

**8<sup>TH</sup> EUROPEAN FORUM ON THE RIGHTS OF THE CHILD  
(BRUSSELS, 17 AND 18 DECEMBER)**

**THE ROLE OF CHILD PROTECTION SYSTEMS IN ENSURING RESPECT OF THE BEST INTERESTS  
OF THE CHILD IN PARENTAL CHILD ABDUCTION CASES  
– BACKGROUND PAPER –**

## **1. INTRODUCTION**

The Commission Communication "[An EU Agenda for the rights of the child](#)<sup>1</sup>" was adopted in 2011 to ensure the effectiveness of actions on children's rights and to step up efforts in protecting and promoting the rights of the child. It contains actions to make the justice system more child-friendly and to protect children when they are vulnerable and are subject to or at risk of violations of their rights. It also recalls that the standards and principles of the United Nations Convention on the Rights of the Child (UNCRC)<sup>2</sup> must continue to guide EU policies and actions that have an impact on the rights of the child. As set out in Article 3 of UNCRC, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the **best interests of the child shall be a primary consideration**.

In an increasingly mobile European society, there is a commensurate increase in the number of couples from different Member States. As long as the parents live together, they usually exercise jointly their parental responsibility over their children. The term "parental responsibility" is used to describe the duties and rights to take care of a child such as responsibility for the child's upbringing, the responsibility to look after the child's property or the right to represent the child legally.

In case a relationship breaks down, a parent may want to relocate with their child and settle down in a new place. In this context it is crucial that he or she knows whether and under which conditions it is allowed, in terms of parental responsibility. Very few EU Member States have specific national rules on relocation<sup>3</sup>.

These matters require careful consideration in cross-border situations, for instance if the members of the family are living in different Member States. The EU has adopted common rules to decide which court is competent to deal with custody disputes in such cases and how a court decision is recognised and enforced on cross-border custody, access rights or visiting rights cases: the so-called [the Brussels IIa Regulation](#)<sup>4</sup> applies since 2005. The relevant agreement or court decision has to be respected so not to violate the law since some situations may be qualified as cross-border parental child abduction.

---

<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0060:FIN:EN:PDF>

<sup>2</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990.

<sup>3</sup> For example FR, ES, UK. An important work in is being carried out by the Council of Europe with respect to standards on dispute resolution in the exercise of parental responsibilities, in particular as concerns decisions on the relocation of children [http://www.coe.int/t/dghl/standardsetting/cdcj/Introduction\\_en.asp](http://www.coe.int/t/dghl/standardsetting/cdcj/Introduction_en.asp)

<sup>4</sup> Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

In particular, in sensitive situations such as those relating to parental child abduction, children are repeatedly confronted with difficult situations. Child abduction causes tremendous pain and suffering for the children concerned. A child is often harmed by life on the run and by being deprived of his or her other parent. Prior to abduction, children may have witnessed high levels of conflict between their parents.

The system of child return in the cross-border context as set out in the 1980 Hague Convention<sup>5</sup> and complemented by the above-mentioned Brussels IIa Regulation provides a set of rules to deal with cross-border parental child abduction. Although in the majority of cases it leads to the prompt return of the child<sup>6</sup>; practice and case-law show that there are still many hurdles before giving actual force to a return order as enforcement procedures are subject to the law of the state in which enforcement is sought and provisions on means of enforcement differ from one Member State to another.

Questions therefore emerge as to how the welfare of children can be best ensured by national authorities and professionals involved in the court and enforcement proceedings such as judges, solicitors, mediators, social workers and guardians *ad litem*. As "prevention is better than the cure", particular attention should be paid to measures preventing child abduction, both from the point of view of the parents as well as the child.

To date, the EU has employed various measures to work together with all Member States to improve contacts, understanding and awareness among national authorities and child welfare authorities to ensure that child abduction cases are dealt with in the best interests of the child. The Commission organises - within the [European Judicial Network in Civil and Commercial Matters](#) (EJN) - annual meetings of the Central Authorities designated under the Brussels IIa Regulation to assist with the practical application of the instrument. In addition, bilateral meetings between the respective Central Authorities are organised to facilitate informal contacts between them and to tackle difficulties which are encountered with on-going cases.

Other measures contributing to prevention include awareness raising activities and tools, including information on the [European e-Justice Portal](#) and publications such as the [Practice Guide on the Brussels IIa Regulation](#), to highlight the differences between the legal systems of Member States with respect to the consequences of separation and divorce, rules on the custody of children and the consequences of international child abduction, especially as concerns the impact on the children involved.

At national level, mediation is widely advocated by family law practitioners as the most positive means of resolving matrimonial and parental responsibility disputes, because it can avoid much of the trauma, acrimony and financial cost associated with judicial proceedings.

The [2008 Mediation Directive](#)<sup>7</sup> covers family-related matters and acknowledges the

---

<sup>5</sup> 1980 Hague Convention on the Civil Aspects of Parental Child Abduction

<sup>6</sup> According to available statistics, the overall return rate between Brussels IIa States in 2008 was 52% compared with 39% where the requesting State was a non-Brussels IIa State.

<sup>7</sup> Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. The provision on confidentiality in mediation (Article 7) expressly

vulnerabilities of children. Within the EJM a working group was created with a specific mandate to propose the most appropriate and efficient means to improve the use of international family mediation in cases of international parental child abduction.

For the purposes of the discussions during the session, distinction has to be made between three possible scenarios: cases of cross-border parental child abduction involving EU Member States<sup>8</sup>, cases where the child has been abducted outside EU but to a country that is a contracting party to the 1980 Hague Convention and cases where a child is abducted to a third country that is not a contracting party to the 1980 Hague Convention. In the latter situation, the EU is assisting - in the framework of the 'Malta process' (see Section 4.2 below) - to bring third States closer to the 1980 Hague Convention.

## 2. OBJECTIVE OF THE WORKSHOP

This session intends to further develop work addressing the need for integrated and coordinated multidisciplinary child protection systems, which has been a recurrent theme across a wide range of policy areas.

Taking due account of the role of the EU and its competences, some of the envisaged workshop objectives are:

- To discuss how to extend the range of measures aiming to prevent parental child abductions from a child protection system approach
- To discuss how return decisions taken in parental child abduction cases can be efficiently enforced in respect of the best interests of the child and how child protection systems can best support enforcement
- To look at how the best interests determination process and procedural safeguards could be improved in the light of [General Comment No 14 of the Committee on the rights of the child](#)
- To exchange experience and information on the enhanced use of mediation and to make sure that cross-border voluntary agreements are recognised and enforced
- Finally, to explore how child protection systems can fully involve all stakeholders with respect to parental child abduction.

The session shall primarily focus on **practical outputs** and try to pinpoint **factors for successful outcomes** in more problematic cross-border cases. In order to ensure that the Forum benefits the maximum number of children, the reach of the workshop should go beyond parental abductions and contribute to integrated child protections systems catering to

---

refers to the best interests of the child as one of the grounds on which a mediator may be compelled to give evidence in civil and commercial judicial proceedings or arbitration regarding information arising out of or in connection with a mediation process.

<sup>8</sup> A special case is Denmark which does not apply Brussels II a Regulation (opt-out) but is party to the 1980 Hague Convention.

the needs of other groups of children also. While applying the questions to the issue of parental abductions, participants will be invited to reflect on a systems approach.

### **3. STRUCTURE OF THE SESSION**

The three-hour session on **the role of child protection systems** will be chaired by the Commission and co-chaired by Hilde Demarré, of Child Focus (BE) in the context of the network of international family law mediators with a panel of four experts representing a range of perspectives to introduce the topic and table specific subjects for discussion with the session participants. The session will take place in **English**.

We expect participation in this session of around 50 experts from all EU Member States; the intention is to have a varied range of professionals who play a role in preventing or responding to parental child abductions.

Session participants should therefore include:

- Representatives of the Central Authorities designated under the Brussels IIa Regulation
- Representatives of public authorities with key roles in CPS, e.g. justice, social affairs
- European/international NGOs addressing the issue of parental child abductions
- The judiciary, mediators and other legal practitioners with experience in dealing with cases of cross-border parental child abductions

### **4. CONTEXT**

#### **4.1. THE RETURN OF THE CHILD MECHANISM UNDER THE BRUSSELS IIA REGULATION**

The EU has taken concrete action to put an end to the unacceptable phenomenon of parental child abduction within the EU by adopting strict rules in the Brussels IIa Regulation to the effect that the child shall be immediately returned to the place of his or her habitual residence. Any dispute about the custody or access or visiting rights should be decided by the courts of the habitual residence of the child, since they have closest connection to the case. The rules apply not only to situations where a parent abducts a child to another Member State, but also situations where a parent does not allow the child to return to the other parent at the end of a visiting period.

The Brussels IIa Regulation reinforces the principle of the immediate return of the child. This principle is enshrined in the 1980 Hague Convention, but the Regulation imposes even stricter obligations to ensure the return of the child. Hence, the judge shall not refuse to order the return of the child to the Member State of habitual residence based on allegations that the return would expose the child to harm, if it is established that arrangements have been made to protect the child after his or her return.

Time is of the essence in these proceedings. To minimise suffering and avoid that the child loses contact with the left-behind parent as a result of lengthy proceedings, the Regulation imposes a very strict time limit. The court must decide whether the child shall return within a

time limit of six weeks. Procedural rights are also reinforced and the child as well as the left-behind parent shall be given an opportunity to be heard during the proceedings. The court cannot refuse to return a child unless the person who requested the return has been given an opportunity to be heard.

Considering these very strict rules, the courts are likely to decide that the child shall return in the vast majority of cases. However, if the court decides that the child shall not return, the left-behind parent may request the review of this decision before the court of habitual residence of the child, which has the final say to decide whether or not the child shall return. This court is usually best placed to assess the best interests of the child and collect necessary information about the situation of the child. The court of the habitual residence shall cooperate with the first judge, take account of the reasons for the decision on non-return and give the parties as well as the child the possibility to be heard. If the court of habitual residence of the child decides that the child shall return, his or her decision prevails and shall be automatically recognised and enforced in the other Member State without any formal requirements.

In practice, the challenging part may be the enforcement of the return decision. This is done by the enforcement authorities of the country to which the child is abducted, using the national enforcement laws and procedures of that country. The Commission receives regularly complaints from the left-behind parents about the burdensome enforcement procedures, the length of the proceedings and the varying practices of national authorities. There seems to be also lack of information relating to the enforcement stage.

#### **4.2. EU ACTION TO PREVENT PARENTAL CHILD ABDUCTION TO THIRD STATES**

The European Commission actively promotes cooperation in family law matters with its Euromed<sup>9</sup> partners (Morocco, Tunisia, Algeria, Egypt, Israel, Jordan, the Palestinian Authority, Lebanon Syria and Turkey). The aim is to cooperate on the basis of mutual respect and to find concrete solutions to the problems that may arise in international family disputes. A dialogue on these sensitive matters emerged also during the last Euromed meeting which took place in Rome in October 2013.

The Commission also supports the so-called ‘Malta process’ which is an initiative taken by the Hague Conference on Private International Law and the Maltese government to promote a dialogue with States that have not yet ratified the 1980 Hague Convention on international child abduction. Only Morocco has so far ratified the Convention.

#### **4.3. UNCRC PUBLICATIONS**

In 2013, the UN Committee on the Rights of the Child also published [General Comment No 14 \(2013\) on the rights of the child to have his or her best interests taken as a primary consideration \(Article 3.1\)](#)<sup>10</sup>, which provides guidance on best interests determination and elements to consider when assessing and determining best interests. Furthermore, it invites States and all persons who are in a position to assess and determine the child's best interests to pay special attention to procedural safeguards to guarantee the implementation of the child's

---

<sup>9</sup> <http://www.euromed-justice.eu/content/project-information>

<sup>10</sup> [http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC\\_C\\_GC\\_14\\_ENG.pdf](http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf)

best interests (See Section B), and these are worth discussing from the perspective of practical and operational improvements.

## **5. QUESTION FOR SESSION PARTICIPANTS**

- 1. From a child protection systems approach, which measures should be developed to help prevent parental child abduction?**
- 2. From a child protection systems approach, what can be done to enhance networking, facilitate dialogue and ensure the involvement of all stakeholders in matters relating to parental child abduction?**
- 3. What should be the key elements for the future EU guidelines on child protection systems in relation to parental child abduction?**

## **6. THE WAY AHEAD**

The Commission seeks to address the issues outlined in the 8th Forum background papers in cooperation with Member State authorities, international organisations, ombudspersons for children, civil society, practitioners and academics.

Forum participants are invited to explore how the EU and other actors can contribute to ensuring an integrated approach to child protection in the Member States. Concrete suggestions and contributions are sought with a view to developing future EU guidelines on child protection systems<sup>11</sup>.

---

<sup>11</sup> The EU Strategy towards the eradication of trafficking in human beings 2012-2016 provides for development of guidelines for child protection systems by 2014 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0286:FIN:EN:PDF> .