

Summary

The Hague Convention on the Civil Aspects of International Child Abduction: research and findings from a Dutch perspective

Background

The Hague Convention on the Civil Aspects of International Child Abduction (the 'Hague Convention') was established in 1980 on the initiative of the Hague Conference on Private International Law, and its objective is to provide clear, international rules for an effective approach to international child abductions. This convention entered into force for the Netherlands on 1 September 1990. The convention defines international child abduction as the removal of a child to, or wrongful retention of a child in, another country, in breach of custody laws in the country where the child had its habitual place of residence. In such cases, the child is removed from the other parent's custody, without that parent's consent. In principle, and in the child's interests, the 1980 Hague Convention favours the return of the child to the parent and family situation from which it was removed. The outcome of an impending custody decision is not anticipated. The issue of which of the two parents should be granted custody at that time can only be assessed by the authorities of the country where the child was habitually resident prior to the abduction.

Each Contracting State must designate a Central Authority (CA), whose task it is to implement the objects of the 1980 Hague Convention and which serves as a point of contact in cases of international child abduction. In the Netherlands, the Minister for Justice has been entrusted with this role. The Legal and International Affairs section of the Youth Policy Division acts as the executive office. The Dutch Central Authority handles both "incoming" and "outgoing" international child abduction cases. In incoming cases, a child has been abducted by one of the parents from another country to the Netherlands, whilst in outgoing cases the child is abducted from the Netherlands to another country. For cases of child abduction to a non-Contracting State, the law has assigned to the Dutch CA a role that is much the same as its function under the 1980 Hague Convention. In incoming cases, the Dutch CA acts as legal representative of the parent who has been left behind if judicial proceedings are instituted.

Definition of the problem and study questions

In 2002 a report was published on the situation in the Netherlands as regards international child abduction, which highlighted a number of problem areas in the resolution of international child abduction cases pursuant to the Hague Child Abduction Convention. These problem areas include the provision of information to parents (both the abductor and the parent who has been left behind) and the possibilities for reaching amicable settlements. Further to this report, in the spring of 2003 a working group was formed with the task of taking stock of areas for improvement in international child abduction procedures and bringing about

these improvements where possible. One of the recommendations made by this working group was that studies should be commissioned of procedures in international child abduction cases and the role of the Central Authority.

The aim of this study is to take stock of areas for improvement in the implementation of the 1980 Hague Convention which will benefit the child's welfare. On this basis, nine study questions were formulated:

- 1 Which factors are instrumental in averting imminent international child abduction?
- 2 What are the motives behind (imminent) international child abduction?
- 3 Which factors are key to reaching a settlement in international child abduction cases?
- 4 Which factors are instrumental in guaranteeing contact between parent and child during the proceedings?
- 5 Which factors are instrumental in guaranteeing the expeditious conclusion of cases once they have been referred to the Central Authority?
- 6 Which factors affect the return of children in a caring manner following a court ruling to that effect?
- 7 Which factors are instrumental in guaranteeing the child's welfare after it has been returned?
- 8 Which aspects are key to a concrete approach to international child abduction?
- 9 How is information provided to parents dealing with (imminent) international child abduction?

Method and scope of the study

Various information sources were used:

- *Literature,*
- *interviews with experts (n = 3),*
- *study of files,*
- *digital investigations (n = 14)*
- *round-table meetings (n = 11) and*
- *interviews with parents who have been left behind (n = 8) and abducting parents (n = 2)*

Due to the small number of respondents, it is not possible to make generalized statements on the basis of the data. The study findings relate only to the respondents in the study; although they are not representative of all international child abduction cases handled, they do give a good impression of what is involved. The same is true of the files studied: they relate to unique cases which, as such, can be neither compared nor generalized. Above all, the files provide an insight into the diverse and often complex situations in which the 1980 Hague Convention is implemented. In this study, the impact of international child abduction on the welfare of the child is only alluded to in a general sense.

The findings of study questions 1 to 8 are discussed based on the information drawn from the files, interviews with experts, digital investigations and the round-table meeting. The purpose of the interviews with parents was to gain an insight into the provision of information to parents dealing with (imminent) international child abduction (study question 9).

The procedures in practice, and parents' experiences

Averting imminent international child abduction

Although “imminent international child abduction” features little in the files studied, all the experts are familiar with this phenomenon. According to the experts, the likelihood of imminent abduction resulting in actual abduction increases if parents are no longer communicating with each other. The experts also say that issues such as inadequate integration in the country of residence, pressure exerted by family in the country of origin or cultural differences can give rise to abduction, as can “external” factors such as insufficient knowledge in the field of international child abduction at the authorities involved or the lack of a clear investigative and arrest policy in this area. However, meetings with both parents and the use of mediation would be particularly effective ways of averting imminent international child abduction, as would judicial measures, such as accompanied access rights or restricted access, and practical measures, including confiscating the passports of the parent in question and the child¹. However, it should be pointed out that measures such as restricted or accompanied access can equally constitute reasons to abduct a child to another country and that confiscation of a passport is not a failsafe measure if the parent and child have dual nationality - in which case they can still leave the country with their remaining passports. The interviews with the parents revealed confusion as to the body to which imminent international child abduction can be reported. The parents left behind who had reported the imminent threat nonetheless turned to a lawyer and the police, both of whom took action. In the case of one of the abducting parents, the lack of support and impossibility of expressing their views caused the parent to actually take the children abroad. This same parent also says not to have known that this was against the law.

According to the experts, promoting expertise at the authorities involved and giving information about procedures in international child abduction may lead to a (more) effective response when an imminent child abduction is being reported.

Motives

In almost two-thirds of the files studied, the mother is the abducting parent. The motives for abduction often remain unclear; information about the motives was found in just fifteen of the thirty files. The motives vary greatly, as is apparent from the interviews with the parents, but they all seem to stem from the relationship problem that lies at the heart of the child abduction.

Settlement

In eleven of the files studied, the parents tried to reach a settlement and a solution acceptable to both parties was reached in seven instances. In four of these cases, the amicable settlement was reached through the mediation of various bodies. The majority of the experts say that they (always) make the parents aware of the importance of a settlement, with the odd exception. More than two thirds of the respondents also actively seek, within their roles, to bring about an amicable settlement between the parents. One of the means of achieving this is mediation, with themselves acting as mediators if necessary.

It appears that the task of reaching a settlement is hindered by conflict and mutual mistrust between parents and by practical impediments, such as the geographical distance between the two parents and the amount of time often involved. If a child has been taken to a non-Contracting State, it is difficult to reach a settlement because there are no judicial means of exerting pressure. Nonetheless, the majority

¹ For simplicity's sake, when discussing the results the term “child” is used. Often, however, several children have been abducted from one family.

of the experts believe that — certainly in cases to/from Contracting States — it should be possible to reach a settlement more frequently than is currently the case. Mediation may help, especially if it takes place at an early stage.

The interviews with the parents revealed that two of the eight parents who had been left behind attempted to reach a settlement, in both cases successfully. In the other six cases, the parents say they either made no attempt to reach a settlement because the circumstances were not right or that they were not made aware of the possibility of a settlement. That they were unaware of the option is curious, because the CA says that, in its first telephone conversation with the parent who has been left behind, it always mentions that reaching a settlement takes precedence over judicial proceedings. In addition, the CA refers to the brochure and each parent has the text of the convention and the Implementation Act, which mention the importance of a settlement. Apparently, this method of providing information is not explicit enough for the parents who have been left behind. Moreover, the two parents who did reach a settlement also say that they were not made aware of this option, but rather they reached this solution on their own initiative — with the aid of mediation.

The two abducting parents say that they were aware of the possibility of reaching a settlement; however, one of them feels this option was not made sufficiently clear.

Contact between parent who was left behind and child

In almost half of the files studied, there was contact between the child and the parent who was left behind during the abduction. Most of the options cited by respondents for themselves or their organization to promote contact between the child and the parent who was left behind during the abduction related to the use of mediation or encouraging the parent who was left behind to seek contact. According to the experts, if one of the parents does not want to co-operate, or if the parents do not trust each other or the bodies involved, this is not conducive to contact between parent and child. Equally non-conducive is a lack of opportunity for mediation and accompanied access. Likewise, the geographical distance between the parent who has been left behind and the child can be a hindrance, as can judicial proceedings that are already underway. The interviews with the parents seem to suggest that fear and lack of willing on the part of the parents are key factors in the absence of contact.

Time to conclusion

Based on the files, it would appear that, on average, a period of 5.5 months elapses between the time at which a case is reported to the Dutch CA and the time at which the CA closes the file. This is true of both incoming and outgoing cases. However, the averages must be interpreted with the necessary caution because of the small number of cases.

As there is little agreement between the experts regarding the length of time that constitutes the “expeditious conclusion” of outgoing and incoming cases, it is not possible to define the term “expeditious conclusion”. Most respondents cite a somewhat shorter period of time for incoming cases than for outgoing cases, without giving clear reasons for this.

It appears that the experts believe that outgoing cases in particular could be concluded more expeditiously than is currently the case. The obstructive factors cited include financial aspects and red tape. According to the experts, the use of mediation and a more active stance, the dissemination and exchange of knowledge and a uniform approach on the part of the central authorities would all improve the chances of both types of case being concluded expeditiously.

Many of the parents interviewed feel that the procedure for the application for the child’s return was not concluded expeditiously enough, and blame this primarily on a lengthy initiation phase and the many intermediate links.

Return

The files show that the child was returned in seventeen cases. There is also one case where it is unclear whether the child was returned, and in another case the child was “re-abducted” by the parent who was left behind. In the other eleven cases, the parents found another solution and/or the application for the child’s return was withdrawn or (in three cases) rejected — in some instances on procedural grounds. Little information was found in the files regarding the procedure for the child’s return. The majority of the experts say that they were never or not usually involved in the return. As the point of contact, the CA is the only party always involved in a child’s return. The child’s welfare is deemed the central concern if a child is to be returned in a caring manner, and there should be consideration for the abducting parent’s position once the child has been returned. Information and better co-ordination between the parties involved may also be conducive to returning a child in a caring manner. Mediating bodies and the judiciary could also play a supportive role, the latter, for instance, by attaching conditions to the child’s return.

Most of the parents interviewed were not happy with the way in which the child’s return was handled. The interviews with the two abducting parents revealed that the child was not returned in either case. As for the parents who were left behind, the child was returned in six of the eight cases. Two of these six parents were aware in advance of the procedure for the child’s return and feel it was handled with care. Almost all the parents who were ignorant of the procedure believe that the child’s return was not handled with care. In four of the six cases, the parent collected the child from abroad him or herself after the proceedings. Most of the parents say there was a lack of information.

The child’s welfare

As established from the files and talking to the experts, there is hardly any information about the child’s welfare after its return. The experts do, however, take the view that both they and/or other bodies should be better informed, especially with a view to future cases and their assessment and establishing future policy, but also because it provides the possibility of aftercare.

What is felt to be most important to the child’s welfare is that the child has contact with both parents and that custody and access are properly arranged, with as little recourse as possible to court proceedings. According to the experts, the child’s separation from the care-providing parent has a negative effect on the child’s welfare.

From the interviews with parents, of the six cases where the child was returned, two parents say that their child needed professional help but did not receive it. In one case, the child did receive professional help, but this was stopped at the child’s request. The same is true of the child of one abducting parent. The child of the other abducting parent did receive satisfactory professional help.

Two of the parents who were left behind say they themselves need or needed professional help.

In four of the cases where the child was returned, the child lives with the parent who was left behind and in two cases with the abducting parent. In all the cases, the parents with whom the child does not live do have contact with the child - sometimes against the other parent’s wishes.

In the cases where the child was not returned, there seems to have been hardly any contact between the parents who were left behind and their child, because of obstruction by the ex-partner. As for the abducting parents whose children were not returned, contact between the child and the parent who was left behind is regular in one case and very sporadic in the other.

Concrete approach to international child abduction

In the experts' opinion, mediation in international child abduction cases — despite practical hindrances such as time and distance — is feasible and can be highly instrumental in resolving problems to do with the child's return and the situation afterwards. Mediation should start as early on as possible. One respondent felt that "co-mediation" could be used in the case of abduction to a non-Contracting State, whereby both parents are assigned a mediator, and those mediators confer on the parents' behalf. If possible, the mediator for the abducting parent should originate from the country to which the abducting parent has moved.

As regards the implementation of the 1980 Hague Convention, a number of respondents take the view that it is applied expeditiously and expertly, although some experts have the impression that the CA suffers from an "image problem". There seems no reason to remove the role of legal representatives at the CA. Moreover, it seems there is a need for the creation of a centre of expertise in international child abduction. The importance of aftercare after the child's return is also endorsed. According to the experts, both the aforementioned centre of expertise and access houses may be helpful in this regard.

Providing the parents with information

Initially, none of the parents were apparently aware of the existence of organizations that offer assistance in international child abduction cases. The lawyer is a key figure in recording the *first report* and referring the parent to the Central Authority. The police are another frequent first point of contact for parents. However, the interviews reveal that they did not always refer the parent to the Central Authority.

Most parents say they did not receive enough information at the time of the *judicial proceedings*. Likewise, most of them say that *throughout the procedure* in regard to the application for the child's return they mainly kept themselves abreast of progress. Half the parents cite the lawyer as the person who provided the most information, with the Central Authority being mentioned three times.

Almost all the parents who were left behind are unhappy with the *information and assistance* offered throughout the procedure. A variety of reasons are cited for this, mostly to do with communication with and the working method of the Central Authority. There is also dissatisfaction with the police's actions. Nor are the abducting parents entirely happy with the information and assistance they received.

All in all, it can be concluded that the provision of information was found wanting by the parents.

In conclusion

This study has taken stock of areas for improvement in the implementation of the 1980 Hague Convention which may benefit the child's welfare. The key findings of the study will now be outlined.

Motives for (imminent) international child abduction

Knowledge of motives is important, because it could form the basis for the development of appropriate prevention policies, which may prevent international child abduction. In conclusion, these motives can ultimately all be regarded as stemming from relationship and divorce problems.

Mediation

The findings of the study suggest that "mediation" is an important means of reaching an amicable settlement between the parents. Moreover, the use of mediation is regarded as an important way of encouraging contact between the

parent who has been left behind and the child during the abduction, handling the child's return in a caring manner and improving the child's welfare after its return. Mediation appears particularly crucial during proceedings with regard to applications for a child's return. The study reveals the expectation that mediation will be less effective in cases where the abducting parent has moved to a country that is not a signatory to the 1980 Hague Convention. The aforementioned "co-mediation" model merits further consideration in this regard.

Situation with regard to the child's return and welfare after its return

There is little information available about the situation relating to and after the child's return. Nonetheless, the study findings do reveal that a great deal of importance is attached to good aftercare and that the importance of this is recognized.

Role of the Central Authority

The study reveals that a number of respondents believe that the CA implements the 1980 Hague Convention in expeditious and expert manner. However, a number of criticisms are also made. The study established that there is dissatisfaction with certain aspects of the CA's actions, particularly communication and the provision of information.

Provision of information

The experts and parents are united in the view that the provision of information from the moment international child abduction is imminent, or actually occurs, is a thorny issue. In conclusion, the provision of information was found wanting - certainly by the parents involved.

Centre of expertise in international child abduction

The experts involved in the study were the main advocates of the possibility of a centre of expertise in the field of international child abduction. Based on the findings of the study, it can be concluded that there is an apparent need for such a centre.

The key study recommendations are as follows:

1. Professionalize mediation in international child abduction cases to or from the Netherlands and establish a clear time span for this;
2. If a child is returned to the Netherlands: provide follow-up for the child and family after its return and offer structural "outreach" aftercare;
3. The Central Authority must state more clearly how it works, the role it performs and what the parents and bodies involved can expect, both in terms of working method and in terms of communication and information;
4. It is important to provide parents with (better) information;
5. Take account of the need expressed by respondents for the creation of a centre of expertise in international child abduction.