of the abduction (Freeman, 2014; Gallop & Taylor, 2012; Grief, 2009; Chiancone, 2000; Freeman, 1997; Vandenhole, Erdem Türkelli & Lembrechts, 2019; Lembrechts, Putters & Van Hoorde, 2019).

The purpose of this brief study is to give an overview of both the legal frameworks that exist in the European Union (and to a lesser extent beyond) and the literature on the topic. The focus is on literature in the legal field, although we have incorporated some work from the fields of psychology and sociology. Due to the attention given to the legal frameworks, we also include case law by the Court of Justice of the European Union (in Luxembourg) and the European Court of Human Rights (in Strasbourg). Case references are placed in italics, while the names of authors are in regular font. This makes the study perhaps not a pure literature study, but the legal framework is necessary to provide the full picture as a first step in the INCLUDE project.

1. International child abduction: legal framework and procedures

In Europe, international child abduction is regulated by a plurality of legal frameworks. The main instruments are the Hague Convention on Civil Aspects of International Child Abduction (hereafter Hague Convention') and the EU Regulation concerning jurisdiction and the recognition and

[1] The data relating to parental abductions is very fragmented. This study gives a partial picture of the phenomenon, since it only concerns application made under the 1980 Hague Convention, it does not take into account abductions that occurred in countries that are not party to the Convention and does not cover disputes resolved in private without the involvement of public institutions.

enforcement of judgments in matrimonial matters and the matters of parental responsibility (hereafter Brussels II-*bis*). Both the Convention and the Regulation are legally binding instruments.

The Hague Convention binds more than 100 countries in total, including all the EU Member States. Brussels II-*bis* is applicable in all the EU Member States (except for Denmark; for the UK it is applicable until 31 December 2020) and applies only when a child is abducted from one EU Member State to another. Both the Convention and the Regulation have been informed by children's rights law (in particular, the United Nations Convention on the Rights of the Child, hereinafter CRC) and human rights law (in particular, the European Convention on Human Rights, hereinafter the ECHR). All these legal instruments pursue the protection of the child from the negative effects of an abduction.

Applicable legal instruments

- Hague Convention of 25th October 1980 on the Civil Aspects of International Child Abduction (Hague Convention)
- EU Regulation (No 2201/2003) concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Brussels II-*bis*) [*the recast EU Regulation No 2019/1111 has been adopted meanwhile and will apply to legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements registered on or after 1st August 2022 (article 100)*]
- United Nations Convention on the Rights of the Child (CRC)
- European Convention on Human Rights (ECHR)
- Other instruments, including the Charter of Fundamental Rights of the EU and the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children

1.1. The Hague Convention

The Hague Convention represents the reference framework in international child abduction cases. It is in force in 101 States from all over the world. The Convention sets up a system of cooperation between national Central Authorities to ensure a quick return of the abducted child to his or her country of habitual residence, unless specific exceptions apply. The Hague Convention applies to children under the age of 16, in the following typical scenarios:

a) A child is removed from his or her State of habitual residence by one of the parents, and is taken to another State without the consent of the other parent.

   E.g. Maria lives in Italy with her mother. Her father lives Germany and the arrangement is that Maria spends one month during the summer holidays with her father. One day, Maria's father picks her up from school and takes her to Germany without the consent of her mother.

b) A child is retained in a State different from his or her country of habitual residence, without the consent of the other parent.

   E.g. Maria goes to Germany to visit her father for the summer holidays, in accordance with the arrangement, but at the end of the agreed period the father does not allow her to return.

In the above-mentioned examples, the Hague Convention establishes that the child should promptly return to his or her country of habitual residence. Therefore, the State in which the child has been conducted or retained has the obligation to order the immediate return.

> *E.g. Maria's mother can ask the German court to order the immediate return of Maria to Italy.*

The concept of 'habitual residence of the child' is very important in child abduction cases. It does not refer to the formal, official or registered residence of the child, but to the place in which the child in reality lives and has his or her social and family ties (prior to abduction). Since it is a factual concept, it is sometimes difficult to define in practice, especially in situations in which the family is not settled in one country and in case of conflicts. There is no common definition of habitual residence at the international level. This implies that different national courts may come to different conclusions as to the location of the child's habitual residence.

The mechanism of the Hague Convention is based on the presumption that the court of the habitual residence of the child represents the appropriate forum for long-term and definitive decisions concerning the future of the child, such as where the child should live and how parental responsibility is exercised (jointly or solely) by the parents.[2]

Another assumption in the Hague Convention is that an abduction is not in a child's best interests, unless specific exceptions apply. The Convention thus aims to prevent parental abductions. The mechanism of swift return intends to discourage the abducting parent from taking unilateral action, depriving him or her from any advantage that could result from the abduction (Peréz Vera, 1980).

> *E.g. Unless specific exceptions apply, the abduction of Maria will not result in her father obtaining a favourable decision on custody from the German court.*

If one of the following exceptions applies, the court may order not to return the child:

a) when the child has been abducted more than a year before and is settled in his or her new environment (art. 12.2 of the Hague Convention);
b) when the other parent (the left-behind parent) was not exercising their custody rights at the time of the abduction, or agreed to the move (beforehand or afterwards) (art. 13.1(a) Hague Convention);
c) when there is a grave risk that return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation (art. 13.1(b) Hague Convention);
d) when the child objects to return and has attained an age and maturity at which it is appropriate to take these views into account (art. 13.2 Hague Convention);
e) when return would not be permitted by the protection of human rights and fundamental freedoms (art. 20 Hague Convention).

The interpretation and application of these exceptions is a very delicate matter. Courts in different States interpret these exceptions in different (and even conflicting) ways (Schuz, 2013; Hale, 2017).

[2] This is also confirmed in case law of the ECJ, see *Purrucker*, §84; *C v M*, §50.

Some studies have stated that the Hague Convention mechanism works more effectively in its objective to protect the children from the negative effects of abduction if is enforced in a reasonably short timeframe (Hammer et al., 2002; Agopian, 1984; European Commission, 2016; Greif, 2009). This assumption is more evident when the time of the abduction is spent in hiding or when the child is prevented from making friend or from having any form of social contact (Freeman, 2014). Taking account of the child's wellbeing, the need to restore the situation prior to the abduction and the need to minimise the negative effects of abduction, the return to the State of habitual residence should be ordered (and enforced) quickly. Otherwise, there is the risk that the return would represent another traumatic experience for the child, and might even feel like a second abduction (Freeman, 2006).

The Hague Convention is a cooperation instrument. Each contracting State must designate a Central Authority to handle petitions for removal to its country and to cooperate with other States' Central Authorities. In most States, these central authorities are hosted in the ministries of justice, external affairs or family affairs. Those bodies have the duty to fulfil operational measures of the Convention (art. 6 and 7 Hague Convention). They have both explicit and implicit tasks, aimed at securing and facilitating compliance with the obligations set by the Convention. These include:

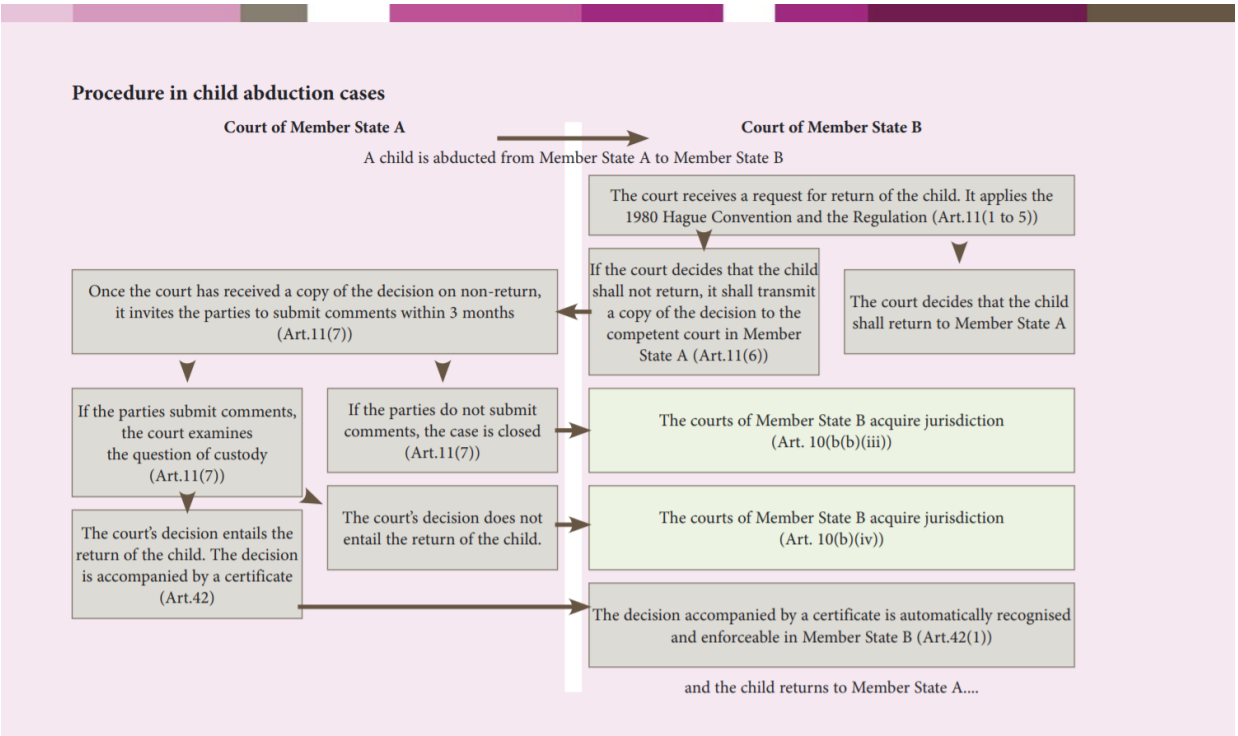
- locating the whereabouts of the child;
- taking appropriate actions for the voluntary return of the child or for finding an amicable solution;
- facilitating the judicial or administrative proceedings with a view to obtaining the return of the child;
- ensuring that the return of the child is safe.

1.2. The EU Brussels II-*bis* Regulation (No 2201/2003)

When a child is abducted from one EU Member State to another, the EU Brussels II-*bis* regulation binds all the EU Member States, except for Denmark. The choice to regulate a matter for which an international convention already existed, was controversial (Trimmings, 2013). The idea was to address some issues that were still considered problematic in the administration of abduction cases, while at the same time taking advantage of the high level of mutual trust between EU Member States. Brussels II-*bis* does not abandon the approach of the Hague Convention. In fact, the Regulation follows the path of the Hague Convention, confirming its application and strengthens it (recital No 17 of the Brussels II-*bis* Regulation; McEleavy, 2015; Carpaneto, 2014).

When a child is abducted from one EU Member State to another, the left-behind parent can contact the Central Authority (CA) in the state of origin. If an amicable solution is impossible, a legal procedure will follow, which takes the following course:[3]

[3] Flowchart 'Procedure in child abduction cases' from European Commission (n.d.), Practice Guide for the Application of the new Brussels II Regulation, available online at www.europa.eu.int/civiljustice, p. 49.



The Regulation reiterates the need for domestic courts to proceed swiftly (within six weeks) in the administration of abduction proceedings (art. 11(2)). In addition, art. 11(4) aims at correcting the tendency of domestic courts to apply too frequently the ground of non-return of art. 13.1.(b) Hague Convention (grave risk of harm). Building on the principle of mutual trust existing between Member States, the rule is that the court must order the return of the child if adequate arrangements have been made in the country to where the child will return to secure the protection of the child after return. Indeed, this assessment is based on a close and effective cross-border cooperation between Member States, since it requires domestic courts to evaluate the capacity of another legal system to provide adequate protection for the child (and to determine what constitutes 'adequate measures of protection').

Brussels II-*bis* also relies on the concept of habitual residence. Whereas there is no international definition, the Court of Justice of the European Union (ECJ) has explained how EU Member States should interpret the concept in specific circumstances. Following EU law, all EU countries should give the same interpretation to habitual residence as the residence that "corresponds to the place which reflects some degree of integration by the child in a social and family environment", taking account of all circumstances specific to each individual case (ECJ *Mercredi*, §56). National authorities in the EU should follow the guidance by the ECJ (Kruger, 2017).

A controversial feature of the Brussels II-*bis* Regulation is the so-called "second chance procedure" or "overriding mechanism" (art. 11(6)-(8)). The court of the State in which the child was habitually resident before the abduction may order the return of the child, even though the court of the State of refuge has already decided that the child should not return on the basis of the grounds stated by art. 13 Hague Convention (see above). The decision of the court of habitual residence is immediately enforceable in the State of refuge without the need of any special procedure. This means that the decision adopted in the State of habitual residence is treated, in the State of refuge, as if it was adopted by a local court.

E.g. Luke lives in Poland with his parents. However, after the divorce, Luke's mother decides to go back to her hometown in Hungary. She takes Luke with her without the consent of Luke's father. The father asks the Hungarian court to order the return of Luke under the Hague Convention. The Hungarian judge refuses to order the return, because Luke has opposed to the return and he is 12: the judge thinks that Luke is sufficiently mature and his views should be taken into account and respected.
*However, Luke's father asks the Polish court to order the return of the child according to art. 11(6)-(8) Brussels II-*bis*, despite the decision of the Hungarian court. The Polish court's decision entails the return of the child, because it doesn't consider Luke to be mature enough and considers the return to be in Luke's best interests. This latter decision is immediately enforceable in Hungary.*

The overriding mechanism in Brussels II-*bis* has caused a profound change of perspective in the management of child abduction cases within the EU. According to this system, the State of the child's habitual residence has the final decision on the return of the child and this decision can immediately be enforced in the State of refuge. As a consequence, the court of habitual residence of the child has the last word in any dispute concerning the child's future.

The legal literature is divided on the overriding mechanism. On the one hand, the Brussels II-*bis* regime avoids the abuse of art. 13 Hague Convention exceptions by the court of the State of refuge. The provision is aimed at sending as many children as possible back to their habitual residence and to secure the status of the State of habitual residence as the ideal forum for a decision on rights of custody (among others: Carpaneto, 2014). On the other hand, the mechanism may cause distrust among the EU Member States when they contradict each other's judgments (among others: McEleavy, 2015; Beaumont et al., 2016).

1.3. Mediation

International mediation can be defined as a process by which "an impartial, independent and qualified third party, the mediator, helps, through confidential interview, the parents who live in different states and are in dispute to re-establish communication with each other and to find agreement themselves that are mutually acceptable, whilst considering the interests of the child" (Vonflet, quoted in Stalford, 2012, p. 157). Family mediation is aimed at finding "a solution for the conflicts between family members through discussions and negotiations" (Haavisto, 2018, p. 42). Mediation should help parents overcome the emotional, social and cognitive barriers to conflict resolution and to teach them conflict resolution skills (Nylund, 2018, p. 11). It is a powerful tool in the sense that it facilitates better communication and thus helps parties to de-escalate their conflict (Bernt, 2018, p. 123).

Both the Hague Convention (Article 7(c)) and Brussels II-*bis* (Article 25) include provisions to promote the use of alternative dispute resolution in resolving cross-border family conflict. In addition, mediation is increasingly promoted as a speedy and effective mechanism to minimise costs and trauma associated with return procedures (Stalford, 2012, p. 163). Lowe & Stephens (2018, p. 3) show that in 2015, on an overall return rate of 45%, 17% were voluntary returns compared to 28% judicial returns. Where 348 applications ended in a voluntary agreement to return, a further 56 ended in some form of access (including agreements and court orders for access) and 84 ended in

some other form of agreement, mostly an agreement to remain in the Requested State (ibid., p. 12). Statistically speaking, voluntary returns are indeed resolved more quickly than judicial returns, with 61% concluded in 90 days or less (ibid., p. 22).

Mediation should focus on the interests of the child (Nylund, 2018, p. 11) and resulting agreements should be in line with the best interests of the child (Bernt, 2018, p. 106). Despite the fact that mediation is a process based on self-determination by the parties and some consider this incompatible with the need to secure the best interests of the child (Salminen, 2018, p. 211), under some countries' legislation (eg Finland), mediators have the duty to pay special attention to securing the position of the minor children in the family (Haavisto, 2018, p. 44; Salminen, 2018, p. 212).

In order to secure an outcome that is in the best interests of the child, parents often need the mediator to help them to recognise the needs and interests of the child (Nylund, 2018, p. 11). The individual and contextual discussions in mediation can help to find case-specific solutions that are in line with the principle of the best interests of each individual child (Salminen, 2018, p. 215). However, mediation is sometimes diluted to purely (cheap) settlement. The idea is then that the interests of the child are inherently served by settlement (Nylund, 2018, p. 13). Such settlement-oriented mediation may in fact be contrary to the best interests of the child and the best interests of the child may become subordinate to settlement (Ibid., p. 13-140). Specific concerns arise in cases of substance abuse, physical and psychological abuse and mental health issues (Bernt, 2018, p. 107).

As Stalford (2012) points out, international mediation is challenging not only from a logistical point of view (p. 159), but also on a deeper level in having to accommodate cultural – and to a lesser extent economic and social – diversity. In practice, this can present serious dilemmas, e.g. when parents' relationships, values and perspectives are characterised by deep inequalities or power imbalances (p. 161). Even when a mediator could inform the parties that they should act in the best interests of their child(ren), the parents' interpretation of what this entails will inevitably be informed by their own values (Stalford, 2012, p. 163; James et al., 2010, p. 314). A mediator's technical skills and knowledge can thus not go without acute awareness of ethical and normative tensions at play (Stalford, 2012, p. 163).

Agreements made as a result of international mediation can be transposed into binding terms by the court using national law, and consequently be enforced cross-nationally through private international law (Stalford, 2012, p. 165; Hague Conference, 2019). National practice in mediation varies, amongst others on the extent to which children's views are actively sought to inform an agreement, often resulting in the marginalisation of children's voices (Stalford, 2012; James et al., 2010). Other models of alternative dispute resolution, such as family group conferencing, have arguably been more successful in including children's perspectives equally to those of adults (Holland & O'Neill, 2006) and may in that sense prove inspirational for child abduction cases. Also the model of social citizenship proposed by Neale (2002)[4] could provide an effective framework for fostering meaningful communication between adults and children.

[4] "Under this model, rights and welfare are contextualized within social relationships and practices rather than understood simply in the context of impartial reasoning and public legislation (*references omitted*). Such a model acknowledges that children's rights, interests, needs and competencies are not identical but vary from child to child according to age, gender, cultural context, family dynamics and circumstance (in much the same

2. Children's rights in abduction proceedings

Children's rights are the human rights of all persons below 18 years of age. They constitute fundamental claims for social justice and human dignity for children and young people (Reynaert et al., 2015, p. 5), applying specifically to protect them from harm, to meet their needs and to ensure that they can participate fully in matters that concern them. Children's rights have a legal dimension of binding obligations on States, embedded in key legal instruments such as the CRC. However, rights are given meaning not only through rules and documents, but also in the structures, relationships and processes of our society (Reynaert et al., 2015; Morrow and Pells, 2012). As such, children's rights can be a legal as well as a social lever to change power relations between adults and children, ensuring that children and young people, as fully fledged citizens, have their own place in society.

Children's rights law, and in particular the CRC, has favoured an approach to child abduction based on a case-by-case assessment of children's best interests (art. 3), their protection from harm (art. 19), their right to contact with both parents (art. 9), their protection form illicit transfer (art. 11), and their right to be involved in matters affecting them (art. 12). Moreover, the European Convention of Human Rights (ECHR) guarantees the right to respect for private and family life (art. 8) of adults and children. The provisions in these Conventions imply a legal obligation on States to evaluate the situation of the individual child in every abduction case. In what follows, we highlight the legal obligations and barriers to implementation of two relevant matters: the child's best interests and the hearing of the child.

2.1. The best interests of the child

The child's 'best interests' is a well-established concept in children's rights discourse and has become a central principle in all actions concerning children (Alston, 1994). The Convention on the Rights of the Child provides in art. 3(1) that the best interests of the child shall be a primary consideration in all actions affecting children.[5] In 2013, the UN Committee on the Rights of the Child issued a General Comment (GC 14) clarifying the meaning of the term. Even after the Committee's clarifications, however, the best interests principle continues to raise more questions than answers – not only in literature and academic debates (see, amongst others, Eekelaar, 2015; McAdam, 2007; Wolfson, 1992; Freeman, 1997; Zermatten, 2015; Archard & Skivenes, 2009; Freeman, 2007; Sutherland & Macfarlane, 2016 and others), but also in its recurrent interpretation in (inter)national jurisprudence (Liefaard & Doek, 2015). As such, art. 3(1) CRC remains one of the most controversial and debated

way that adult interests and competencies vary). In this way, children's interests are context specific, arising out of and in tune with their lived experiences. A social model of citizenship is closely aligned with children's own thinking, for it grounds the individualized rights of recognition, respect and participation within the relational ethics of care, responsibility and interdependence. […] [Adults would] need to find new ways of engaging with children based on trust in their judgements and respect for their views. In particular, practitioners would need to abandon their preconceived ideas about welfare and rights and, instead, cultivate a healthy degree of uncertainty about what individual children might need or want (*reference omitted*). These strategies would depend upon adults giving children an adequate knowledge of their rights of participation and protection, and empowering them, through the provision of local information, to know how to exercise those rights should they need to do so." (Neale, 2002, pp. 470-471).

[5] Whereas art. 3 CRC is the main legal source, the principle of the best interests of the child is also found in other CRC-articles, such as separation of child and parent (art. 9), family reunification (art. 10), parental responsibility (art. 18) and substitute care for children without parents (art. 20).

provisions of the CRC. Assessing and determining the best interests of the child inevitably includes a degree of subjectivity, but safeguards can prevent arbitrariness (Vandenhole, Erdem Türkelli & Lembrechts, 2019, p. 72).

According to the Committee's GC (paras 4-6), the best interests principle aims to ensure the physical, mental, spiritual, moral, psychological and social development, integrity and human dignity of the child. The Committee explains that the principle corresponds to three levels of obligations for states: a substantive right, a rule of procedure and a fundamental interpretative legal principle.

Substantively, when different interests are at stake in a decision that affects an individual child, a group of children or children in general, the child and/or children have a right to have their interests assessed, appropriately integrated and consistently applied. Procedurally, the decision-making process must include an evaluation of the possible impact of the decision on the child(ren) concerned, child-friendly procedural safeguards (including the guarantee that children can express their views) and a legal reasoning justifying the final decision. It should be clear how the child's best interests were taken into consideration and how much weight was given to these interests in the process leading to a decision or action. As a legal principle, the best interests principle obliges states to choose, if a legal provision is open to more than one interpretation, the interpretation that most effectively serves the child's best interests (Vandenhole, Erdem Türkelli & Lembrechts, 2019; Van Bueren, 1995, p. 47-48; Committee on the Rights of the Child, 2013, para 6).

The principle of the child's best interests now inspires the entire EU private international law in all family matters. It has become the leading principle in cases of separation and divorce, parental responsibility, placement and rights of access (Scherpe, 2016).

The Committee insists the child's interests have high priority and therefore, a larger weight must be attached to what serves the child best in comparison to other interests. This view is shared by the ECtHR. In a range of cases, the Court held that whereas the interests of parents remain a factor when balancing the various interests at stake (*Haase*, §89; *Kutzner,* §58*)*, the interests of the child are paramount and may override those of the parents (*Sahin*, §66; *Neulinger & Shuruk*, §134). Already in 1982, before the CRC entered into force, the European Commission on Human Rights (ECmHR) held in *Hendriks v. Netherlands* (§5) that where 'there is serious conflict between interests of the child and one of [the parents], the interests of the child … must prevail' (quoted in Detrick, 1999, p. 87).

In child abduction cases, the principle of the child's best interests has caused a shift from an automatic application of the immediate return mechanism of the Hague Convention to a more balanced reasoning, which takes into account the situation of the child involved on a case-by-case basis. Even though the Hague Convention is aimed at protecting children in general and is considered compliant with human rights standards, the situation of the individual child should be evaluated *in concreto* in international child abduction cases (McEleavy, 2015a; see also *Zarraga*, §§64-68).

This evolution has been fostered by case law. In several cases, parents have brought national courts' decisions under the Hague Convention to the ECtHR. The Court has been asked to assess whether the contracting States respect the ECHR's human rights standards in the application and the interpretation of the relevant legal framework on international child abduction. Faced with the difficult task of balancing different rights and interests in this sensitive area of family law, the ECtHR

has developed a rich jurisprudence on how national authorities should deal with cases of child abduction.

Assessing alleged violations under the right to family life (Art. 8 ECHR) in international child abduction cases, the Court favours a harmonious application of the relevant international instruments, including the CRC, the Hague Convention and the ECHR. The ECtHR explained that states are under an obligation to strike a fair balance "between the competing interests at stake – those of the child, of the two parents, and of public order [...] within the margin of appreciation afforded to States in such matters [...], bearing in mind, however, that the child's best interests must be the primary consideration" (*Neulinger and Shuruk*, §134).

As the Court's case law clearly shows, favouring return along the lines of the Hague Convention does not mean a child's return should be ordered automatically or mechanically. The statement of the ECtHR in *Neulinger* was considered confusing, since it could possibly undermine the quick nature of the return proceeding and the underlying principle of the Hague Convention according to which the rights of custody should be assessed by the court of the last habitual residence of the child.

In *X.* v *Latvia*, the ECtHR Grand Chamber acknowledged the difference between quick return proceedings and in-depth custody cases. At the same time, the Grand Chamber confirmed that while art. 11 Hague Convention provides that judicial authorities must act expeditiously, this does not exonerate them from the duty to undertake an effective examination of allegations made by a party on the basis of one of the exceptions to the return of the child under arts 12, 13.1(a), 13.1(b), 13.2 and 20 Hague Convention. Exceptions to return must be interpreted strictly, but must nevertheless be genuinely taken into account and evaluated in light of art. 8 ECHR.

Finally, the minority opinion (partly dissenting and partly concurring) in *Raw* is interesting.[6] Judge Nussberger is of the opinion that it is not in the interest of an abducted child to be represented in the return procedure by a parent to whom the child does not want to return. This causes a conflict of interest that is neither in the best interests of the child nor in the interest of a fair trial. The Netherlands, with the practice of the *guardian ad litem* in child abduction cases, does seem to offer an appropriate answer to this conflict of interests. The *guardian ad litem* is appointed by the court to defend the interests of a child in legal proceedings where a parent or guardian cannot or will not do so (Dullaert, 2012, p. 1).

In the EU, cases have also been brought before the ECJ. In particular, this Court held that "[i]t is clear that an unlawful removal of the child, following the taking of a unilateral decision by one of the child's parents, more often than not deprives the child of the possibility of maintaining on a regular basis a personal relationship and direct contact with the other parent", which is not in the child's best interests (*Povse*, §64). "Consequently, it is in the child's best interests to re-establish that relationship […]", the Court held (ibid., §66).[7]

[6] Judges in the ECtHR may wish to draft an opinion concerning a case they were involved in, in which they explain why they voted with the majority of judges (concurring opinion) or, on the contrary, why they did not agree with the majority (dissenting opinion). Concurring and dissenting opinions are attached to the judgment. They may contain relevant information and clarifications not only on judges' personal reasoning, but also on core discussion points in the judgment. In *Raw*, two out of seven judges did not agree with the majority ruling.
[7] See also *J. McB v L. E.*, §60; *Deticek*, §54.

The consideration of the child's views has now become an essential element of the best interests assessment in return proceedings (Committee on the Rights of the Child, 2013, §§15 and 43; *M.K. v Greece*). This matter is explained in further detail in the next section.

2.2. The hearing of the child

When the Hague Convention was adopted in 1980, it was not common to hear children in legal proceedings. However, under Art. 13(2) of the Hague Convention, parents can bring in the child's perspective by raising the exception to return on the basis of the objections of a child who has attained an age and degree of maturity at which it is appropriate to take account of his or her views. When the Convention was drafted, this ground of refusal was aimed at avoiding the return of older children against their will (Perez Vera, 1980). There is no minimum age for Art. 13(2) Hague of the Convention to apply though.

Research has been done on how judges consider how much weight should be given to the child's views and has highlighted different approaches of courts in applying the ground for refusal of Art. 13(2) Hague Convention, on the basis of the age and the maturity of the child (Taylor & Freeman, 2018). Those approaches vary according to the geographical area, the culture and the individual perception (Schuz, 2013; Stalford, Hollingsworth & Gilmore, 2017; Van Hof et al., 2020).

The Hague Convention does not contain any obligation for judges to hear the child (see also ECtHR *Gajtani*): indeed, the Convention does not even oblige judges to investigate whether an objection in the meaning of Art. 13(2) exists. Art. 13(2) Hague Convention states that the child's objection should be considered, when it is expressed, and that it should be given due weight according to the age and the degree of maturity of the child. However, the provision should be read taking into account the evolution of children's rights law over the years (Sutherland, 2013; Schuz, 2013), including provisions in the CRC and Brussels II-*bis*. Brussels II-*bis* does contain a specific obligation to hear the child in abduction proceedings (Art. 11(2)), unless it is 'inappropriate having regard to his or her age or degree of maturity'.

Children's and human rights law do contain legally binding provisions on the hearing of the child. Article 12 UNCRC guarantees the right of the child to be heard in all matters affecting him or her, and that the views expressed must be given due weight in accordance with the age and maturity of the child. Being identified by the CRC-committee (2005) as one of the four general principles underpinning the CRC, the right of the child to be heard has increasingly influenced legislation and court decisions nationally and internationally. It applies in all proceedings concerning children, and thus also applies to child abduction cases (see also Kruger & Lembrechts, 2019; ECtHR *M.K. v Greece*).

The obligation to hear the child in proceedings has thus extended to international child abduction cases, even if the Hague Convention does not explicitly state this (Elrod, 2011). This means that the importance of the child's participation in abduction proceedings is wider than only assessing whether the child actually objects to returning. Children's views are likely to facilitate a more informed decision, even if they do not object to return or do not add information to what the decision-maker already knows (Schuz, 2013; Henaghan, 2012; Tisdall & Morrison, 2012). Importantly, the hearing may benefit the child, provided they get the right support. Moreover, even very young children may be capable of forming their own views (Vigers, 2011; Lembrechts et al., 2019).

Children should also be involved in mediation, and the general view that children are actors who should be given the opportunity to be heard should extend to mediation (Thørnblad & Strandbu, 2018, p. 184 – note that this study concerned mandatory family mediation in Norway and not specifically child abduction situations). Even though there are objections to involving children en mediation processes, Thørnblad & Strandbu found that most children want to participate (Ibid., p. 195). Most expressed positive experiences and attitudes to the inclusion of children in mediation (Ibid., p. 199). They also felt that they were able to express their views and were understood (Ibid.)

The right of the child to be heard in international child abduction proceedings has also been developed within the European Union and the Council of Europe. As concerns children's rights law, Art. 24 of the EU Charter of fundamental rights contains wording that recalls Art. 12 CRC and must be respected by national courts when applying EU law.

Although the child's views must be taken into account in return cases, neither the ECHR nor the Brussels II-bis Regulation impose an obligation to follow the child's views (*Raw v France; Blaga v Romania*). The Court recognised that the child's objection (Art. 13(2) Hague Convention) may be an independent exception to the obligation to return (*Blaga*; *M.K. v Greece*). However, even if the child has reached the necessary age and sufficient maturity, Art. 13(2) does not mean that the child can veto his or her return or has a right to decide where and with whom to live. Also other circumstances relating to the child must be taken into account, such as the possibility of a loyalty conflict (*Gajtani*) or the strength of the child's objection (*Koons*; *Rouiller*).

Overall, the ECtHR states that national courts are best placed to decide what weight should be given to the child's opinion. In *Gajtani*, for example the judge tried to understand the underlying reasons for the child's statements, rather than to follow literally what the child said. This approach of the judge did not constitute an infringement of Article 8 ECHR. Interestingly, however, the ECtHR has been more radical on this matter in other areas of family law. Referring to national case law, the Court held in *M. and M. v. Croatia*, that 'in situations where both parents are equally fit to take care of the child, and the child is, having regard to his or her age and maturity, capable of forming his or her own views and expressing them, the child's wishes as regards which parent to live with must be respected. … [O]therwise the rule that the views of the child must be given due weight would be rendered meaningless' (§185).

Due to the sensitive family context in which child abduction takes place, the hearing – as well as the necessary procedural guarantees – often generate tensions. Both judges and children may experience dilemmas related to the technical or speedy nature of the procedure, difficulties in assessing children's maturity, specific challenges related to hearing young children or lack of information and transparency, to name a few (Van Hof et al., 2020). Some of these tensions have been described in earlier research, amongst others on the wellbeing of abducted children (Freeman, 2014; Schuz, 2013; Greif, 2009; Freeman, 1997; Van Hoorde et al., 2017), the hearing of abducted children in local jurisdictions (Lembrechts et al., 2019), and more broadly on the private international law context (Kruger, 2013).

In this context, research has shown that the practice of national courts varies greatly in many aspects. States have taken different approaches on the opportunity of the child to be heard, on the interpretation of the child's age and maturity, on the modalities of the hearing, and on the weight

that should be given to the child's views. Moreover, there are different approaches on the role of the child's hearing in assessing their best interests (Van Hof et al., 2020). A research undertaken within the project VOICE (Carpaneto et al., 2018) has analysed the case law from 17 EU countries between 2005 and 2017 and found out that judges use a number of different reasons not to hear children. These reasons concerned the age and/or maturity of the child, need for additional support of the child, influence or manipulation, the child's best interests and specificities of legal procedures. The concept of the child's best interests was used both as an argument for and against hearing children in return proceedings. However, when the courts do hear children, they usually take the child's views into account (Van Hof et al., 2020).

In the EWELL project (Van Hoorde et al., 2017), researchers investigated the well-being of children in cases of international child abduction in Belgium, France and the Netherlands from a social-psychological and legal perspective, and studied how the hearing may positively affect the well-being of abducted children. The results of the research have shown that often, judges do not trust the hearing of the child as a tool for better decision-making. In addition, many communication tensions may exist between judges and children. Children may feel that judges do not really listen to them and they miss feedback from the judge, while judges have difficulties in finding the right balance between resolving the family conflict and paying attention to the child (Lembrechts, Putters & Van Hoorde, 2019). Judges are aware that the hearing, if not well-conducted, may negatively affect the child, and – intending to protect the child – prefer to avoid a hearing in child abduction cases.

Importantly, however, not hearing children out of fear of not being able to support children sufficiently does wrong to the legal obligations under Article 12 CRC (Parkes, 2013, p. 91). It is the responsibility of adults to ensure that hearing children will be safe, that methods are in place to reduce the risk of harm and that professionals are sufficiently trained to conduct such hearings (Schuz, 2013, 115-116; UN Committee on the Rights of the Child, 2009, p. 27; Lembrechts et al., 2019).

2.3. A children's rights-based perspective in child abduction proceedings

When speaking of a children's rights-based perspective to children's best interests and participation in legal proceedings (or other settings), formal (legal) and informal (social/relational) aspects of children's rights interact. Using the example of participation, it is clear that both dimensions play an equal part in ensuring full implementation of children's rights.

Participation can be seen as an umbrella term for a number of human rights that allow children and young people to take up an active role in their own lives (Hart, 1992; Tisdall, 2015, p. 186). Legally speaking, participation entails an obligation on States to ensure children and young people's right to express their views on all matters that affect them, and to have due weight be given to these views in accordance with the child's age and maturity (Article 12 CRC). These 'matters affecting the child' also include legal procedures, as specified in paragraph 2 of this article.

From a social or relational point of view, the space children and young people can occupy to express their views is strongly defined by the extent to which adults and structures actually see children and young people as citizens in their own right (Bessell, 2009, p. 308). This way of 'seeing' children is referred to as *images of childhood*, i.e. the – often implicit – assumptions that are at play in our

interaction and dealing with children and young people (Reynaert et al., 2015, p. 3; Veerman, 1992, p. 10). Studies on childhood have shaped the idea of children as citizens with the inherent right to participate in social and political life (see, amongst others, Mayall, 1994; James & Prout, 1997; Reynaert et al., 2015).

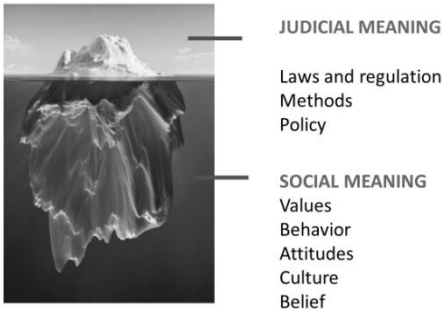


Figure 1 - Children's rights (KeKi; building on Scottish Children's Parliament, 2015)

The metaphor of an iceberg can be useful to illustrate how both dimensions interact (see *Figure 1*). An iceberg consists of a visible and an invisible part. When navigating at sea level, our attention is focused on the – relatively small and obviously limited – visible pile of ice: laws, rules and policy texts are tangible and concrete to illustrate what children's rights may mean, and what obligations they entail in a context of legal proceedings. The significant portion below sea level, however, pointing at the prevalence of e.g. values, attitudes and culture at play in our interaction with children and young people, is at least as influential, but often remains hidden or unnamed. Yet, it applies to all of us in our day-to-day relationships and involves both our personal as our professional ethos. Clearly, both parts of the iceberg are intertwined and interdependent if we want to fully understand what children's rights may mean in specific contexts (Van Vooren & Lembrechts, *forthcoming*).

In addition to adhering to the legal framework, legal professionals and others involved with children's participation in abduction proceedings must be aware that the way they look at and interact with children has an influence on how the hearing is put in practice. Critical reflection about the values, beliefs and attitudes – at work below sea-level and underpinning our images of childhood – can strengthen children and young people's position to participate as fully fledged citizens (Tisdall, 2008, p. 420; Percy-Smith, 2006, p. 173; Van Vooren & Lembrechts, 2020).

Where adults implicitly share an image of children being incompetent to understand the issues at stake in family proceedings, or being unfit to be asked to take responsibility for decisions that are properly the responsibility of adults, tensions on the rights of the child in such proceedings come into focus sharply (Tisdall & Morrison, 2012, p. 157; James et al., 2010, p. 314; Neale, 2002, p. 468). It is important to recognise then that children's experiences of their own childhood are independent of adult's interpretations of those views (James & Prout, 1997). Children are actively involved in the negotiation of their family relationships (Yasenik & Graham, 2016, p. 187). Genuinely listening to children, informing them and taking their views seriously assumes that children are indeed not passive recipients of family decisions, but active participants with a stake in the outcomes.

3. The return of the child in practice: the enforcement of return orders

3.1. Legal framework

An important phase of international child abduction proceedings, in which special attention must be given to the wellbeing of the child, is the point when a return order has been adopted and needs to be enforced in the Member State of origin. This phase is very delicate and often neglected in

specialised international and EU legislation (Kruger, 2011). The actual enforcement of return orders is not regulated by the Hague Convention or by Brussels II-*bis*, but is left to the margin of appreciation of States under their own national law. As a consequence, all countries may have different approaches towards the enforcement of return orders (Schulz, 2006).

In its case law, the European Court of Human Rights (ECtHR) has clarified the obligations of States regarding the enforcement of return orders. The leading judgment is *Ignaccolo-Zenide v Romania*, in which the Court clarified that national authorities are responsible to take all necessary adequate and effective steps to facilitate the enforcement of return orders (§101; §108). They must do everything that can reasonably be expected from them in order to ensure effective enforcement (ibid., §96; *Sylvester*, §59; *Bajrami*, §52; *M.R. & D.R.*, §54). This includes a positive obligation to take measures to reunite parents and children, taking the best interests of the child into account when striking a fair balance between the competing interests at stake (i.e. those of the child, the parents and the public order) (*Maire*, §70; *Mansour*, §55; *Severe*, §101).

3.2. Actors

A wide range of legal and non-legal professionals may assume responsibility at different points throughout the enforcement phase. These actors include:

- The courts. Courts should prioritise speedy return. Return orders should be made as detailed and specific as possible to anticipate potential issues of enforcement. Wherever possible, the judge should spell out exactly what is expected by each party and the time within which the specified actions should be taken (Lowe et al., 2007, p. 47). This should preferably be done after a hearing of the parties. Also the child should be heard, either directly or through experts, so that he or she can have a say in how to best implement the return. In addition, judges should cooperate in international networks to enhance speedy implementation.
- The Central Authority (CA). CAs should cooperate with the parties and promote amicable settlement on the modalities of return through mediation. They also have a role to play in promoting opportunities of hearing the child during legal and amicable dispute settlement (Lamont, 2016, p. 95).
- Enforcement officers. Authorities such as police and custom officials should give consideration to the possibility of a mediated agreement. They should also ensure enforceability if the agreement is not complied with.
- Mediators and psycho-social professionals. These professionals have a key role to play in preparing the child (and the parents) for return from an early stage in the proceedings onwards. They should keep the child fully informed about enforcement proceedings and about what will happen upon return.
- Other professionals, including child protection authorities and interpreters, who should assist the child throughout enforcement and follow-up on their wellbeing after return.

3.3. Issues identified in previous research

In 2006, a research team from Cardiff composed a list of most commonly encountered problems in relation to enforcement of return orders (Lowe et al., 2007, pp. ii-iii). Some issues are directly related

to the rights or needs of the children involved, whereas others refer to problems that leave room for improvement on the side of the legal professionals (notably Courts) involved.

- Issues related to the rights or needs of the children involved:
    - The child objects to being returned and refuses to travel/co-operate.
    - Enforcement is delayed due to the health/welfare of the returning child.
- Issues that leave room for improvement on the side of legal professionals (notably Courts) involved:
    - Court orders do not specify how the child's handover/return is to be effected nor within what time frame.
    - Enforcement is delayed because the appellate court did not rule on the case for a long time without stating any reason (related to lack of awareness and knowledge of judges hearing Convention applications).
- Other barriers to effective enforcement:
    - The child and respondent go into hiding.
    - The child is removed to another country.
    - The use of appeal system/legal mechanisms to delay enforcement.
    - The respondent engages in obstructive behaviour to delay/avoid enforcement (e.g. the respondent refuses to reveal travel plans, changes travel plans, claims moving difficulties, refuses to sign visa applications).
    - Enforcement of the return order is delayed because the parent cannot re-enter the country of habitual residence (e.g. for immigration reasons or because of a criminal warrant).
    - Enforcement is delayed due to non-compliance with conditions/undertakings contained in the return order, or a need to secure a mirror order in the requesting State (e.g. the applicant fails to pay money upfront or to comply with conditions; neither party can afford airfares; neither party can afford accommodation; the applicant is unable or unwilling to overturn a criminal warrant; lengthy process to secure mirror orders).
    - Enforcement is delayed due to the impact of concurrent domestic custody proceedings in the requested State/requesting State.
    - Enforcement is delayed due to the health of the respondent (e.g. illness, pregnancy).
    - Enforcement is delayed because the parents cannot fund travel arrangements (also relevant to conditions/undertakings).
    - Enforcement is delayed because the applicant parent did not take steps to obtain enforcement of the return order.[8]
    - Enforcement is delayed because the applicant parent changed his/her mind about pursuing the enforcement of the return order.
    - Enforcement is delayed because of the pressure of the public/media.

[8] Usually, it is up to the applicant (either in person or through his or her lawyer) to initiate actual enforcement of a return order. In some jurisdictions, the applicant may act jointly with the Central Authority, that either merely assists or even acts on his or her behalf, and often both the applicant and the Central Authority may initiate enforcement. In other States, it is the Central Authority that would take the necessary steps. Less frequent is enforcement initiated by the court (Schulz, 2006, p. 45).

The Cardiff study team proposed three key operative principles to ensure good practice in relation to enforcement (Lowe et al., 2007, p. 40), which have been reiterated in the Guide to Good Practice (2010) and also appear, to some extent, in the case law of the ECtHR:[9]

- Speed (i.e. the obligation to return a child promptly should equally apply to the enforcement phase as it does to other steps in the proceedings). Undue delay may result in the child being settled in a new environment, while contact with the left-behind parent may have deteriorated or ceased to exist. Failure to act expeditiously entails a risk that the return may have similar effects to a second abduction. For the ECtHR, the adequacy of an enforcement measure is judged by the swiftness of its implementation, as the passage of time can have irreparable consequences for the relationship between the child and the parent who does not live with them (*Ignaccolo-Zenide*, §102; *Maire*, §74).
- Familiarity of all those involved with the Hague Convention (i.e. a lot of potential enforcement problems can be avoided when judges, advocates, lawyers, Central Authority staff, mediators, immigration authorities, airlines, embassies, local welfare agencies and other experts involved are experienced). All actors should receive interdisciplinary training and education to assume their role and responsibilities, so that they are fully aware of the aims of the Convention.
- Effective, clear and explicit communication and cooperation (i.e. with the Central Authority and between the different agencies or bodies involved, also on a cross-border level). The ECtHR confirms that States have an obligation to ensure that different state bodies coordinate their efforts to implement the judicial decisions regarding the child (*Maire*, §71; *Chabrowski*, §108).

In the Guide to Good Practice on Enforcement (2010), the Hague Conference explains that rapid and effective mechanisms should be available to enforce a return order, including – but not limited to – a range of coercive measures. The Guide to Good Practice on Implementation (2003, p. xiii) specifies that such measures could include, for example, provisions for contempt of court, the possibility of imposing a fine or imprisonment, the power to order disclosure of the child's whereabouts, the possibility of issuing a warrant for the child and expanding the role of the Public Prosecutor. As in the other phases of the return proceedings, there is an overriding obligation of expeditiousness to avoid undue delay in implementing the return order.

The nine legal systems studied by Lowe et al.[10] have usually been effective in dealing with enforcement problems – with only rarely having to utilise the strongest enforcement measures such as court procedures, imprisonment or involvement of the police. Location orders and specialised services to assist in locating the whereabouts of children can be helpful. The study also proposes a number of preventive measures, including measures preventing a parent to go into hiding and measures related to amicable dispute resolutions. Attaching undertakings or conditions in the return order can also assist enforcement (Lowe et al., 2007, pp. 42). Specialisation of judges in abduction cases (i.e. concentrated jurisdiction) is also seen as an advantage (ibid., p. 45), especially when it

[9] The Hague Conference on Private International Law publishes non-binding Guides to Good Practice. These offer guidance on specific aspects of the Hague Convention and can be used by authorities and legal professionals to interpret their obligations under the Hague Convention.

[10] These are: Australia, England & Wales, France, Germany, the Netherlands, Romania, Sweden and the United States of America.

leads to a small pool of experts involved in abduction work (ibid., p. 46; see also Guide to Good Practice on Enforcement, 2010, p. ix and Guide to Good Practice on Implementation, 2003, p. xii). The more judges become specialised in abduction matters, the easier it is for them to gain experience and expertise (Lembrechts, 2018, p. 29).

3.4. Children's wellbeing during enforcement

Article 3 CRC on the best interests of the child addresses governments, judicial and administrative authorities and public entities as duty-bearers. These include the courts, central authorities and enforcement officials involved in child abduction proceedings. At the same time, the provision is also relevant to civil society, the private sector and professionals working with and for children, including mediators, psycho-social professionals and others. Strictly speaking, it does not impose legal obligations on parents, legal guardians or other individuals legally responsible for the child. However, complementary to art. 18 CRC on the common responsibilities of parents (Van Bueren, 1998, p. 5), GC 14 intends to provide guidelines on the best interests for actions undertaken by any person working with and for children, including parents and caregivers (para. 10) (see also Vandenhole, Erdem Türkelli & Lembrechts, 2019, p. 61). The bests interests of the child should thus be a primary consideration to all actors involved in the enforcement procedure.

Specific risks for the child's wellbeing may occur for example in situations where the abducting parent refuses to allow the child to return and to engage in any form of cooperation, assuming obstructive behaviour to delay or avoid the enforcement of the return order (see e.g. Schulz, 2006). The ECtHR has generally taken the stance that although coercive measures against children are not desirable in this sensitive area, the use of sanctions must not be ruled out in the event of unlawful behaviour by a parent (*Ignaccolo-Zenide*, §106; P.P. v Poland, §92), for example when parents clearly do not cooperate with the authorities (*Maumousseau*, §84; *Maire*, §76). Measures against a parent should also be enforced effectively and could include, for example, a fine (Karadzic, §61), a detention order (ibid.) or location measures (Severe, §116).

3.5. Involvement of the child during enforcement

Enforcement may be particularly challenging when children object to return. Such mechanisms as a collection order may not be appropriate (and difficult to implement), especially with older children who voice strong objections, sometimes even violently (Lowe et al., 2007, p. 13). Research on the participation of children in divorce proceedings has shown that some children who had little impact on the decision-making process or could not change anything about the contact arrangements, refused to comply with the Court orders (Taylor & Gollop, 2015, p. 250). This finding illustrates how a lack of involvement and respect for children's views may result in unworkable agreements. The possibility of mediation, as well as discussing conditions for return with the child during the proceedings, may be particularly relevant to reach satisfactory results upon enforcement.

Appropriate procedures to hear children's views before reaching a final decision are key. The earlier during the return proceedings this is possible, the better, as this allows for more time to adequately prepare the child for return with the necessary support (Guide to Good Practice on Enforcement, 2010, p. 29). Also after the decision has been made, counselling and information should be made

available to children to come to terms with the decision (ibid., p. 17), irrespective of whether they objected return in the sense of Article 13(2) Hague Convention.

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[11] This small-scale qualitative study was undertaken to investigate the lived experiences of those who were abducted many years earlier. The aim was to learn whether, and how, in the views of the participants, these abductions had affected their lives, and whether such effects had continued long-term. The study is based on personal interviews undertaken by the principal investigator with 34 participants including three sets of abducted children and one set of an abducted child and non-abducted sibling. The interviews took place principally in England and the USA in 2011–2012, with an opportunity for updating by email provided in 2014. The study found that a high proportion of the participants reported suffering very significant effects from their abductions in terms of their mental health, and that these effects were ongoing into their adult lives very many years after the abduction. These findings tend, therefore, to support those from earlier studies about the long-lasting effects of abduction which are emphasized in this project by the direct reporting of the abducted children, as adults, long after the event. The study concludes that, as the effects of abducted can be seriously negative and long-lasting, more must be done to protect children against abduction and its effects. Recommendations are made relating to the prevention of abduction, reunification when abduction occurs, and support for abducted children and their families including where the abducted child is not found, or is not returned to the State of habitual residence, as well as when the child is reunified with the left-behind family.

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[12] This paper examines the hearing of children in Belgian and Dutch courts in return proceedings following an international child abduction. The analysis is based on the experience, insights and needs of both children who have experienced an abduction by one of their parents, and family court judges. In this sensitive and often highly conflicted family context, hearing children in court is not simple. Challenges of both a judicial-institutional and communicative-relational nature can hinder the effective implementation of children's right to be heard. This article seeks to answer the question of how to better support judges and children in addressing these challenges, with the aim of enabling children to fully and effectively participate in return procedures. Building on the interviews with children and judges, supplemented with findings from Belgian and Dutch case law and international literature, three key recommendations are formulated: 1) explore and evaluate opportunities for judges and children to experience support during the return procedure, for example via the figure of the guardian ad litem; 2) invest in training and opportunities for specialisation of judges with a view to strengthen their expertise in taking the best interests of the child into account; and 3) systematically pay attention to feedback to the children involved on how the final decision about their return is made – and this before, during and after the procedure.

[13] This report summarises the findings of a global survey on all applications received by Central Authorities in 2015. It uses the findings of previous studies of 1999, 2003 and 2008 to provide an analysis of statistical trends over a 16-year period. Replies have been received from 76 of the then 93 Contracting States that were Party to the 1980 Hague Convention in 2015. Detailed information has been provided on a total of 2,652 incoming

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