

Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

Sarah Hillebrand, Leonie Maaß, Cihan Sönmez

Table of Contents

<u>Introduction</u>	p. 02
<u>Structure</u>	p. 03
<u>Commentary on the major articles of the Convention</u>	p. 03
<u>Report on Compliance with the Hague Convention on the Civil Aspects of International Child Abduction 2012</u>	p. 08
<u>The Convention in practice</u>	p. 09
<u>Preface</u>	p. 09
<u>Central Authorities</u>	p. 09
<u>The procedure of return</u>	p. 10
<u>Staff</u>	p. 10
<u>Language</u>	p. 11
<u>Time</u>	p. 11
<u>Summary</u>	p. 12
<u>Approach of a person concerned</u>	p. 12
<u>Futher legal problems (example: Germany)</u>	p. 14
<u>Political reactions/critics</u>	p. 15
<u>Plans and Aims/“The Malta Process“</u>	p. 16
<u>Conclusion</u>	p. 18

Introduction

The Hague Convention on the Civil Aspects of International Child Abduction was signed on 25 October 1980 and entered into force on 1 December 1983.

In February 2012, 87 states are part of the Convention. Andorra, Gabon, Guinea, Russia and Singapore are the latest parties.

It is a multilateral treaty and part of the Hague Conference on Private International Law.

The Hague Conference is a permanent Institution to ensure the development of unification in Private International Law since the beginning of the 20th century.¹

The main intention of the Hague Convention on the Civil Aspects of International Child Abduction (Hague Abduction Convention) was to guarantee an immediate return of wrongfully abducted children and to protect children from negative consequences of an abduction into another country. If an abductor claims that his action has proceeded lawful by the competent authorities of the State of refuge, one effective way of deterring him would be to deprive his action of any practical or juridical consequences.

So the Convention secures the restoration of the status quo by returning wrongfully removed children expeditiously.²

Article 1 of the Convention declares:

The objects of the present Convention are

- a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and*
- b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.*

The Convention describes a compromise between two objectives. First, it is concerned with the

¹ http://de.wikipedia.org/wiki/Haager_Übereinkommen_über_die_zivilrechtlichen_Aspekte_internationaler_Kindesen_tführung

² Explanatory Report by Elisa Perez- Vera, http://www.hcch.net/index_en.php?act=publications.details&pid=2779, p. 426 f.

removal of the child's habitual environment when the child is taken out of the family and social surrounding. The Convention promotes the return of such children.

Secondly, the Convention takes measures to avoid removals of children into another country. Because of these objectives, the Convention creates a system of close co-operation among the authorities of the contracting states. It deals only with civil aspects of an abduction, it does not aim to regulate criminal factors. It describes no substantive rights, but has a procedural nature and grants a prompt action of the Authorities.³

Structure

The Convention consists of 45 articles and six chapters.

Articles 1, 2, 3 and 5 describe the scope and establish criteria if a removal is wrongful.

Article 4 refers to the personal application of the Convention, Article 35 refers to the temporal application.

Articles 7 and 8 deal with the Central Authorities and the duty for the contracting states to designate a Central Authority.

Articles 8, 27 and 28 concern the applications of Central Authorities.

Articles 9 to 12, and 14 to 19 are devoted to the return of children, while Article 13 and 20 promote exceptions from the general rule for the return of the child.

Article 21 imposes specific duties with regard to access rights.

Articles 22 to 26 and 30 refer to costs and proceedings.

Articles 31 to 34 apply to states with more than one legal system and relations with other conventions.⁴

Commentary on the major articles of the Convention

a) Article 2:

³ Explanatory Report, p. 428

⁴ Explanatory Report, p. 440, 441

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

This Article specifies the importance of speedy procedures concerning access and custody rights. But it does not force the contracting states to take measures for new procedures in their international law. So this Article commits the states only to use the most speedy available procedure.⁵

b) Article 3:

The removal or retention of a child is to be considered wrongful where

- a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and*
- b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.*

The rights of custody mentioned in sub- paragraph b) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

This Article constitutes one of the key provisions. The duty to return the child exists only, if the removal was wrongful. Therefore the Article defines this wrongful removal.

The wrongfulness derives from the fact that the removal action has disregarded the rights of the other parent which are also protected by law.⁶

c) Article 4:

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

This Article defines the children as regarded protected under the Convention.

It applies to children less than 16 years, who were habitually resident in a Contracting State.

⁵ Explanatory Report, p. 444

⁶ Explanatory Report, p. 444, 445

Habitually residence means that the child lived in a familiar and usual environment.

The abductor can not create a new habitual residence by wrongfully removing the child, even if this removal lasts for some years.⁷

d) Article 5:

For the purpose of this Convention

- a) *“rights of custody” shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;*
- b) *“rights of access” shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.*

This Article defines custody and access rights in order to avoid an incorrect interpretation of their meaning because this would endanger the Convention's aim.⁸

e) Articles 12 and 18:

12) When a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith. The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment. Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

18) The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child any time.

These articles complete each other because of the duty to return the child.

Article 12 defines a situation, in which the State has to order the return of the child. It deals with

⁷ Explanatory Report, p. 450, 451

⁸ Explanatory Report, p. 452

two cases. Firstly, the duty of authorities where proceedings have begun within one year of the removal and secondly, where an application is submitted after the time-limit.

Article 18 imposes no duty. It authorizes to return a child by invoking other provisions.⁹

f) Article 13 and 20:

13) Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child, if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views. In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

20) The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedom.

These articles give the judge a discretion not to return a child in particular cases. The question of whether custody is actually exercised must be determined by the individual judge.

The burden of proving the facts of Article 13 is imposed on the person that is against the return of the child.

Article 20 only deals with those principles accepted by the law of the requested state.

So it will be necessary to show that fundamental principles do not permit the return of the child.¹⁰

⁹ Explanatory Report, p. 458, 459

¹⁰ Explanatory Report, p. 460, 461

g) Article 15:

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting State shall so far as practicable assist applicants to obtain such a decision or determination.

The provision of this article should help in reaching a decision if the requested State is uncertain of how the law of the child's habitual residence will apply in a certain case.

But the request has a voluntary nature and the return cannot be made conditional upon such a decision.¹¹

h) Article 21:

An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child. The Central Authorities are bound by the obligation of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

The Convention does not pursue to regulate access rights extensively, but it is necessary to secure the co-operation of the Central Authorities.

Article 21 assures the freedom to apply to the Central Authority of the individual's choice and the organization and the protection of the exercise of previously determined access rights.

There is no example how the co-operation has to be organized, but the details will depend on the circumstances in each particular case and on the capacity to act.¹²

¹¹ Explanatory Report, p. 463

¹² Explanatory Report, p. 465, 466

Report on Compliance with the Hague Convention on the Civil Aspects of International Child Abduction 2012¹³

Every year in May the U.S. Department of State publishes a compliance report towards the U.S. Congress.

This report observes the compliance with the terms and the spirit of the Convention and the transformation of the Convention's objectives in the Contracting States.

The report distinguishes between “not compliant” and “demonstrating patterns of non-compliance”. Non-compliance is a problem in the practical implementation of the Convention.

In the report of 2012 the following results could be found:

Countries, that were not compliant with the Convention are Costa Rica, Guatemala, St. Kitts and Nevis.

For example, judges got influenced by opinions of outside groups or by the media and did not consider the objectives of the Convention. Some courts denied the Convention return application. There have been difficulties in communicating with the Authorities. If there has been some communication, the information were inaccurate. Additionally, some Authorities asserted, that the Convention had no force of law in their country.

Countries demonstrating patterns of non-compliance are Argentina, Brazil, Ecuador, Panama and the Bahamas.

For example, there were no successfully enforced orders for return since 2006. Often there were significant delays in the execution and enforcement of return or delays in case processing in general. Some judicial decisions were based on factors beyond the scope of the Convention. Authorities did not provide requested case updates. In lots of cases there were problems with a slow judicial system. In some cases the judges were unable to cope with the Convention and will need additional training.

¹³ <http://travel.state.gov/pdf/2012HagueComplianceReport.pdf>

Furthermore there are countries with enforcement concerns.

That are countries which are parties to the Convention in which left-behind parents in the United States have not been able to secure prompt enforcement of a court's final return or access order during the reporting period.

This is because of the absence of fast and effective enforcement mechanism.

These countries are Argentina, Brazil, France, Mexico, Poland and Romania.

The concern was that the return order or access order has not been enforced.

The Convention in practice

In this chapter we would like to give you an impression of how the Convention is executed by the Contracting States and how they work together with the affected families and other local and regional authorities. All of the information provided in this chapter is based on the experience of a participant who worked during his studies for the Central Authority in Germany and on the information given in the "Good Practice Guide" by the Hague Conference on Private International Law (www.hcch.net).

Preface

Since the world grows together more globally, the potential for international child abduction also grows. Although the regulations in the Convention are well defined, there is a lack of clear procedural requirements which leads to problems on a practical level. To allow a fair application process for all citizens of the member states a certain uniformity in applying the treaty must be required. Since laws and policies are dynamic, it might be a difficult task to achieve the required uniformity. The implementation process must be evaluated within each individual system, in order for the Hague Convention to be a useful tool in international child abduction.

In this chapter it is briefly described how the states work together in applying the Convention.

Central Authorities

Since the so called Central Authorities are mainly in charge of applying the treaty, the Contracting States must first ensure that there is appropriate legislation for establishment of Central Authorities and other necessary structures.

There are huge diversities among the Central Authorities since the Convention does not have any

regulations concerning the structure and capacity of those Authorities. The differences are especially in the structure, the personnel who works in them and the resources they work with.

The states are free to establish more than one Central Authority (this might be the case in states with federal structures). It is important that these Authorities are accessible for the affected applicants. Usually the Central Authorities are incorporated in the ministries of Justice of each state (in Germany and Turkey, for example).

The procedure of return

To give a better understanding of what the Central Authorities are actually doing we briefly want to provide you with some information about how a wrongfully removed or retained child needs to be returned back.

If a child is wrongfully removed or retained according to the Convention the affected family contacts the competent Central Authority in the state the child was residing and provides it with the relevant documents (application form, birth certificate of the child, photo of the child, possible new address, custody situation). The most important information is the possible new address of the wrongfully removed or retained child and the report about the custody situation. A child is wrongfully removed or retained only if the person applying at least had common custody during the act of removal. Another important aspect is to provide the Central Authority with a possible new address of the child. The Central Authority of the state which the parent applies from contacts the Central Authority the child is removed to and provides it with the information given by the applicant. The Central Authority of the state the child is removed to then tries to locate the child and takes according to the Convention all appropriate measures to realize the return. For this purpose the Authorities shall use the expeditious procedures available.

Usually the wrongfully removed child is not returned voluntarily but needs to be brought back after certain legal steps. The whole procedure requires a tremendous amount of communication between parents, courts, local and regional authorities and the established Central Authorities function as medium between all the involved persons and institutions. The above described procedure might look simple but is in practice slowed down or even stopped (in many cases the child cannot be returned because it cannot be located).

Staff

One of the most important aspects is that the Central Authorities must have a member of staff able to deal with queries at all times. Also necessary arrangements should be made to provide emergency

contact at all times, during and outside of office hours. The Good Practice Guide of the Hague Conference on Private International Law proposes also to gather all contact details on its web site and on the ones of the Central Authorities.

Language

Another relevant problem is caused by the different languages used in the communication between the Contracting States. Since the Central Authorities transmit the information (application, letters of applicant, documents, certificates) usually via e-mail, facsimile and mail, misunderstandings might occur during the process of transmitting. Sometimes even phone calls are necessary to be able to provide a fast service. Although most of the communication is in English language, this is not always the case. Especially forms which are needed to be filled out by the applicants are often in the language spoken in the state the applicant comes from. The staff working in the Central Authorities is usually not able to work with more than the two more common languages English and French. This means that the Central Authorities need to spend a tremendous amount of money for translations. It might be useful for the Central Authorities to employ staff who possesses the relevant language skills if there is a significant number of cases with a Contracting State which speaks another language.

To come back to the above mentioned forms which the applicants need to fill out in order to start proceedings for the return of the child, we need to mention that these forms are not identical among the Contracting States. This might cause difficulties in understanding and slows the whole process down because more communication and/or translations are needed. Concerning the unification of the application forms there is work done in the Hague Conference of Private International Law but the assimilated forms are not available everywhere yet.

Time

This leads us to the last aspect to be mentioned here. All of the above mentioned factors slow down the whole process, beginning from the application until the possible return of the child. To be able to return the child successfully a fast cooperation between applicant and Central Authority, between the two Central Authorities and between the Central Authority where the child is retained and the authorities supporting the Central Authority (police, regional governments, courts...) is necessary. Especially the relevant judges need to be trained for the application of the treaty but it is also known that in the mass of cases judges have to deal with, most states have difficulties in educating the judges with these special parts of law. The usually better trained staff of the Central Authorities has an important role in supporting the relevant courts and providing them with the information needed.

In this context it should also be mentioned that conferences with judges and members of the Central Authorities take place regularly and the feedback of the participants of these conferences is always very positive.

Summary

To give a final impression we want to share that on the one hand the judicial cooperation between the Contracting States in fact works in a very active way. On the other hand we need to consider the aspects mentioned concerning the time, language and staff. In this matter a lot of work needs to be done to work *effectively* at the same time. A fast way of co-operation will increase the number of returns. To achieve this a common education of the staff members of each state by regularly held conferences is necessary. Furthermore a unification of all the forms concerning the bureaucracy and an agreement to use one language, most likely English, could be useful.

Approach of a person concerned

According to article 8 of the Convention on the civil aspects of international child abduction any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.¹⁴

The application can be addressed to every Central Authority which will be bound by all the obligations laid down by the Convention. Therefore the applicant is free to choose between the Central Authorities which in his opinion is the most appropriate. The wording of the Convention only mentions the Central Authority of the child's habitual residence for reasons of efficiency.¹⁵

The names and addresses of the Central Authorities can be found on the website www.hcch.net.

Generally the application must be written in the official languages of the addressed Central Authority and the Central Authority of the state in which the abducted child is assumed to be.

There are model forms which are recommended to use because they contain the necessary

¹⁴ http://www.hcch.net/index_en.php?act=conventions.text&cid=24

¹⁵ Explanatory Report, p. 455

information and therefore speed up the proceedings.

Since the use is not mandatory, the Convention mentions all elements an application must contain in the second paragraph of article 8.¹⁶

Every information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child should be included in the application. Besides all available information about the whereabouts of the abducted child and the identity of the person with whom the child is presumed to be is required.¹⁷

Concerning information on the child's date of birth the Convention makes it clear that this is only necessary when the information is available. This should favour applicants who are not able to give concrete particulars. If the information is available, the applicant always has to supply precise information because the application can be rejected in terms of article 27. This happens when the requirements of the Convention are not fulfilled or the application is otherwise not well founded. According to article 4 the Convention shall cease to apply when the child attains the age of 16 years.¹⁸

Furthermore the application has to include the grounds on which the applicant's claim for return of the child is based. These grounds should refer to both legal and factual elements which are named in article 3. The Convention does not demand documentary support at this initial state. An addition of those documents is optional. The reason for this regulation is the occasional difficulty to receive the documents in question. A precious amount of time for locating the abducted child could get lost.¹⁹

Besides every relevant document can be added to the application.

As it is mentioned above the applicant is free to chose a Central Authority. According to article 9 this Central Authority has the direct duty to transmit the application to the Central Authority of the state in which it has reason to believe the child is located. This duty also arises when the Central Authority which is informed by another Central Authority reaches the conclusion that the child is in fact located in a different country.²⁰

16 Explanatory Report, p. 455

17 see 14

18 Explanatory Report, p. 455, 456

19 Explanatory Report, p. 456

20 see 14

This regulation results from article 7 in which the states commit their Central Authorities to work together and promote co-operation amongst the competent authorities to secure the prompt return of children and to achieve the other objects of this Convention.²¹

Futher legal problems (example: Germany)

In Germany child benefit is granted for all children until the age of 18 - in certain cases also beyond that age. The applications for child benefit are filed with the Family Benefits Office (Familienkasse) of the Federal Employment Agency (Bundesagentur für Arbeit - BA).²²

According to the service regulation for the family load distribution of the German Income Tax Act (DA-FamEStG) parents have the right to get child benefit until the child reaches the age of 18 as long as the child is missed.²³

However new jurisdiction has to be attended. In compliance with § 63 I 3 of the German Income Tax Act (EStG) children who neither have a domicile nor a habitual residence in Germany, another Member State of the EU or in a state in which the Agreement on the European Economic Area (EEA) is applied cannot be considered. According to § 9 of the German Fiscal Code (AO) a habitual residence arises from a continuous residence of six month. If a child is abducted into such a state and he or she cannot be returned after six months, the right to child benefit expires.²⁴

The abducted child has to remain registered at the left-behind parent's domicile. According to § 11 of the German Civil Code (BGB) a minor child shares the parents' domicile. He or she does not share the domicile with the parent who does not have the right of custody. If no parent has this right, the child shares the domicile with the person who has the right of custody. The child keeps the domicile until it is legally overruled.

The abducted child's registration implies the separate information of the school authority. The compulsory health insurance also persists. Community fees which refer to the size of the household

²¹ see 14

²² http://www.arbeitsagentur.de/nn_426246/EN/Navigation/zentral/Leistungen/Kinder/Kinder-Nav.html

²³ http://www.bzst.de/DE/Steuern_National/Kindergeld_Fachaufsicht/Familienkassen/Dienstanweisung/Dienstanweisung_node.html

²⁴ Hessisches Finanzgericht 3. Senat vom 26.05.11, Az. 3 K 1724/10

can be adjusted to the current situation.²⁵

Political reactions/critics

Christiane Hirts, the European Office CEO of The Committee for Missing Children, says that in Germany 1000 to 1500 children are abducted per year. Nearly half of them are abducted into countries whose governments did not sign the Hague Convention concerning child abduction. These are first and foremost Arabian countries in which approximately 10 percent of the return efforts are successful.²⁶

Ekin Deligöz, a member of the German Federal Parliament and its Children's Commission complains about the difficulties concerning the separation between facts about the child abduction and the facts about the decision concerning the parental custody. These lead to mistakes concerning decisions about the competences and therefore to time delays.²⁷

Furthermore left-behind parents criticise the difficulty to get important information and support.

If a child is abducted into a state which joined the Hague Convention, the Central Authorities can be demanded. The Convention generally commits the member states to enable the children's returns. It is much more difficult, if there are no international arrangements with a state, in which the child is abducted. Lawyers have to be locally authorised and legal proceedings are instituted. These proceedings can be very different from the ones which are practised in the left-behind parent's country.²⁸

Since the proceedings relating to the Hague Convention are exclusively subjects to civil law, a criminal complaint can be derogatory. The risk arises that the taking parent is criminal prosecuted and cannot exercise his parental custody after the child's return. An out-of-court-settlement in the context of mediation cannot be enabled. On these grounds a criminal complaint should be well-

25 see 1

26 <http://www.sueddeutsche.de/politik/auslandsentfuehrungen-verschleppte-kinder-machtlose-muetter-1.502951>

27 http://webarchiv.bundestag.de/archive/2009/0729/ausschuesse/a13/kiko/Empfehlungen_und_Stellungnahmen/kindes_entziehung_ausland.pdf, p.2

28 see 27, p. 2, 3

thought-out.²⁹

Plans and Aims/“The Malta Process“

During 2004 and 2009 the Judicial Conferences on Cross-Frontier Family Law Issues took place in Malta. Judges and experts from Australia, Bangladesh, Belgium, Canada, Egypt, France, Germany, India, Israel, Jordan, Malaysia, Malta, Morocco, the Netherlands, Oman, Pakistan, Qatar, Spain, Sweden, Switzerland, Tunisia, Turkey, the United Kingdom, the United States of America, the European Commission, the European Parliament, the Council of the European Union, the United Nations Committee on the Rights of the Child, the League of the Arab States, International Social Service, the International Centre for Missing and Exploited Children, and Reunite, as well as the Hague Conference on Private International Law, met to discuss about how to secure better protection for cross-frontier rights of contact of parents and their children and the problems posed by international abduction between the states concerned.³⁰

The basis is the United Nations Convention on the Rights of the Child of 1989. The best interest of the child shall be the primary consideration. If the parents live in different states, the child shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Furthermore the child should be enabled to get to know and respect the cultures and traditions of both parents. Besides the states are obliged to take measures to combat the illegal transfer and non-return of children abroad.³¹

First and foremost the judges and experts agreed on continuing the efforts to improve co-operation at the judicial and administrative levels between states which are, and states which are not, parties to the relevant Hague Conventions. Mutual trust and understanding should be developed. “Non-Hague State Parties“ should be encouraged and assisted in developing the capacities and structures including Central Authorities which enable such co-operation to take place.³²

By careful consideration to the ratification of the 1996 Hague Child Protection Convention and the

29 see 1

30 www.hcch.net/upload/maltadecl09_e.pdf, p. 1

31 www.hcch.net/upload/maltadecl_e.pdf, p. 1

32 see 30, p. 1

1980 Hague Convention on the Civil Aspects of International Child Abduction, solutions should be found for the protection of the child which are agreed between the parents.³³

Furthermore the mutual recognition of decisions based on common grounds of jurisdiction is important.³⁴

Central Authorities should be established as efficient and properly resourced authorities in each country. Their role should be composed of the first point of contact for affected parents, of contact for co-operation and exchange of information between countries and between national authorities and agencies and of the national body with expertise and experience in managing cross-border family law cases.³⁵ Next to the Central Authority a central contact point is the International Social Services (ISS) in the German Association for Public and Private Care.³⁶ It helps left-behind parents to have rapid access to important information and support. Furthermore measures to assist in promptly locating the child must be taken in every country because time delays can lead to complications in finding the abducted child.³⁷

Since there is a high number of abductions into “Non-Hague-States“, there is a need to develop more effective structure for the mediation of cross-border family disputes. In doing so the structures and methods of mediation should be compatible with different legal and administrative systems, in private and public sectors, respect the rights of the parties including the child, ensure fairness, operate in conjunction with existing legal procedures without prejudice to the rights of the parties to have access to judicial proceedings and avoid delay or the misuse of mediation to impede the progress of legal proceedings.³⁸

Moreover the value of direct judicial communications in international child protection cases should be brought forward.

Judges and other professionals should get the opportunity to increase their knowledge and understanding of the relevant international instruments and procedures in training programmes. These should consist of information sessions, seminars and conferences, participation in judicial networks and receiving The Judges' Newsletter on International Child Protection which is published

33 see 30, p. 2

34 see 30, p. 2

35 see 30, p. 2

36 see 27, p. 2

37 see 30, p. 2

38 see 30, p. 3

by the Permanent Bureau of the Hague Conference on Private International Law.³⁹

One of the most important duties is enabling a parent to have contact with his or her child. Therefore the states should issue visas, passports or other travel documents.⁴⁰

It is of capital importance to encourage as many states as possible to ratify the Hague Convention to enable locating and returning abducted children.

Conclusion

The 1980 Hague Convention was an important step to help left-behind parents to get their abducted children back. The attention should be turned on convincing more states to ratify the Hague Convention. Especially talks with Arabian states should be continued because a multitude of abductions are into those states. The First Malta Judicial Conference on Cross-Frontier Family Law Issues took care of that by translating the texts of the essential Conventions of the Hague Conference on Private International Law into Arabic.⁴¹

With the help of the three Malta Judicial Conferences the interest in the Hague Convention grew. This concept should be continued to reach as many countries as possible.

Since encouraging other countries cannot always be successful, improved mediation methods should be developed. This is important to ensure the communication between the concerned parents. A return can be simplified in this way.

Moreover the reports about the compliance with the terms and the spirit of the Convention and the transformation of the Convention's objectives in the Contracting States should continue. By this means a certain control can occur and the Contracting States may sense a pressure for compliance.

Furthermore it is essential to separate the proceedings concerning the Hague Convention from the proceedings concerning the decision about the parental custody. The aim of the Hague Convention

39 see 30, p. 4

40 see 30, p. 5

41 see 31, p. 3

is returning an abducted child into the left-behind parent's country independent from the parental custody. The children should be protected from a harmful aftermath of the abduction.⁴²

The Central Authorities should work together more closely and effectively to ensure faster proceedings. If a child lives in the country he or she is abducted into for too long, a return could be refused because the child is already settled in this new environment. The child's well-being is rightly in the centre of attention. But the consequences for the left-behind parents should not be forgotten. A refusal for this reason can be very hard to take. Therefore the proceedings must be very quick. Left-behind parents should have rapid access to important information and support. In Germany a central contact point is the International Social Services (ISS) in the German Association for Public and Private Care.⁴³ This exemplar could be spread out into other countries. Besides the time is an important factor for a successful return, everything should be done to speed up the process. To achieve this a common education of the staff members of each state by regularly held conferences is necessary. Furthermore a unification of all the forms concerning the bureaucracy and an agreement to use one language, most likely English, could be useful.

42 see 1

43 see 27, p. 2