

# LEPCA

Lawyers in Europe on Parental **Child** Abduction

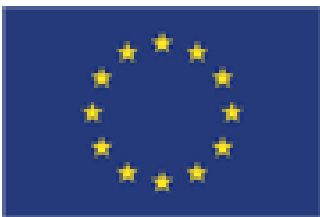
Questionnaire and conference organised by the International Child Abduction Center, the Netherlands in close collaboration with partner organisation MiKK, Germany and associate partners from nine European countries.

## Lawyers in Europe on Parental Child Abduction, LEPCA,

A questionnaire and the first European conference on cross border family issues held from the 7th - 10th May 2014, the Peace Palace, The Hague, the Netherlands.


The issues, conclusions and recommendations  
The 1980 Hague Child Abduction Convention, The 1996 Hague  
Child Protection Convention and the Brussels II bis Regulation.  
The Center IKO, Hilversum, June 2014.





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## 1. Preface

From 7 to 10 May 2014, over 200 specialists in the field of international parental child abduction met at the Peace Palace in the Hague to discuss the outcome of a survey held amongst European family lawyers earlier that year. These specialists represented various professions including lawyers, judges, cross-border mediators, Central Authorities and academics. The survey's main objective was to inventory the knowledge and experience of family law attorneys-at-law representing parents in parental abduction cases in all EU Member States. The survey, consisting of 108 questions, was sent to more than 900 family lawyers in Europe. The addresses were collected on the basis of the existing list of law firms held by the Centre International Child Abduction (Centre IKO), the associate partners of the LEPCA project and the Central Authorities. A total of 166 lawyers responded to the questionnaire, of whom 133 filled in the questionnaire completely. The results of these responses were processed and the conclusions were presented at the conference in order to instigate discussion. The outcome of the discussions was used to draft recommendations and has been added to the final report. One of the main final questions in the questionnaire was whether a network of specialised family lawyers should and could be established in Europe.

An interview study with German specialized cross border family lawyers was provided by Mikk, Germany, the projectpartner in the LEPCA project. The study is part of the full report.

The conference delegates represented 28 jurisdictions: 22 European jurisdictions and 6 from outside Europe representing, Australia, Japan, Peru, Mexico, Russia and the United States of America. The LEPCA (Lawyers in Europe on Parental Child Abduction) conference was the beginning of a process in order to achieve greater European consistency of approach in cross-border family disputes. This includes reference to issues of child abduction, relocation, prevention techniques, international contact and the voice of the child. On the third day of the conference, 70 lawyers many of whom are also cross-border mediators, came together in order to establish a network of parental child abduction lawyers. They stressed that more schooling and interaction between specialised lawyers will in the end result in better representation of the parents and children inside and outside the courts. The conclusion was that a network organisation should be created that provides for the exchange of case law, expertise, advice on the law of different jurisdictions, as well as organises training sessions regarding the application of international and European rules in cross-border family matters such as parental child abduction. Such an organisation should be established in order to achieve such a goal. The Centre IKO, which organised the conference with the support of the European Union, was appointed to establish the network by the participants.

At the conference the seminars and discussions were conducted by:

- Professor Thalia Kruger (Belgium, University of Antwerp) and Mr Karin Verbist (Belgium, lawyer)
- Ms Sabine Brieger (Germany, judge) and Ms Kerstin Niethammer-Jurgens (Germany, lawyer)
- Dr Ian Curry-Sumner (The Netherlands, consultant in Private International Law)
- Mr Francisco Javier Forcada Miranda (Spain, Ministry of Justice, High Court Judge)
- Ms Annegret Katzenstein (Switzerland, President of the 2<sup>nd</sup> civil chamber of Zurich)

- Superior Court) and Mr David Urlwyler (Switzerland, Head of the Central Authority)
- Mr Dirk de Waele (Belgium, Attorney General Court of Appeal)
- Professor Nigel Lowe (United Kingdom, Cardiff Law School)
- Mr Eberhard Carl (Germany, judge) and Mr Michael Karle (Germany, psychologist and child psychiatrist)
- Mr Milos Hatapka (Slovakia, Director of the Private International Law Division of the Ministry of Justice), and
- The Rt. Hon. Sir Matthew Thorpe (United Kingdom, retired judge).

The cross-border workshop was performed by Mikk, projectpartner of the LEPCA project represented by Mr Christoph Paul (Germany, lawyer/notary/mediator), Mr Anke Loebel, (Germany, lawyer and mediator), Mrs Sandra Fenn, (United Kingdom, mediator at Reunite), Ms Katharina Kriegel-Schmidt (Germany, mediator) and Mr Mathijs Storm (The Netherlands, legal expert and mediator at the Centre IKO).

The advisory board has counselled the team during all different stages of the project. The advisory board was chaired by Mr Francisco Javier Forcada Miranda (legal advisor of the Spanish Ministry of Justice and High Court judge). Members were: Mr Ian Curry-Sumner (The Netherlands, consultant private international law), Ms Danièle Ganancia (France, judge), Ms Thalia Kruger (Belgium, Professor University of Antwerp), Mr Nigel Lowe (United Kingdom, Professor Cardiff Law School), and Mr Christoph Paul (Germany, lawyer-notary-mediator)

The financial contribution made by the European Commission made this project possible. It shows that a financial contribution is essential to establish the formation of European cooperation on cross-border family issues, such as parental child abduction; a good practice that should be continued in the future. We wish to thank all legal specialists on parental child abduction that participated in the LEPCA project, not only for their collaboration, but also their positive contribution. Their input and enthusiasm, completing the 108 questions of the questionnaire and actively participating in the conference made the first conference for Lawyers on parental Child Abduction a resounding success.

Els Prins

Managing Director, Center International Child Abduction.

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### **1.3 Introduction**

Every day millions of parents and children cross borders. The majority of them travel with the intention to go on holiday or relocate in order to start a new life somewhere else. When the children do not return from holiday, or are taken abroad without the consent of one of the parents, the left-behind parent is often desperate.

The relocation and recovery of a child from abroad is a legal, financial and emotional battlefield for all parties involved, and the psychological consequences on children and parents are devastating. When two parents separate after a having been married and wish to follow different paths in life, and yet both wish to care for the children, disputes tend to arise. These disputes have a severe impact on the child's life. When large distances are involved, the problem arises where the child will live and how regular contact between the left-behind parent and the child will be arranged. In child abduction cases, proper advice and legal counselling is, therefore, crucial. Although the majority of family law lawyers accept cross-border mediation, we know that the main task of a lawyer is to represent the parent properly in court proceedings and inform them of their legal rights and obligations. The debate on how children should be represented in court in a parental child abduction case is an ongoing and an important issue.

The survey among family lawyers who represent parents in court procedures, sent prior to the conference, was necessary in order to gain a sound impression of the knowledge of the lawyers and the practical issues they have to deal with in their own jurisdiction. How many parents did they represent? Is there a working relationship with the Central Authority? Are plans in place to concentrate jurisdiction? Are specialised judges appointed and is cross-border mediation accepted as a part of the court procedure? Other questions included: Are lawyers familiar with the 1980 Hague Abduction Convention, the Brussels II-bis Regulation and relocation proceedings?

The role and the voice of the child was a separate chapter, as was mediation and legal aid. We expect that the conclusions and recommendations of the report will contribute to a better application of the 1980 Hague Abduction Convention, the Brussels II-bis Regulation and the building of a strong European professional network of cross-border family lawyers, specialised in representing and guiding parents and children in parental child abduction. As the amount of cross border family cases and Hague cases are relatively limited, it is of great importance that the lawyers are able to exchange knowledge, have a common database and have the possibility to communicate with other professionals, such as liaison or network judges, Central Authorities, prosecutors, cross border family mediators, child psychologists and youth care workers. We aim to achieve closer cooperation between legal representatives of parents and children within Europe, both nationally and internationally; a result that hopefully has already been achieved as representatives of countries outside Europe also expressed their wish to be able to join the network at the LEPCA conference.

We understand that the European Commission is currently working on the revision of Brussels II-bis Regulation. The conclusions and recommendations of the LEPCA survey and conference will hopefully serve as a welcome addition to the results already gathered. We hope that this contributes to a swift, professional procedure in international parental child abduction cases with the focus on the interests and the well-being of the child, but also that of the parents as they are foremost the caretakers of the children involved.

## 2. Summary

### General information regarding the respondents

In order to gain a good impression of the density in each European country of family lawyers who represent parents in court in parental child abductions cases, the countries of the participants were inventoried. The results show that a substantial group of specialised lawyers, 6 to 17, each from seven European countries has responded to the questionnaire. The countries are; the United Kingdom, Italy, The Netherlands, Spain, Germany and Belgium and Latvia. From the other countries three lawyers responded; from Romania, Denmark, Finland and Lithuania. In all other countries only one or two lawyers responded.

It was striking that lawyers who participated in the LEPCA conference met colleagues from their own countries they had ever met before. During the conference groups were formed. Lawyers from Sweden, Spain, Belgium, Poland and Italy stated the need to create a national association of cross-border family lawyers in order to increase specialisation in the field of parental child abductions. In the Netherlands an association of specialised parental child abduction lawyers was established in 2011.

### **Recommendation**

*At the recommendation of the General Assembly, held on the 10 May, 70 lawyers stated that they would promote an initiative regarding the development of associations of specialized cross-border family lawyers in each European country and in order to feed those associations, the establishment of an umbrella organisation. The umbrella organisation will have the task to inform the associations about the law and situation in different jurisdictions, stimulate interaction between members, organise training sessions, webinars and conferences in the future. It was determined that the Centre for International Child Abduction in the Netherlands, would take the initiative to establish such an umbrella organisation.*

### **Court procedures / The judicial system and length of legal procedures**

We wanted to know in which countries in Europe, jurisdiction on international child abduction cases is concentrated. We learned that not all lawyers could answer this question. Concentration of jurisdiction can also mean that there is more than one specialised court. Especially when the county is large, it is logical that more than one court deals with parental child abductions cases.

Countries where jurisdiction is not concentrated included: Latvia, Hungary, Bulgaria, Denmark, Estonia, Greece, Portugal and Spain. Uncertainty related to the situation in Poland, Cyprus, Croatia and Austria. In 15 European countries, jurisdiction was more-or-less concentrated in international parental child abduction cases.

The more judicial or administrative authorities that have jurisdiction, the more scattered the experience will be among the judges concerned and there will be less consistency of legal practice. In Europe there are at least 8 to 12 countries where jurisdiction on international parental child abduction cases is not concentrated.

**Recommendation**

*The recommendation of the general assembly stated that it is important and desirable that a concentration of jurisdiction is brought into force in each European country. The positive experiences with concentration of jurisdiction in handling cases of parental child abductions have been widely recognised.*

**The length of legal procedures**

The length of legal procedures in parental child abduction cases differs greatly in Europe owing to the limitations of appeal. We asked lawyers in each European country how many instances of appeal are available in child abduction cases. In 11 countries a parent can appeal to more than one instance. The length of the procedure is important in order to avoid long delays causing legal uncertainty for the parents and the children. The European Commission has encouraged the Hague Special Commission to introduce limits to the grounds of appeal. The Hague Abduction Convention 1980 requires expeditious proceedings to avoid delay in the return of the child. Experience shows that the appeal cases in Hague cases can cause long delays from up to 18 months and sometimes even more than two to three years. Half of the respondents stated that the court procedures took less than 6 months.

**Conclusion.**

There is no consistency in the length of the legal procedures regarding international parental child abduction cases. The average time in 50% of the European countries is between 6 months and two years, and sometimes even three years or more.

**Recommendation.**

*A limit should be introduced to the number of levels to which appeal can be made against the court decision of a Hague return application in order to bring about a swift return of the child. The General Assembly argued that when the case has been adjudicated by a judge and in second instance by a court of appeal, sufficient guarantee has been granted that the case has been reviewed properly.*

**The 1980 Hague Abduction convention**

61 % of the respondents stated that in 50% of their cases the court ordered the return of the child. The grounds of refusal were in more than 50% on the basis of the 'grave risk for the well-being of the child' and the fact that the child was not 'settled in its new environment'. The human rights issues were only raised by the lawyers in 4% of the cases. The reason to refuse the return of the child was in 25% of the cases the fact that the caring parent and the sibling would be separated and the safe return of the caring parent was not possible.

In the majority of the cases, an appeal on grounds of refusal was not successful. One third of the lawyers stated that appeal had not been successful at all. 40% of the lawyers mentioned that in



25% of their cases the appeal was successful and a return order denied. The remaining lawyers had successfully appealed in more than 50% of their cases.

The opinion of the lawyers regarding the application of the grounds of refusal differed greatly. The majority of the respondents were satisfied with the grounds of refusal as they apply in their country. Respondents from Bulgaria, the Netherlands and Sweden indicated that the grounds of refusal should be applied less restrictively. Respondents from Italy, Spain, Luxembourg, Latvia, Belgium and France did indicate that the grounds of refusal should be applied more restrictively.

### **The best interest of the child**

The reactions of the respondents differed. The Hague Abduction Convention does not determine what 'the best interest of the child' might be other than returning to the habitual residence. The lawyers who stated that the best interest of the child is not sufficiently taken into account indicated that, due to the fact that the judges interpret the 1980 Hague Abduction Convention restrictively the voice of the child is not taken into consideration. The respondent stated that the child does not have a legal representative in the court proceedings and therefore the child's interests are not taken into account. Lawyers in Bulgaria, Croatia, Cyprus, France, Greece, Hungary, Portugal, Romania and Slovakia did think that in their country the best interests of the child are sufficiently taken into account.

In those cases where the lawyers were familiar with the 1996 Hague Child Protection convention, the question was posed whether they had ever used the convention in an international child abduction case. 77% of the respondents were familiar with the 1996 Hague Child Protection Convention and 41% of them had used the convention in international child abduction cases. In Germany and in the Netherlands, the 1996 Hague Child Protection Convention was applied the most by lawyers in court procedures. Followed by lawyers in Latvia, Denmark, Italy and the United Kingdom. In other European countries it was used sometimes.

*The General Assembly concluded that as a result of the 1996 Hague Child Protection Convention, lawyers, judges and also mediators are under an increased obligation to acquire knowledge of foreign law regarding the acquisition of parental responsibility.*

### **The voice of the child**

Two important questions regarding the involvement of the child in a child abduction court procedure were posed; 1. Is the voice of the child heard during an international child abduction court proceedings in the cases you dealt with? And 2. From what particular age the lawyer thinks the child should be heard. The majority of the lawyers, 76%, indicated that the voice of the child is heard during court procedures as long as the child has reached a particular age. What that particular age is differs among the lawyers. Between 10 and 12 years of age is widely accepted. Lawyers from Germany, the United Kingdom and the Netherlands state that younger children can be heard. In Germany children as from 3 years are heard.

### **Conclusion.**

The Hague convention and Brussels II regulation the hearing of the child plays in 76% of the European countries an important role in court but only when the child has a certain age and

maturity, mostly from 12 years of age. Fact is that the majority of the children who are taken by their parent are between 0 and 8 years of age. That means that the majority of the abducted children is not heard.

*Recommendation*

*During the workshop on the issue of the voice of the child, the lawyers recommended that the child either be heard by the judge, a special CAFCASS officer or a specially trained child psychologist, or should be represented by a guardian ad litem. The judge should follow a special training in how the child should be heard.*

*In the EU lawyers are in favour of hearing the child by people who are deemed apt to do so according to the legal culture of their country, this can be for example a trained judge, a welfare officer or a child psychologist.*

**The Brussels II Bis Regulation**

In regard to the application of the Brussels II bis Regulation several questions were posed.

1. What do you advise parents in International Child Abduction cases.
2. Have you ever had any problems concerning enforcement without ex equator of return and access orders (art. 40,41,42)?
3. Are you aware of the overrule procedures under Brussels II bis Regulation (Article 11 (8)) ? and
4. Have you heard about the possibility of direct judicial communications of Article 11, (6,7), 15 (6) and 55 (c). Brussels II bis regulation?

From the answers, it is clear that in general a court procedure, in regard of the Brussels II-bis Regulation for the return of the child is seen as a provisional measure. Most respondents find it necessary to litigate additionally in the country of the habitual residence It is to be noted that 70% of the lawyers recommend the left-behind parent to start both a court procedure for the return of the child in the country to which the child has been taken as well as a court procedure with respect to the parental responsibilities in the country of habitual residence. Half of the respondents indicated that they encountered problems with the enforcement of return or access orders. Almost 20% of the respondents who indicated they were familiar with the working of the Brussels II-bis Regulation were not aware of the overrule procedure under Article 11. One third of the respondents had never heard about the possibilities of direct judicial communications.

**Conclusion**

One-third of the lawyers have insufficient knowledge of the working of the Brussels II-bis Regulation and have not heard about the possibilities of direct judicial communications. The majority of the lawyers recommended the left-behind parent to start both a court procedure for the return of the child in the country to which the child has been taken, as well as a court procedure with respect to the parental responsibilities in the country of habitual residence. The lawyer of the parent who has taken the child is often advises to commence proceedings in order to gain sole

parental responsibility, which can lead to a race-to-court.

### **Recommendations**

*The time limits of Art. 11(3) of Brussels II-bis need to be clarified. In any event they should apply to a) the time taken to issues court proceedings; b) the time taken for the first instance proceedings to be concluded; c) The time taken for appeals to be concluded. Ideally, timing should also cover the enforcement process. Separate times should be specified for each of the above stages.*

*The added value of the overrule procedure contained in Art. 11(6)-(8) of the Brussels II-bis regulation is highly controversial. The current overrule procedure should be improved in order to achieve the principles of mutual trust and cooperation. There should be more practical guidance as to the completion of the certificates used in the Brussels II-bis regulation in order to avoid misunderstanding and delay. Increase the knowledge and teach lawyers about the application of Brussels II-bis in cross border family matters in the countries involved when at the same time, a court procedure in a Hague child abduction case, is proceeding.*

### **The enforcement of the return order**

To obtain a good impression of the way a return order is enforced, the following questions were asked

1. Which authority is responsible for the enforcement of the return order?
2. Can you request the judge to determine how the return of the child should be organised?
- 3, In what percentage of international child abductions cases that you have dealt with has the child actually returned or been returned after the judicial decision ordering the return of the child?

Lawyers working in the same country provided inconsistent answers when pointing out which authority is responsible for the enforcement of the return order. The majority indicated that the police and the Central Authority are responsible. Others stated that the public prosecutor or the judge issues the enforcement of the return order. According to the answers of the respondents in 19 of 27 countries national law is available as an enforcement instrument

Lawyers in 19 of the 27 European countries indicated that one may request a judge to determine how the return of the child should be organised. In 6 countries one may not request a judge to determine how the return of the child should be organised. This was stated by lawyers from Bulgaria, Denmark, Latvia, Poland, Romania and Slovakia. In Austria and Sweden it could not be determined how the return of the child should be organised. More then 50% of lawyers did indicated that in the child abduction cases they handled 75% of the children were returned. 26% of the lawyers experienced that in fewer than 25% of the cases the child was returned voluntarily after the return order was issued. Lawyers from Bulgaria, Austria, Croatia, Denmark, Greece, Hungary, Luxembourg and Poland indicated that children in their countries in the majority of the cases they have dealt with did not return voluntarily after the judicial decision ordering the return of the child.

## Conclusion

The results of the survey revealed that not all lawyers know who is responsible for enforcing the return order when a parent does not return the child voluntarily. When the judge has ordered the return of the child and the abducting parent does not respond to the requests, the enforcement of the return order is in approximately 40 % of the cases not implemented

### **Recommendation**

*More knowledge about who is responsible for returning the child in each European country when the parent is not collaborating is necessary in order to execute the court order. When the return order is enforced a special protocol is recommended. In the protocol rules can be stated about how the well being of the child can be assured and when the enforcement has to be implemented. The role of the police, what they wear, the involvement of youth care or a child psychologist during the action is described on order to cause as less stress for the child as possible.*

*The General Assembly state:*

*After a decision for return, a child should be granted a reasonable time prior to the enforcement of the decision. The amount of time was debated. The remark was made in relation to stress full police actions where the child was taken from the parent without having the possibility to take personal belongings and saying goodbye.*

## Relocation proceedings

50% of the respondents have experience in commencing legal proceedings in order to achieve an international relocation. Countries where relocation proceedings are regularly pursued by lawyers for parents who want to move legally with their children are the United Kingdom, the Netherlands, Spain and Italy. Also in Belgium and Germany parents often request the judge permission to move.

We asked the lawyers who represented a parent in a relocation case what the average duration is of a relocation proceeding starting from the moment the petition is submitted at the court until the final judgement. The majority stated that the average duration of a relocation proceeding is between six months and one year.

## Conclusion

In the majority of the European countries relocation proceedings are not well known. In the countries where relocation requests are submitted to the judges the proceedings take between six months and one year. A relocation proceeding is ruled under the national law but has international consequences.

**Recommendation**

*In all States it should be possible to permit a child's relocation to another state. In determining whether to permit relocation, the child's welfare should be a primary consideration and there should be no presumption for or against relocation. If relocation is permitted the court should make clear provision for the child's continues contact with the left behind parent.*

**Central Authority (CA)**

The Central Authorities (CA) play an important role in a child abduction procedure. Their role differs and is laid down in the national law of each country describing their competences. We asked the lawyers if they were familiar with the existence and the role of the CA in their country and what the role of the CA is when dealing with an parental child abduction to a non-convention states.

A majority of the lawyers did mention that the CA plays a role in localising the child and providing information. More then 50% stated that the CA is responsible for enforcing the return order, 10% did not know what the role of the CA is.

In regard to the role of the CA in child abductions to non-convention states their role differs per country according to the lawyers. 40% stated that the CA will contact the relevant embassy or consulate, or will contact the ministry of foreign affair, 27% indicated that the CA did not have jurisdiction to take steps and 30% mentioned that the CA has a role to play is seeking an amicable solution or offer mediation

**Conclusion**

Although the general rule is known to 90% of the lawyers, the specific role of the CA is not widely known. 70% did not know that the CA in their country offers an amicable solution to the parents involved in a parental child abduction case. The CA is not obliged to organise cross border mediation, but has to bring about an amicable resolution. Article 7(c) 1980 Hague Abduction Convention specifies that the Central Authority shall take all appropriate measures to secure the voluntary return of the child or to bring about an amicable resolution of issues. The role of the CA in issues related to non Conventional States was not clear to everyone.

**Recommendation**

*As the CA can play an important role in providing provisions to the left-behind parent, such as translating vital documents, legal aid and cross-border mediation or other means of amicable solutions. It is important that each CA communicates their specific range of duties and responsibilities to the public and lawyers in particular more profoundly.*

## **Criminal Offence**

50% of the respondents used criminal prosecutions to ensure the return of the child.

Almost 80% of them advised the left-behind parent to file a report with the police in case of international child abduction. The majority indicated that in fewer than 25% of the cases they have dealt with the abducting parent was prosecuted after a police report had been filled. The answers of the respondents from the same country regarding how often the abducting parent was prosecuted after a police report had been filed differed.

As parents have the tendency to go to the police immediately after they realise that their child has been taken to a Hague Abduction Convention state by the other parent, often two legal procedures will be commenced; one criminal and one civil procedure on the basis of the 1980 Hague Abduction Convention. When the parent wishes to prosecute the abducting parent, this can have consequences for the safe return of that parent later in the procedure. In the civil procedure the judge who rules that the child has to return to the habitual residence often speaks of the fact that the old situation should be restored.

First of all we asked the respondents, whether international parental child abduction is a criminal offence in their country. The second question was what is the maximum custodial sentence for international parental child abduction? The lawyers were divided about the fact if an parental child abduction is a criminal offence in all cases or under certain circumstances. Lawyers from the same county gave different answers. Respondents from 4 countries stated that parental child abduction is not criminal offence in their jurisdiction. It is a fact that a parental child abduction is not a criminal offence in most Eastern European countries (Poland, Bulgaria, Croatia).

Lawyers from Luxembourg and Malta also stated that it is not a criminal offence in their respective countries. The maximum custodial sentence for an international parental child abduction varies between a few days to more then 10 years. In the United Kingdom, the average penalty is 3 to 4 years. In The Netherlands, Italy and Spain lawyers mentioned many different sentences related to their own experience. Most sentences were between 0 and 5 years. It is known that in the Netherlands a sentence of more then nine years has been given for a parental child abduction to a non conventional state. As the delict is continuing, the parent is not released.

## **Conclusion.**

The experiences of the respondents with the prosecution of abducting parents vary greatly per respondent. There is little consistency in bringing actions against abducting parents by the prosecution. The issue whether parents should put imprisoned for abducting their own child is debateable. Only when the prosecutor engages in tracing and arrests the parent who took the child, who is often the caring parent, is not able to return safely.

The side-effect is that after the judge has ordered the return of the child in a civil procedure, the parent who took the child oftentimes is unable to not return to the habitual residence without the danger of being imprisoned. In that case, the child will be handed over to the other parent although that is not the intention of the Hague Abduction Convention. The family lawyers who represent parents in (civil) court do not have enough knowledge about criminal law, nor do the judges who rule in a 1980 Hague Abduction Convention cases.

**Recommendations**

*Police and prosecutors in Europe should be more aware of the consequences of issuing an arrest in a parental child abduction cases. When the parent and child went missing, tracing is important to establish where a civil procedure under the 1980 Hague convention should take place. Parents who took the children to a non-convention state will, when confronted with the fact that they are traced, do not return with the child voluntarily.*

*The General Assembly recommended;*

*Cooperation should be encouraged between criminal and civil law authorities in order to ensure that criminal proceeding do not hamper the safe return of the child and the abduction parent. In regard to this the General Assembly stressed that returning a child to a specific country should be separated from who will care of the child, which is an issue in the main procedures.*

**Legal aid**

Is legal aid available in every European country? We asked the lawyers if they were familiar with the Article 28 procedure of the 1980 Hague abduction convention. If they were familiar with the Article 50 of the Brussels II bis regulation about European Legal aid and if they have worked on basis of European legal aid. According to the majority of the respondents in 22 of the 27 countries their country provides legal aid for parents in international parental child abduction cases. Lawyers from Cyprus and Slovakia said their country does not provide legal aid in parental child abduction cases. 70% of the respondents were familiar with the article 26 procedure and 57% was familiar with the Article 50 procedure of the Brussels II bis regulation. 20% of the lawyers stated that they have worked on basis of legal aid.

**Conclusion.**

It is obvious that the legal aid system in Europe is not widely known. The majority of the lawyers, 80% does not work on the basis of legal aid although it should be offered when the parent does comply with the criteria. Lawyers are not obliged to work on the basis of legal aid what means that they do not mention it to the parent. The compensation is often low in regard to the amount of work.

**Recommendation**

*In forming a European network of specialised lawyers on international parental child abductions, it would be desirable to inform parents of those lawyers who work on the basis of legal aid. The rules concerning European legal aid can be published on the website of the Central Authorities (e.g., in the Netherlands, the request forms can be downloaded from [www.kinderontvoering.org](http://www.kinderontvoering.org) or [www.childabductioncenter.org](http://www.childabductioncenter.org)). The legal aid board in every European country should assign a special officer who can help citizens to apply for legal aid in another European country.*

## Cross border mediation

The Guide to Good Practice on Mediation, published by the Permanent Bureau of the Hague Conference on Private International Law, promotes good practices in cross border mediation cases that fall within the scope of the 1980 Hague Abduction Convention. As mediation or reaching an amicable solution is one of the methods to solve an international parental child abduction, questions were posed on mediation in general and cross-border mediation in particular. On the basis of the answers provided, lawyers in 21 of the 27 countries were aware that mediation is available in their country. Cross-border mediation aimed at resolving high emotional family conflicts in particular in cross-border international parental child abduction cases, is available in 8 of the 27 countries; Belgium, Bulgaria, France Germany, Ireland, Luxembourg, The Netherlands and the United Kingdom. Respondents from the Czech Republic, Latvia, Lithuania and Spain provided inconsistent. When these two categories are combined, it is clear that cross-border family mediation would appear to be available in 14 of the 27 countries (i.e., almost 50%).

We asked the respondents to provide their reasoning to recommend cross-border family mediation to their clients, and if so in which circumstances did they recommended participation. The majority of the lawyers, 92% would recommend cross-border family mediation. They had either good experiences, or believed that mediation will reach a better solution than the court proceedings and stated that it is in the best interest of the child. A minority of the lawyers stated that they feared that their clients would lose the court proceedings and, therefore, saw mediation as a last resort. The reason why they advised not to proceed for mediation was in cases where mediation between parents had been unsuccessful in the past, when there where violence or criminal aspects involved or when the client had a good chance of winning a case.

Regarding the legally enforceability of the memorandum of understanding without a court order confirming the mediation agreement, the majority stated that the memorandum of understanding cannot legally be enforced without a court order confirming the mediation agreement. This means that a special procedure must be followed in both countries concerned.

The lawyers were asked if they think it is necessary to have arrangements in the Brussels II-bis Regulation concerning cross-border family mediation. 75% of the respondents indicated that they are in favour of arrangements in the Brussels II-bis Regulation regarding cross-border family mediation. Regarding the cross-border mediations that took place, we asked which percentage of cross border-family mediations they had dealt with came to a final agreement, in which cases they think cross-border family mediation successful and if there has been in increase of cross border family mediation in abduction cases among their clients. Not all of the lawyers who filled in the questionnaire answered this question as they had not been involved in a cross border mediation. The 47 lawyers who answered did so as follows: 16 lawyers indicated that in none of the cases was a final agreement reached. The other 31 lawyers mentioned that in between 25% and 100% of their cases an agreement was established, of which 17 lawyers stated that a final agreement was reached in between 50% and 100% of the cases. The majority of the respondents who were involved in a cross-border mediation believed mediation to be successful if the communication or understanding between the parents and the contact between the parents and the child was restored. Other factors referred to include those cases where the parties reach a final agreement or a mirror agreement covering all the unresolved issues, or when the court procedures are no longer necessary. 15% did not know if there had been an increase in cross-border family mediations, 42.5% had not witnessed see an increase and 42.5 % had seen an increase in the number of mediations.



The last set of questions focussed on whether the lawyers would be interested in cooperation with cross-border family mediators and how they wanted to be involved in cross-border family mediation. 92% answered that they would be interested in cooperation with cross-border mediators. 75% wanted to be involved in the mediation procedure, of which more than 90% stated that wanted to assist in ensuring that the final agreement is legally binding, as well as providing legal advice with respect to the checking of the draft agreement. 14% of the respondent were as cross border family mediators/lawyers involved in a cross border mediation regarding a parental child abduction.

### **Conclusion**

Of the 133 lawyers from 27 countries who participated in the survey, 47 were actively involved in cross-border mediation. In 50% of the European countries, cross-border family mediation is accepted or recognised as means of reaching an amicable solution in an international parental child abduction case. Lawyers whose clients opt for mediation wish to be more involved in cross-border family mediation by providing legal advice and ensuring that the final agreement is legally binding.

### **Recommendation**

*It is recommended that cross-border mediation be introduced in all European Member States and become an integral part of the court procedure dealing with 1980 Hague Abduction Convention cases. The General Assembly stated that lawyers should be involved in the full process of cross-border mediation from the beginning to the end. Therefore, information about the working method, professional mediation organisations and well-trained mediators of cross-border family mediation is needed. Cross-border mediation should have a more explicit and specific placing in the Brussels II-bis Regulation with regard to international parental child abduction.*

### **The platform for legal professionals**

The number of international parental child abductions is on the rise. Therefore, more professional family experts on parental child abduction are needed throughout Europe. For this reason, the lawyers were asked if they would be interested in joining a platform of legal professionals dealing with cross-border family matters. 95.5% of the lawyers indicated that they would be interested in joining the platform for legal professionals dealing with cross-border family cases, of which 79% would like to provide input in the platform

### **Conclusion**

For the first time, family law lawyers who deal with international parental child abductions were brought together. Some of them met their colleagues for the first time, even when these lawyers came from the same country. On the third day of the conference, 70 lawyers were present to provide input for the foundation of a platform for Lawyers in Europe on Parental Child Abduction, i.e., LEPCA. The lawyers indicated that they would join a platform of legal professionals when

available. During the LEPCA conference, these lawyers also indicated that they wish to seek contact with professional cross-border family lawyers in their own country in order to create national associations. The long-term aim is to establish one umbrella organisation in Europe uniting the national cross-border family lawyers associations.

In order to improve the knowledge and skills of family law lawyers dealing with private international law and European regulations, it is necessary to organise workshops, webinars, provide databases, exchange case law and organise conferences on common issues. A network of lawyers can offer better support to the parents and children, and will in the future be better able to operate on a par with other professional networks such as the judicial network and the network of the Central Authorities.

*Recommendation.*

*The General Assembly recommended that future networks of legal professionals involved in international parental child abductions should be strengthened and promoted in order to improve cooperation and skills and encourage knowledge. Training in international family law should become part and parcel of training of family lawyers.*

### **3. The Survey**

#### **3.1 Background and rationale of the LEPCA project.**

The European Commission under the Civil Justice Program has granted the application of the International Child Abduction Center (Center IKO) in Hilversum, the Netherlands, regarding the organisation of the first European conference for family lawyers who represent parents in international parental child abduction cases, called Lawyers in Europe on Parental Child Abduction (LEPCA).

Partner in this project is Mediation bei internationalen Kindschaftskonflikten (MiKK) in Berlin, Germany. Associate Partner organisations are law firms in Belgium, France, Italy, Spain and the United Kingdom, and Non-Governmental Organisations in Bulgaria, Poland and Romania. In addition, Center IKO has established a network of specialised law firms and NGO's in many countries within the European Union.

The LEPCA Conference addresses on legal professionals who deal with the subject of international parental child abduction cases under the 1980 Hague Abduction Convention, the Brussels II bis Regulation and the 1996 Hague Child Protection Convention.

The LEPCA Conference focuses on bringing professionals together in order to exchange ideas, to learn from best practices and to create a platform of specialised international parental child abduction lawyers within the European Union.

Preliminary to the conference a questionnaire had been sent to family lawyers in all twenty-eight Member States of the European Union. The research focuses on jurisdiction, appeal, the 1980 Hague Abduction Convention, the Brussels II bis Regulation, the 1996 Hague Child Protection Convention, relocation, return orders, enforcement, criminal law and cross border family mediation.

The results gained from the questionnaire are valuable. They give an insight into the way international child abduction legislation is applied by lawyers in daily practice. The outcome of the research raises awareness on the importance of experienced international parental child abduction lawyers. The results of the questionnaire will be reflected in master classes. During the master classes knowledge and ideas will be exchanged and recommendations will be made. The outcome of the questionnaire and the conference will be published in a final report which will be presented to the European Commission.

#### **3.2 Target group and methodology**

For the LEPCA questionnaire we approached nearly thousand international family law lawyers from all twenty-eight current European Union Member States. The questionnaire was distributed in English. Lawyers from twenty-seven Member States participated in the questionnaire. No lawyers from Slovenia participated.

The total number of respondents is 166. Out of 166 respondents 133 respondents completed the questionnaire. The remaining 33 respondents have partially completed the questionnaire. Only the results of the completed questionnaires were processed.

The questionnaire focuses on the personal view of the lawyer. The results reflect the perceptions of the lawyers who participated in the questionnaire and are based on their opinion, knowledge and experience. This does not imply that the answers of the respondents, and therefore the results, reflect the actual legal situation within that country. We can only make statements about the opinions of the respondents who took part in this study.

When we mention the respondents from Bulgaria, Hungary, Ireland, Portugal and Slovakia, we refer to the sole participating respondent from that country.

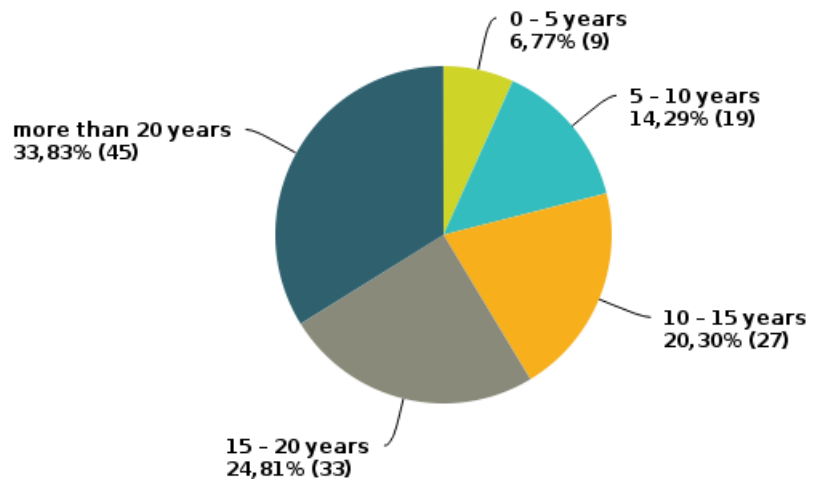
All 133 respondents have dealt with international child abduction cases. The 133 respondents are from:

Country	Number of respondents
Austria	2
Belgium	9
Bulgaria	1
Croatia	2
Cyprus	2
Czech Republic	2
Denmark	4
Estonia	2
Finland	4
France	2
Germany	9
Greece	3
Hungary	1
Ireland	1
Italy	15
Latvia	6
Lithuania	4
Luxembourg	2
Malta	2
Poland	1
Portugal	3
Romania	1
Slovakia	0
Slovenia	15
Spain	6
Sweden	15
The Netherlands	17
United Kingdom	
<b>133</b>	

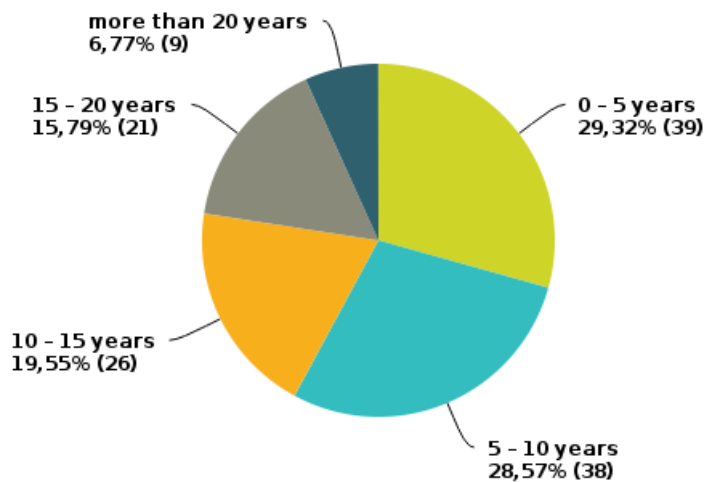
General results

As can be derived from chart 1, the majority of the respondents (45 of the 133) who participated in the questionnaire had been practising law for more than 20 years.

**Chart 1. How long have you been practising law?**



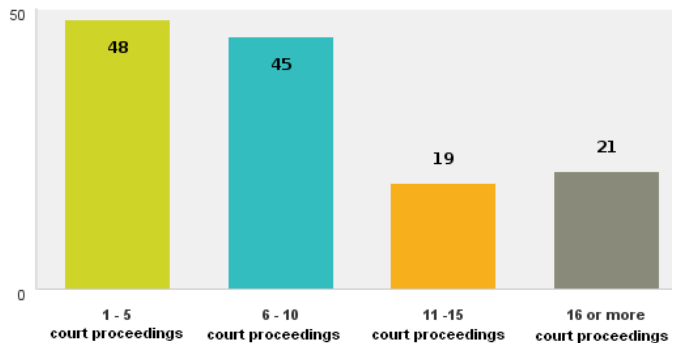
**Chart 2. How long have you been handling international child abduction cases?**



As can be derived from chart 2, 58% of the respondents (77 of the 133) who participated in the questionnaire had been handling international child abduction cases between zero and ten years.

As can be derived from chart 3, 84% of the respondents (112 of the 133) have conducted in the last five years less than 16 international child abduction court proceedings. Only 16% of the respondents (21 of the 133) have conducted in the last five years 16 or more court proceedings.

**Chart 3. How many international child abduction court proceedings have you conducted in the last five years?**



**Chart 4. Is there a certified association of family lawyers in your country?**

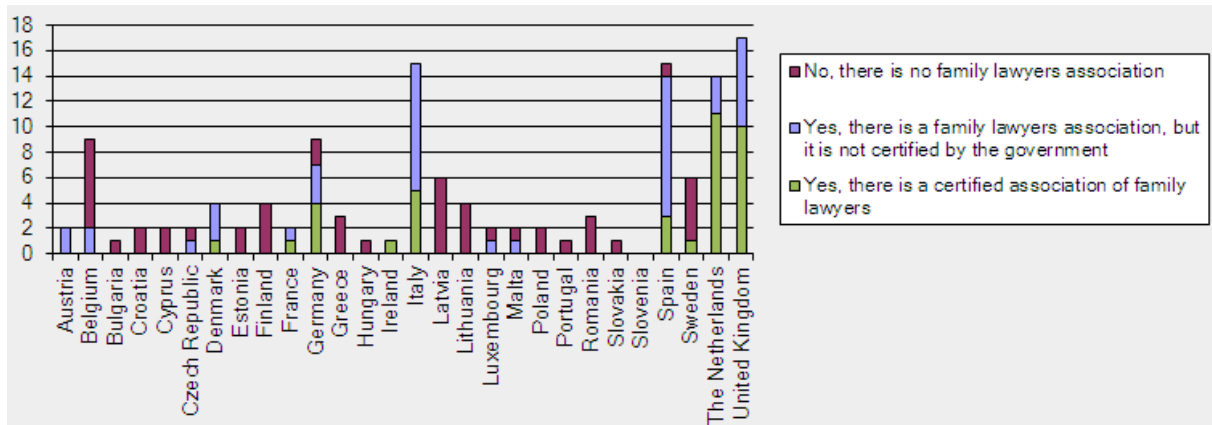
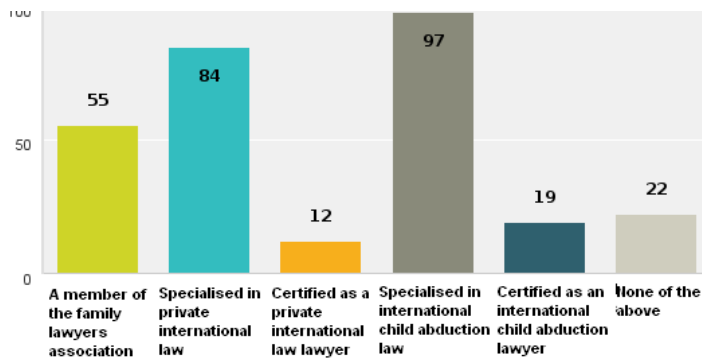


Chart 4 shows that the answers of the respondents do not provide a clear answer. The results show that in some countries it is uncertain whether their family lawyers association is certified. This is the case in Denmark, France, Germany, Italy, Spain, the Netherlands and the United Kingdom.

In some countries there were differences of opinion among the respondents in respect of the existence of a certified association. This is the case in Belgium, Czech Republic, Germany, Luxembourg, Malta, Spain and Sweden.

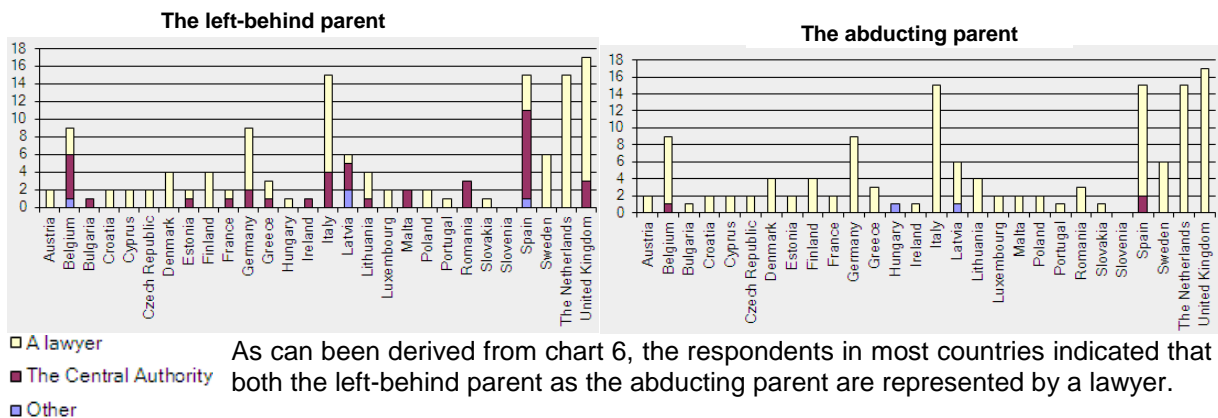
Among respondents who indicated that there is a certified association of family lawyers, in some countries there is no compliance which association is concerned.

**Chart 5. Which of the following is applicable to you?**



As can be derived from chart 5, almost 73% of the respondents (97 of the 133) indicated he or she is specialised in international child abduction law.

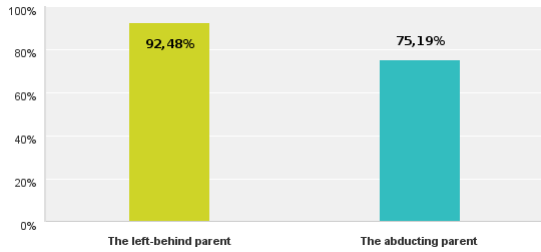
**Chart 6. Who represent the parties in legal proceedings before the competent judicial authority?**



As can be derived from chart 6, the respondents in most countries indicated that both the left-behind parent as the abducting parent are represented by a lawyer.

According to the majority of the respondents in Belgium (5 of the 9), Bulgaria (1 of the 1), Ireland (1 of the 1), Malta (2 of the 2), Romania (3 of the 3) and Spain (10 of the 15) the left-behind parent is in their country represented by the Central Authority.

**Chart 7. Whom have you represented in the legal proceedings in the past?**



**Chart 8. Are you familiar with the workings of the following international instruments?**

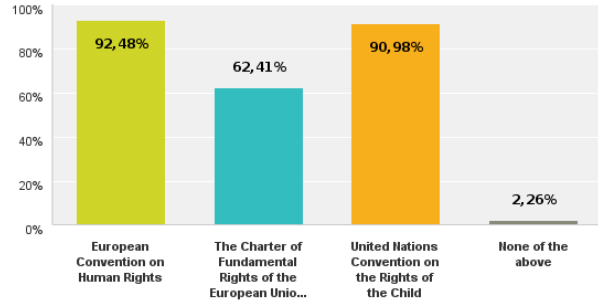
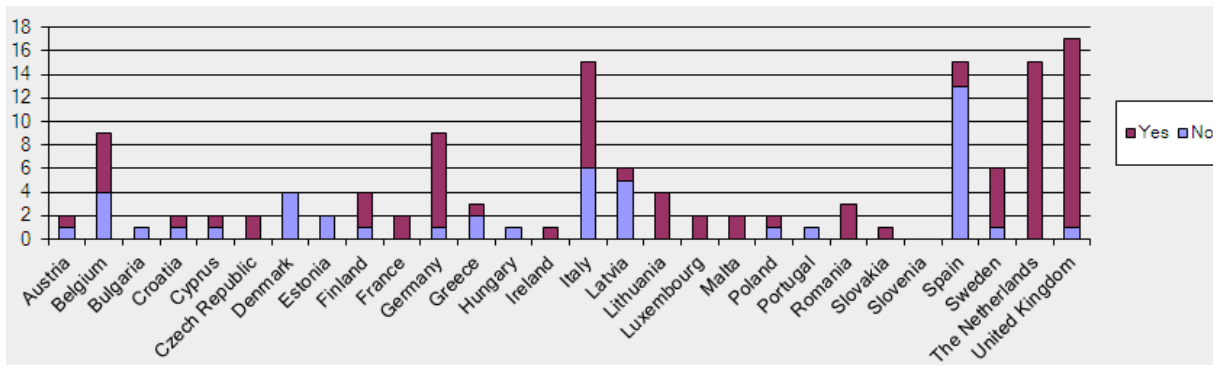


Chart 7 shows that the lawyers who participated in the questionnaire have more often represented a left-behind parent than an abducting parent.

### 3.3 Court proceedings

#### Results

**Chart 7. Is jurisdiction concentrated in international child abduction cases in your country?**

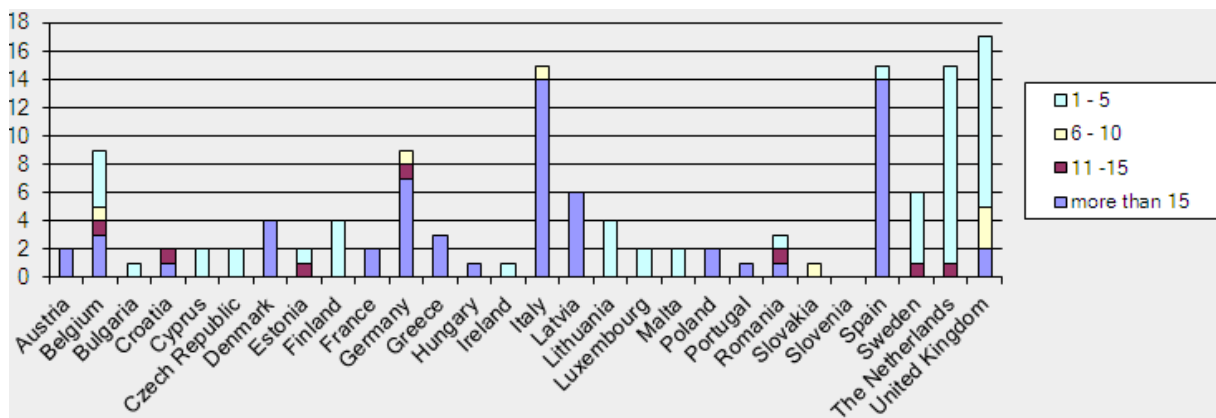


According to the majority of the respondents in 15 of the 27 countries jurisdiction is in their country concentrated in international child abductions cases. This is indicated by the respondents from Belgium, Czech Republic, Finland, France, Germany, Ireland, Italy, Lithuania, Luxembourg, Malta, Romania, Slovakia, Sweden, the Netherlands and the United Kingdom.

According to the majority of the respondents in 8 of the 27 countries jurisdiction is in their country not concentrated. This is indicated by the respondents from Bulgaria, Denmark, Estonia, Greece, Hungary, Latvia, Portugal and Spain.

With respect to 4 of the 27 countries, the respondents did not provide a clear answer regarding the question whether jurisdiction in their country is concentrated, since the opinion of the respondents were equally divided. This is the case in Austria, Croatia, Cyprus and Poland.<sup>1</sup>

**Chart 8. How many courts in your country have jurisdiction in international child abduction cases?**



According to the opinion of the respondents in 11 of the 27 countries more than 15 courts have jurisdiction in international child abduction cases. This is the case in Austria, Denmark, France, Germany, Greece, Hungary, Italy, Latvia, Poland, Portugal and Spain.

According to the opinion of the respondents in 11 of the 27 countries between one and five courts have jurisdiction in international child abduction cases.<sup>2</sup>

<sup>1</sup> Contrary conclusions may be caused by different interpretation of the word 'concentration'. Concentration could have been interpreted as concentration in one court or concentration in a limited number of courts.

<sup>2</sup> The number of courts who have jurisdiction to consider applications for return orders under the Convention should to be corrected to the size of the country; that adjustment is not included in the results.



Remark

The Fourth Special Commission concerning the 1980 Hague Abduction Convention made recommendations for the concentration of Hague return cases in a limited number of courts.<sup>3</sup> The more judicial or administrative authorities have jurisdiction, the more scattering of experience there will be among the judges concerned, and there will be less consistency of legal practice. The importance and desirability of concentrating jurisdiction in Hague return cases has been stressed and principal advantages are to be gained. The positive experiences have been widely recognised.

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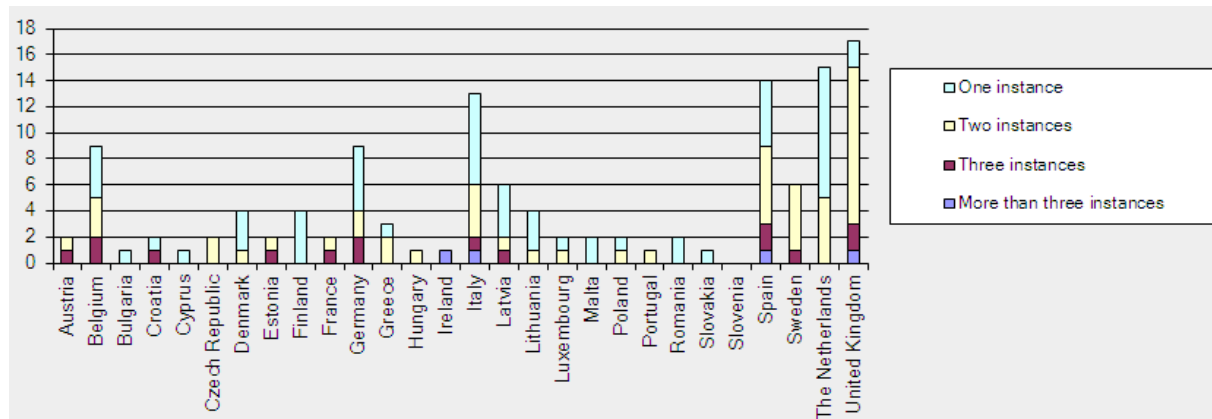
<sup>3</sup> Guide to Good Practice Part II on implementing Measures, p. 28

### 3.4 Appeal

#### Results

According to the respondents one can appeal in ruling in international child abduction cases in all twenty-seven countries.

**Chart 9. How many instances of appeal are available in child abduction cases in your country?**



As can be derived from chart 11, the majority of the respondents in 13 of the 27 countries indicated one can appeal only in one instance.<sup>4</sup> According to the respondents in 11 of the 27 countries, one can appeal in more than one instance.<sup>5</sup>

According to the opinion of the majority of the respondents in 18 of the 27 countries, appeal is not restricted to issues of law.

In 7 of the 27 countries appeal is in the opinion of the respondents restricted to issues of law. This is indicated by the respondents from Ireland (1 of the 1), Italy (8 of the 13), Portugal (1 of the 1), Slovakia (1 of the 1), Sweden (4 of the 6) and the United Kingdom (9 of the 17).

#### Conclusion

Limitation of appeal instances can be important to avoid long delays causing legal uncertainty for the child and its parents. However, limitation of appeal instances is not accomplished in all twenty-seven countries. Regardless the encouragement of the Special Commission to introduce limitations on the grounds of appeal.

The Convention requires expeditious proceedings to avoid delay in return. Experience has shown that the appeal process in Hague cases can cause long delays before a final determination of the matter. Provisions are recommended to limit the number of levels to which appeal can be made against a court decision on a Hague return application.<sup>6</sup>

<sup>4</sup> According to the relative majority of the respondents.

<sup>5</sup> According to the respondents in two instances in Czech Republic (2 of the 2), Greece (2 of the 3), Hungary (1 of the 1), Portugal (1 of the 1), Spain (6 of the 14), Sweden (5 of the 6) and the United Kingdom (12 of the 17). In Austria, Estonia and France in two or three instances (the answers of the respondents are equally divided). According to the respondent in Ireland you can appeal in more than three instances.

<sup>6</sup> Chapter 6 of the Guide to Good Practice on implementing Measures, p. 31.

### 3.5 1980 Hague Abduction Convention

#### Introduction

Almost 98% of the respondents (130 of the 133) are familiar with the working of the 1980 Hague Abduction Convention. Three respondents, one from Denmark, one from Italy and one from Spain, are not familiar with the working of the Convention.

Although all respondents indicated that they have dealt with international child abduction cases, three of them indicated that they are not familiar with the working of the 1980 Hague Abduction Convention.

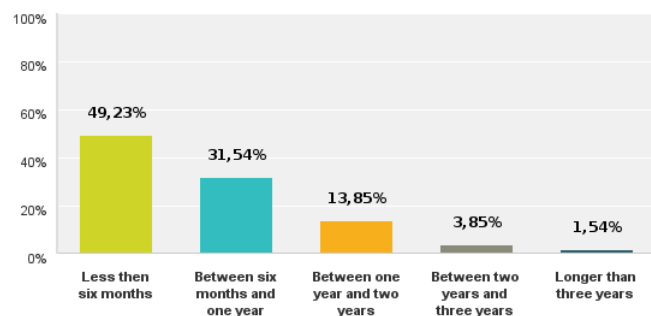
The following questions concerning the 1980 Hague Abduction Convention were not answered by the three respondents mentioned above because they were not familiar with the working of it. The total number of respondents is 130.

#### Average duration

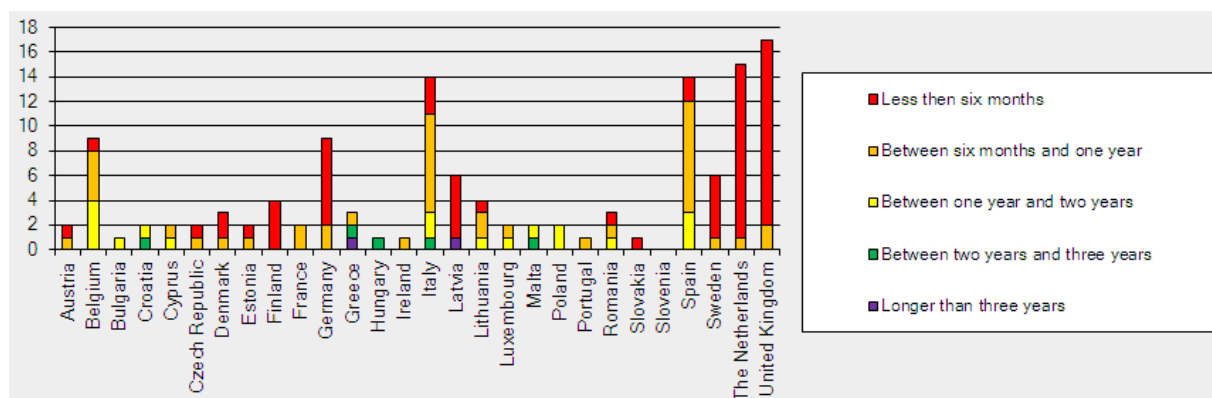
#### Result

As can be derived from chart 12, almost 50% of the respondents (64 of the 130) believe that the average duration of an international child abduction court proceeding is less than six months.

**Chart 10. What is the average duration of an international child abduction court proceeding in your country, starting from the moment the petition is submitted to the court until the final judgement?**



**Chart 11. What is the average duration of an international child abduction court proceeding in your country, starting from the moment the petition is submitted to the court until the final judgement?**



As can be derived from chart 13, respondents from the same country gave divergent opinions regarding the average duration of an international child abduction court proceeding in their country.

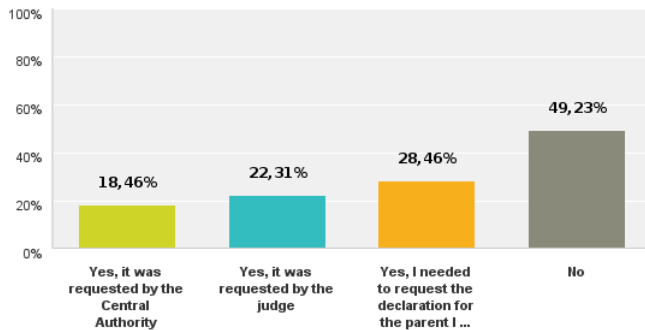
Conclusion

Respondents from the same country gave various answers. This indicates that the experiences of the respondents with international child abduction court proceedings vary widely. Different experiences may express the lack of strict timeframes in national law for the various steps to be taken in international child abduction court proceedings.

Recommendations had been made by the Special Commission. Emphasised is that expeditiousness is essential and the most expeditious procedures should be available. It is important to have strict timeframes. We encourage that national authorities implement these recommendations in their civil law system.

Article 15 declaration

**Chart 12. Have you ever dealt with an Article 15 declaration under the 1980 Hague Abduction Convention?**



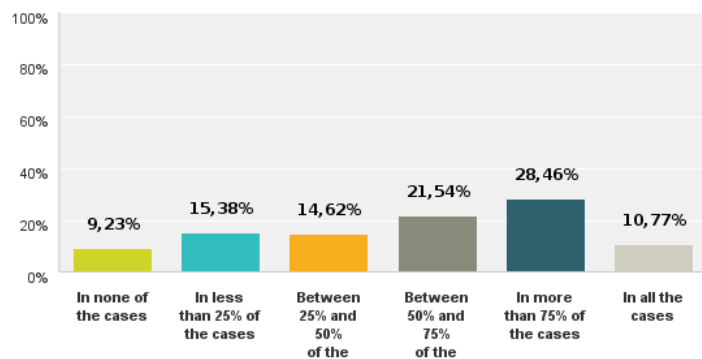
Almost 51% of the respondents (90 of the 130) have dealt with an Article 15 declaration.

Return order

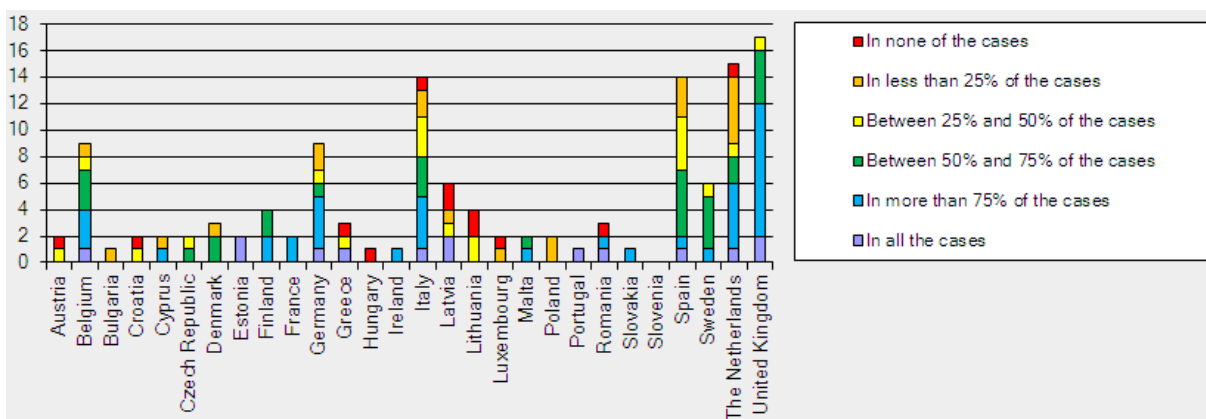
Result

As can be derived from chart 15, 61% of the respondents (79 of the 130) believe that in more than 50% of the cases they have dealt with, the court ordered the return of the child.

**Chart 13. In what percentage of international child abduction cases that you have dealt with did the court order the return of the child?**



**Chart 14. In what percentage of international child abduction cases that you have dealt with did the court order the return of the child?**



As can be derived from chart 16, there was a large diversity in the answers of the respondents from Belgium, Cyprus, Denmark, Germany, Greece, Italy, Latvia, Romania, Spain, the Netherlands and the United Kingdom. The percentage of return orders in the cases that the respondents have dealt with range from 0% to 100%. The different answers of the respondents from those countries are partly related to the fact that in most of the fore mentioned countries more respondents took part in the study, so more different experiences came forward.

### Conclusions

The results show that the experiences of the respondents with the amount of return orders ordered by the court, in the abduction cases they have dealt with, varied greatly.

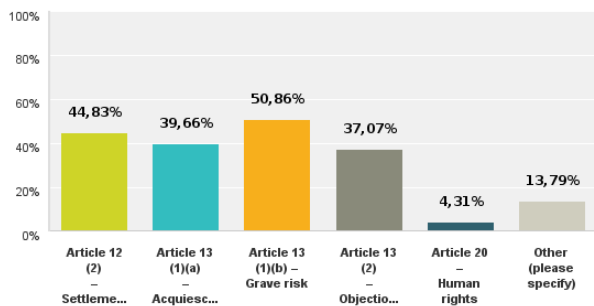
### Reasons of refusal

#### Result

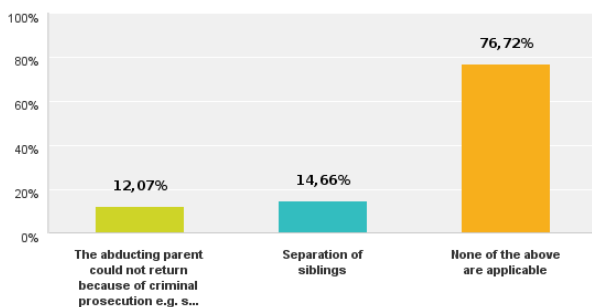
Chart 17 shows that almost 14% (16 of the 116) of the respondents indicated another option.

Article 3 of the 1980 Hague Abduction Convention was mentioned by 4 of the 16 respondents as another ground to refuse the return of the child.

**Chart 15. In the cases you have dealt with on which ground was the refusal to return the child most often based?**



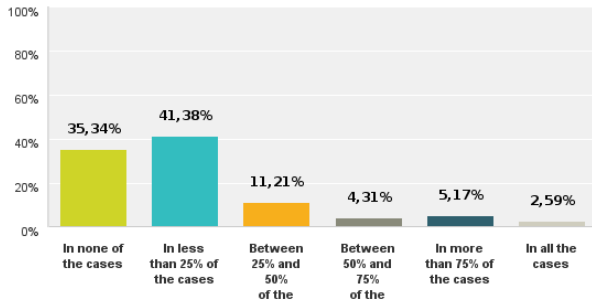
**Chart 16. Have you ever dealt with cases in which the judge refused to return the child due to the following factors i.e. safe return or separation of sibling?**



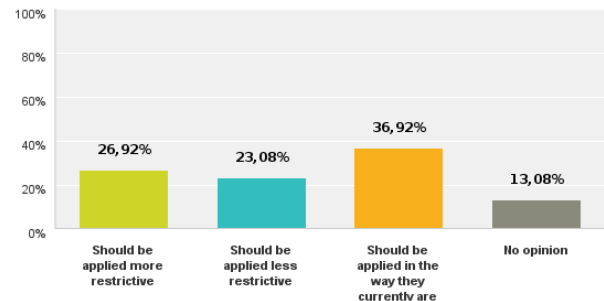
As can be derived from chart 18, 12% (14 of the 116 respondents) indicated that they have dealt with cases in which the return of the child was refused due to safe return of the abducting parent. In particular, in Austria (1 of the 2), France (2 of the 2) and Poland (1 of the 2) respondents have dealt with cases in which the return of the child was refused due to safe return.

Separation of siblings was mentioned as a reason of refusal to return the child by respondents from Belgium (2 of the 9), Bulgaria (1 of the 1), Cyprus (1 of the 2), Germany (2 of the 9), Italy (3 of the 15), Spain (1 of the 15), Sweden (1 of the 6), The Netherlands (1 of the 15) and the United Kingdom (1 of the 17).

**Chart 19. In what percentage of international child abduction cases you have dealt with was an appeal on the ground of refusal successful?**

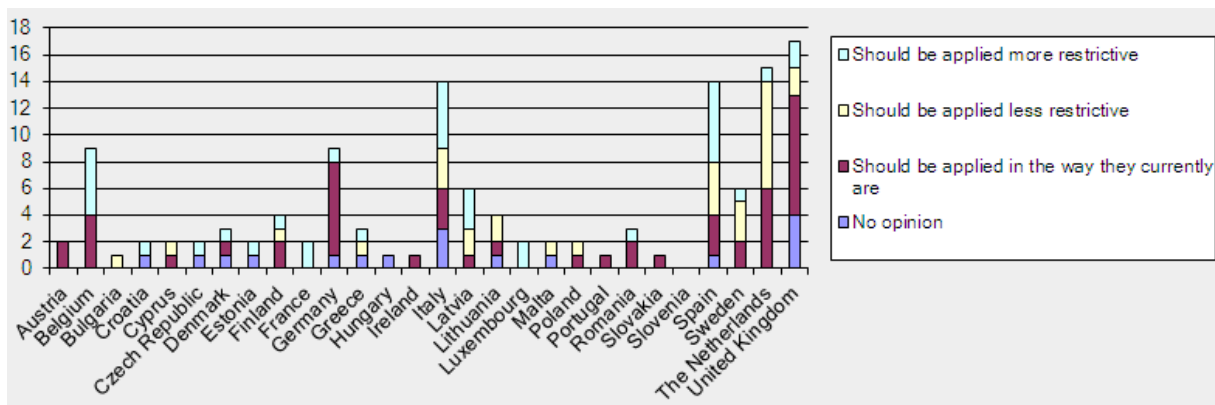


**Chart 20. What is your opinion with regard to the application of the grounds of refusal?**



As can be derived from chart 19, 77% of the respondents (89 of the 116) believe that in less than 25% of the cases an appeal on the grounds of refusal was successful.

**Chart 21. What is your opinion with regard to the application of the grounds of refusal? (Per country)**



As can be derived from chart 21, in 6 of the 27 countries the relative majority indicated that the grounds of refusal should be applied more restrictive. This is the case in Belgium (5 of the 9) France (2 of the 2), Italy (5 of the 14), Latvia (3 of the 6), Luxembourg (2 of the 2) and Spain (6 of the 14).

The majority of the respondents in Bulgaria (1 of the 1), Sweden (3 of the 6) and the Netherlands (8 of the 15) indicated that the grounds of refusal should be applied less restrictively.

In 8 of the 27 countries the relative majority indicated that the grounds of refusal should be applied the way they currently are. This is the case in Austria (2 of the 2), Finland (2 of the 4), Germany (7 of the 9), Ireland (1 of the 1), Portugal (1 of the 1), Romania (2 of the 3), Slovakia (1 of the 1) and the United Kingdom (9 of the 17). This could illustrate that the majority of the respondents in those countries are satisfied with the way the grounds of refusal are applied in their country.

The respondents do not share a general opinion with regard to the application of the grounds of refusal.

Conclusions

From the results came forward that 77% of the lawyers believed that in less than 25% of their cases an appeal on the grounds of refusal was successful. The perception of the respondents is in consistency with the findings from the statistical analysis of the applications made under the 1980 Hague Abduction Convention. 81% of all the appeal decisions of applications made in 2003 under the Hague Abduction Convention upheld first instance decisions.<sup>7</sup> Going into appeal is not very successful.

It should be taken into consideration that appeal instances in Hague return cases should be limited, because going into appeal is only successful in few cases. In the majority of the Hague cases the appeal process, as stated in chapter 3, only causes long delays in return. There is even less need for appeal when jurisdiction of Hague return cases is concentrated in a limited number of courts. Concentration of jurisdiction ensures specialisation and more expertise.

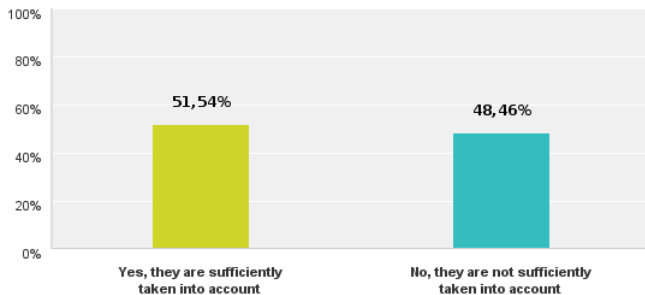
Article 3 of the 1980 Hague Abduction Convention was indicated as another ground of refusal besides the mentioned options. However, in case Article 3 is applicable the removal or retention of the child is not considered wrongful and therefore does not fall within the scope of the definition of child abduction. The question is if Article 3 is used more often to avoid application of article 13(1)(b) of the 1980 Hague Abduction Convention. *(note editor)*

Separation of siblings was also mentioned as a reason to refuse the return of the child. However, separation of siblings is not mentioned as a ground of refusal in the 1980 Hague Abduction Convention

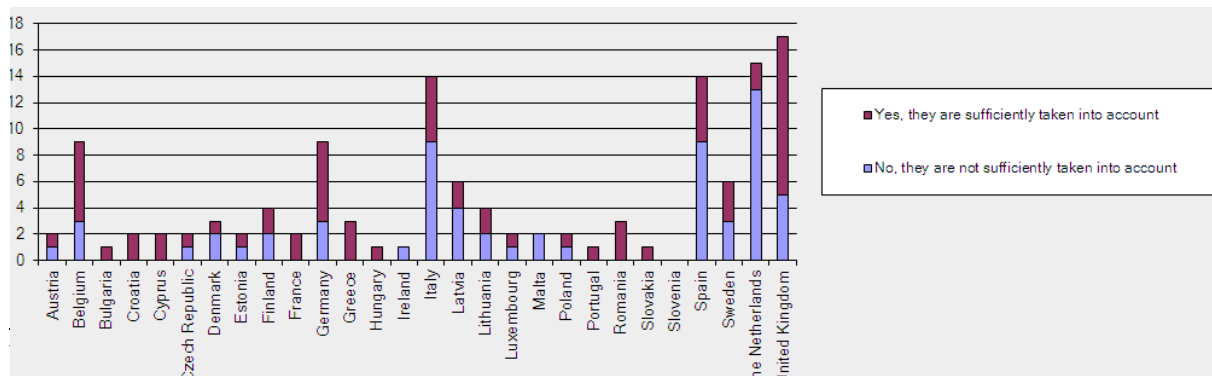
The best interests of the child

Result

**Chart 22. Do you think that the best interests of the child are currently sufficiently taken into account in international child abduction court proceedings?**



**Chart 23. Do you think that the best interests of the child are currently sufficiently taken into account in international child abduction court proceedings?**



international child abduction. Preliminary Document No 3, Part 1, of October 2006 for the attention of the fifth meeting of the Special Commission to review the operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction of October – November 2006.

As can be derived from chart 23, all respondents in Bulgaria (1), Croatia (1), Cyprus (2), France (2), Greece (3), Hungary (1), Portugal (1), Romania (3) and Slovakia (1) were in the opinion that the best interests of the child were sufficiently taken into account. The majority of the respondents in Belgium (6 of the 9), Germany (6 of the 9) and the United Kingdom (12 of the 17), were in the opinion that the best interests of the child were sufficiently taken into account.

The majority of the respondents in Denmark (2 of the 3), Ireland (1 of the 1), Italy (9 of the 14), Latvia (4 of the 6), Malta (2 of the 2), Spain (9 of the 14) and the Netherlands (13 of the 15) were in the opinion that the best interests of the child were not sufficiently taken into account.

The answers of the respondents in respect to why they thought that the best interest of the child are not sufficiently taken into account, varied widely. A lot of respondents indicated that, due to the fact that judges interpret the 1980 Hague Abduction Convention restrictively, the voice of the child is not taken into consideration. The respondents also mentioned that the child does not have a legal representative in the court proceedings, and therefore, the child's interests are not sufficiently taken into account. Chapter 9 goes into more detail on the voice of the child.

### Conclusion

The opinions of the respondents regarding the best interests of the child were divided. The 1980 Hague Abduction Convention does not protect the best interests of the child in a particular case, but protects the interests of children in general. Who the lawyer is representing may play an important role in his perception on the consideration of the best interests of the child. This should be taken into consideration.



### 3.6 Brussels II bis Regulation

#### Introduction

The results indicated that 91% of the respondents (121 of the 133) are familiar with the working of the Brussels II bis Regulation. Twelve respondents, who are from Belgium (1), Croatia (1), Cyprus (1), Denmark (4), Germany (1), Hungary (1), Italy (1), Romania (1) and United Kingdom (1), indicated that they were not familiar with the working of the Regulation.

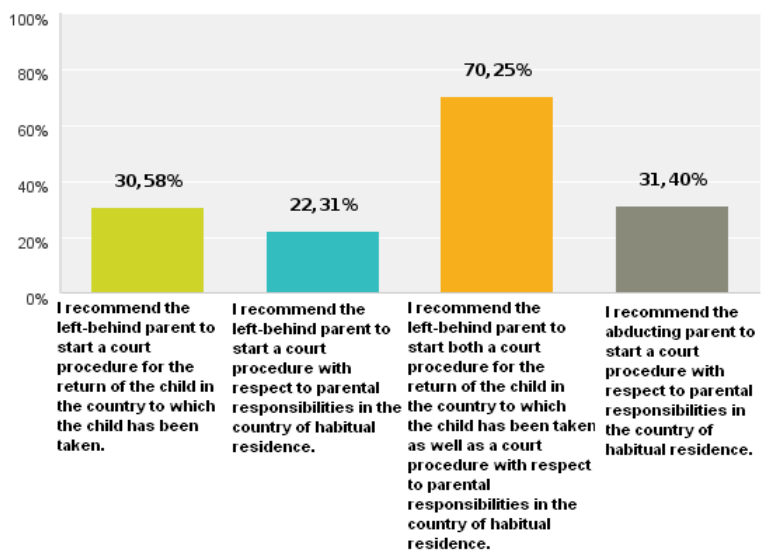
The following questions concerning Brussels II bis Regulation were not answered by the twelve respondents because they were not familiar with the working of it, the total number of respondents is 121.

#### Result

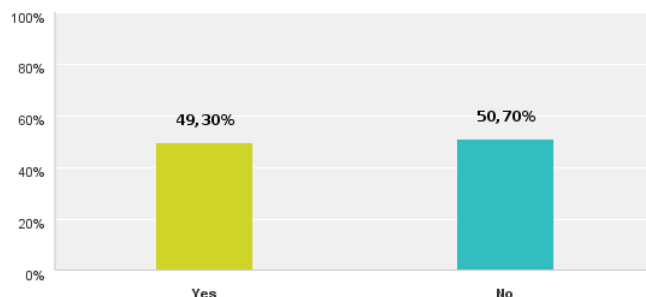
As can be derived from chart 24, a substantial majority of the respondents (85 of the 121) advises the left-behind parent to start a court procedure in the country of habitual residence and in the country to which the child has been taken.

The majority of the respondents in Belgium, Finland, Germany, Italy, Latvia, Malta, Spain, Sweden, the Netherlands and the United Kingdom recommend the left-behind parent to start both a court procedure for the return of the child in the country to which the child has been taken, as well as a court procedure with respect to the parental responsibilities in the country of habitual residence.

**Chart 24. What do you advise parents in international child abduction cases?**



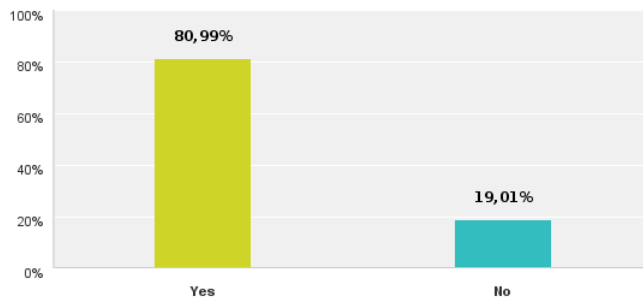
**Chart 25. Have you ever had any problems concerning enforcement without exequatur of return and access orders (Article 40, 41 and 42)?**



As can be derived from chart 25, 51% of the respondents (36 of the 71) indicated they never had problems with enforcement of return and access orders without exequatur (Article 40, 41 and 42 Brussels II bis Regulation).

49% of the respondents (35 of the 71) indicated they have had problems with enforcement of return and access orders without exequatur. In particular, respondents from Spain (9 of the 11) indicated they encountered problems.

**Chart 26. Are you aware of the overrule procedures under Brussels II bis Regulation (Article 11 (8))?**



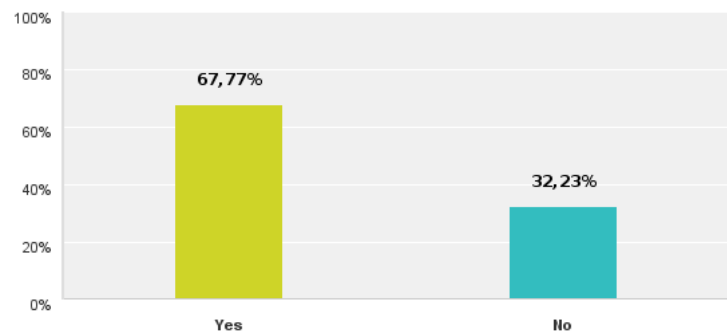
As can be derived from chart 26, 81% of the respondents (98 of the 121) indicated they were aware of the overrule procedures.

19% of the respondents (23 of the 121) who indicated that they were familiar with the working of the Brussels II bis Regulation were not aware of the overrule procedure under Article 11 (8) Brussels II bis. Those respondents are from Belgium (2), Estonia

(1), Finland (1), Germany (2), Italy (4), Latvia (1), Lithuania (2), Luxembourg (1), Romania (1), Spain (2), Sweden (2), the Netherlands (1) and the United Kingdom (3).

**Chart 27. Have you heard about the possibility of direct judicial communications of Article 11 (6)(7), 15 (6) and 55 (c) Brussels II bis Regulation?**

Thirty-nine of the 121 respondents have never heard about the possibilities of direct judicial communications. Those respondents are from Austria (1), Belgium (2), Croatia (1), Estonia (1), Finland (1), Italy (4), Latvia (2), Lithuania (2), Poland (1), Romania (1), Spain (4), Sweden (4), the Netherlands (7) and the United Kingdom (8).



## Conclusion

From the results may be derived that in the opinion of the majority of the respondents a court procedure for the return of the child is seen as a provisional measure. Most respondents find it necessary to litigate additionally in the country of habitual residence.

Half of the respondents indicated that they have had problems with enforcement of return orders. This supports the findings in the two research projects from 2006, which also identified problems with regard to the enforcement of Hague return orders.<sup>8</sup>

It is important that lawyers who are dealing with international child abduction cases are aware of the possibilities of the overrule procedure under the Brussels II bis Regulation. The overrule procedure implicates that a judgement of a court having jurisdiction under the Brussels II bis Regulation which requires the return of a child shall be enforceable in another Member State. The overrule procedure could be of great importance.

32% of the respondents who indicated they were familiar with the working of the Brussels II bis Regulation have not heard about the possibilities of direct judicial communications.

<sup>8</sup> See A. Schulz, "Enforcement of Orders made under the 1980 Convention – A Comparative Legal Study", Prel. Doc. No 6 of October 2006 for the attention of the Fifth Meeting of the Special Commission to review the operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (The Hague, 30 October – 9 November 2006) (available at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings") and . Lowe, S. Patterson and K. Horosova, "Enforcement of Orders made under the 1980 Convention – An Empirical Study", commissioned by the Permanent Bureau and sponsored by the International Centre for Missing and Exploited Children, Info. Doc. No 1 for the attention of the Fifth Meeting of the Special Commission to review the operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (The Hague, 30 October – 9 November 2006) (available at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings" and "Preliminary Documents") and the subsequent "Good Practice Report on Enforcement Under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction", 2007, by the same authors (available at < www.icmec.org >).

### 3.7 1996 Hague Child Protection Convention

#### Introduction

Of the 133 respondents 121 have answered the questions about the 1996 Hague Child Protection Convention.

#### Result

77% of the respondents (93 of the 121) were familiar with the working of the 1996 Hague Child Protection Convention.

Twenty-eight respondents were not familiar with the working of the Convention. Those respondents were from Belgium (6), Czech Republic (1), Estonia (1), Finland (1), Germany (1), Italy (8), Lithuania (1), Poland (1), Spain (4), Sweden (1) and the United Kingdom (3).

Of the 28 of the 121 respondents who were not familiar with the working of the 1996 Hague Child Protection Convention, 14 respondents were from two countries (Belgium and Italy) who have not ratified the 1996 Hague Child Protection Convention.

41% of the respondents (43 of the 105) who were familiar with the working of the Convention had used the Convention in international child abduction cases.

**Chart 28. Have you ever used the 1996 Hague Child Protection Convention in international child abduction cases? Yes**

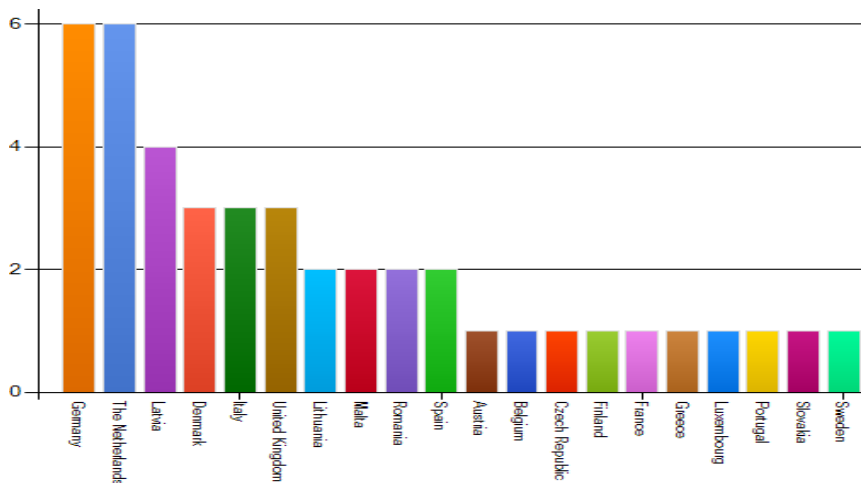


Chart 28 shows the amount of respondents and the countries where the respondents are from who had used the 1996 Hague Child Protection Convention in international child abduction cases.

### 3.8 Relocation proceedings

#### Introduction

50% of the respondents (67 of the 133) had started legal proceedings for international relocation. The questions concerning relocation were answered by the respondents who indicated they have experience with starting legal proceedings for international relocation. The total number of respondents is 67.

#### Result

**Chart 29. What is the average duration of a relocation proceeding, starting from the moment the petition is submitted at the court until the final judgement?**

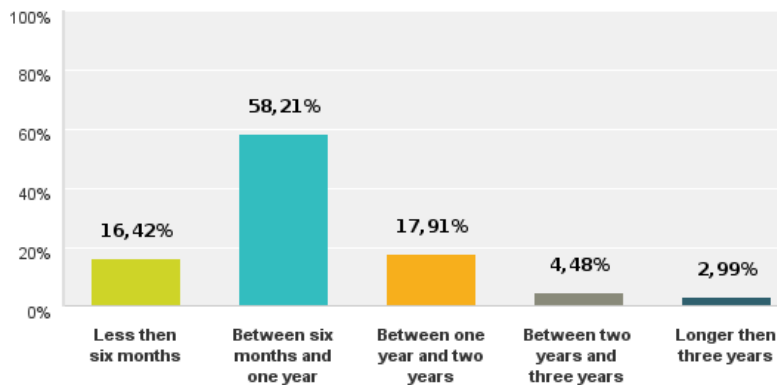
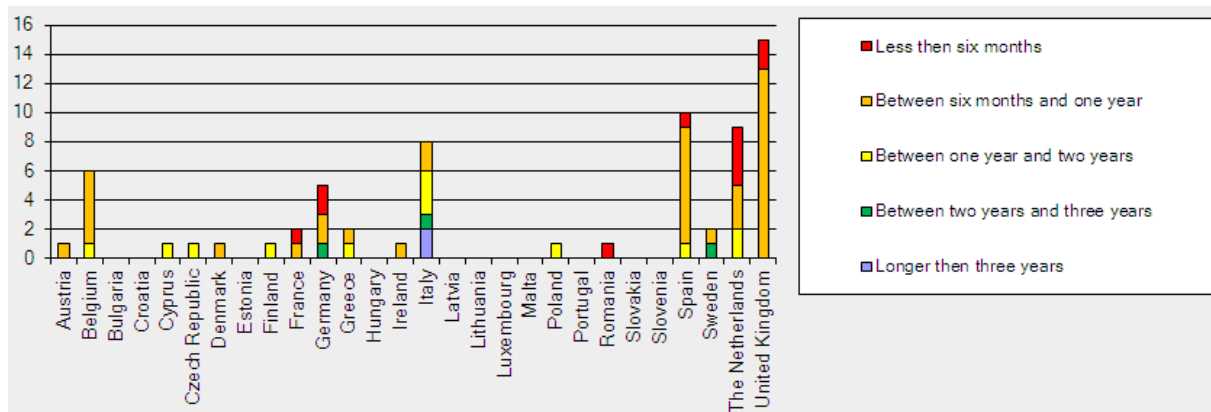


Chart 29 shows that the majority of the respondents (39 of the 67) believe that the average duration of a relocation proceeding is between six months and one year.

**Chart 30. What is the average duration of a relocation proceeding, starting from the moment the petition is submitted at the court until the final judgement?**



As can be derived from chart 30, the majority of the respondents in Belgium, Spain and the United Kingdom indicated that the average duration of a relocation proceeding in their country is between six months and one year.

#### Conclusion

According to the majority of the respondents, the average duration of a relocation proceeding takes in general between six months and one year. By starting a relocation proceeding an international child abduction may be prevented. It is important that parents are well informed about the possibilities of starting a relocation procedure in the country of habitual residence.

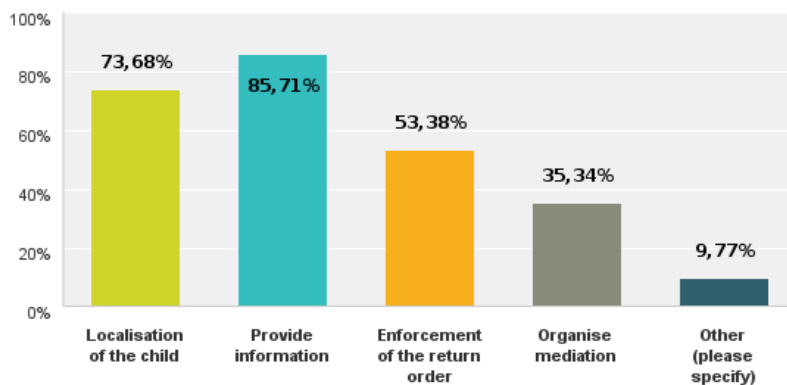
We recommend the development of an international legal instrument regarding relocation.

### 3.9 Central Authority

#### 8.1 Result

95% of the respondents (126 of the 133) indicated that they have had contact with their Central Authority.

**Chart 31. Which of the following is a role of the Central Authority?**



Almost 10% of the respondents (13 of the 133) mentioned another role of the Central Authority. A respondent from Czech Republic indicated guardian of the child in court proceedings as a role of the Central Authority.

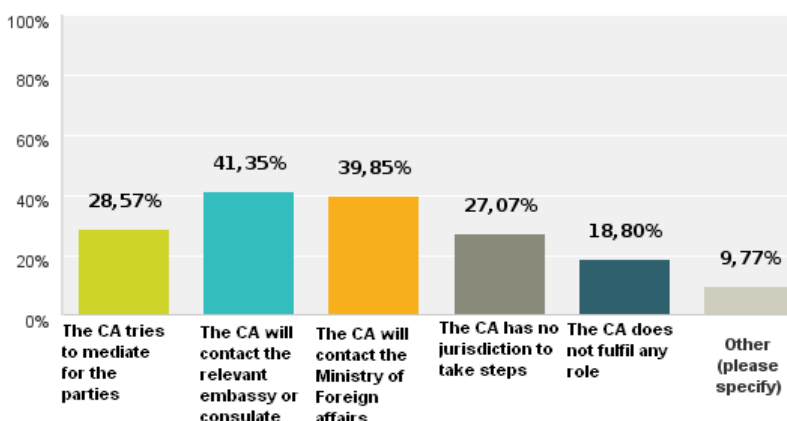
From the answers of the respondents can be derived that in most countries (15 of the 27) the Central Authority fulfils at least all four mentioned roles.

As stated by the respondents, the Central Authority in Croatia (2 of the 2), Czech Republic (2 of the 2), France (2 of the 2), Lithuania (4 of the 4), Portugal (1 of the 1) and Slovakia (1 of the 1) does, in their opinion, not fulfil a role in the enforcement of the return order.

According to the respondents, the Central Authority in Bulgaria (1 of the 1), Cyprus (2 of the 2), Ireland (1 of the 1), Luxembourg (2 of the 2), Malta (2 of the 2), Poland (2 of the 2) and Portugal (1 of the 1) does, in their opinion, not organise mediation.

In the opinion of the respondent from Ireland and Portugal their Central Authority does not fulfil a role in the location of the child.

**Chart 32. What role does the Central Authority fulfil in international child abduction cases to non-convention states?**



As can be derived from chart 32, 10% of the respondents (13 of the 133) indicated another option then the mentioned options. Ten of the thirteen respondents indicated that they did not know what role the Central Authority fulfils in case of an abduction to non-convention states.

## Conclusion

It is understandable that some respondents indicated that the Central Authority in their country does not organise mediation. Article 7 under c of the 1980 Hague Abduction Convention specifies that the Central Authority shall take all appropriate measures to secure the voluntary return of the child or to bring about an amicable resolution of the issues. Nonetheless, the Convention does not oblige the Central Authority to organise mediation, it expresses to bring about an amicable resolution. Moreover, not organising mediation is different from not informing about mediation.

The answers of the respondents do not provide a clear view on the role of their Central Authority, in abduction cases towards non-convention states. The answers are equally divided over the multiple-choice options. Within one country no option strikes above. The results show that the respondents are not aware of the role of the Central Authority in international child abduction cases to non-convention cases.

### 3.10 The child

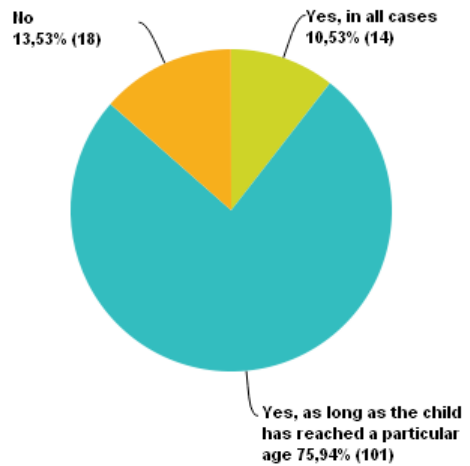
**Chart 33. Is the voice of the child heard during international child abduction court proceedings?**

#### Result

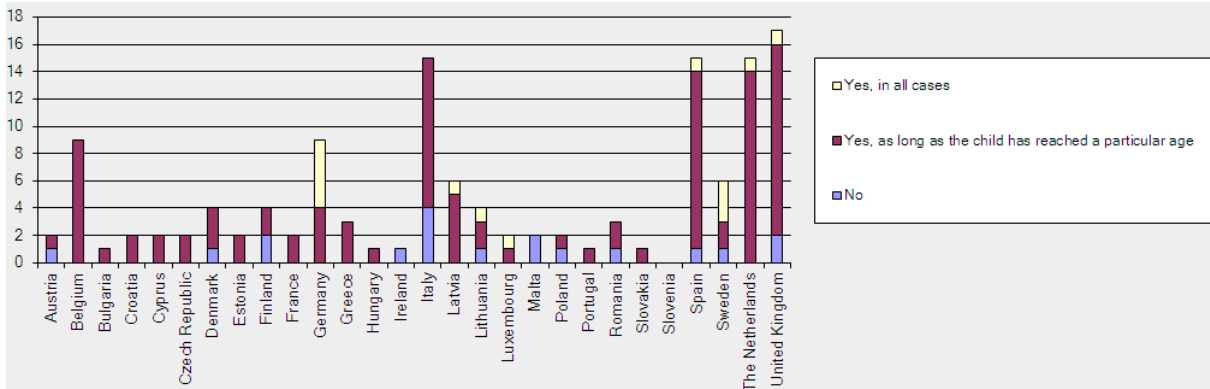
As can be derived from chart 33, 76% of the respondents indicated that the voice of the child is heard in general during international child abduction court proceedings as long as the child has reached a particular age.

Chart 34 shows that only in Germany the majority of the respondents (5 of the 9) indicated that the child is heard in all international child abduction court proceedings.

The respondents from Ireland (1 of the 1) and Malta (2 of the 2) indicated that the voice of the child is not heard during international child abduction court proceedings in their country.

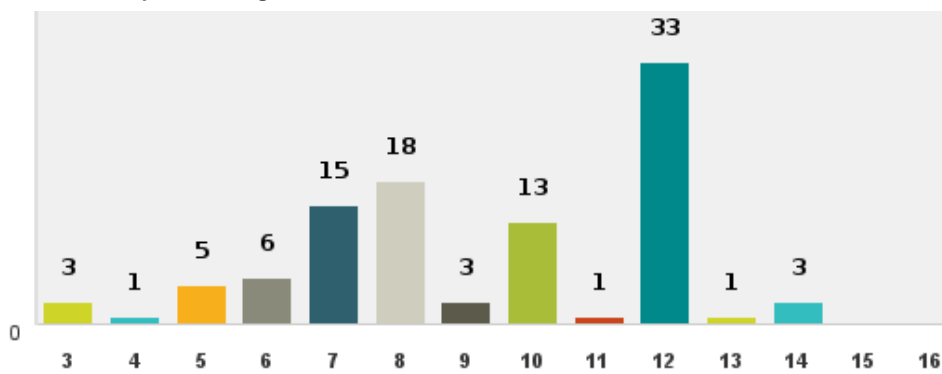


**Chart 34. Is the voice of the child heard during international child abduction court proceedings?**



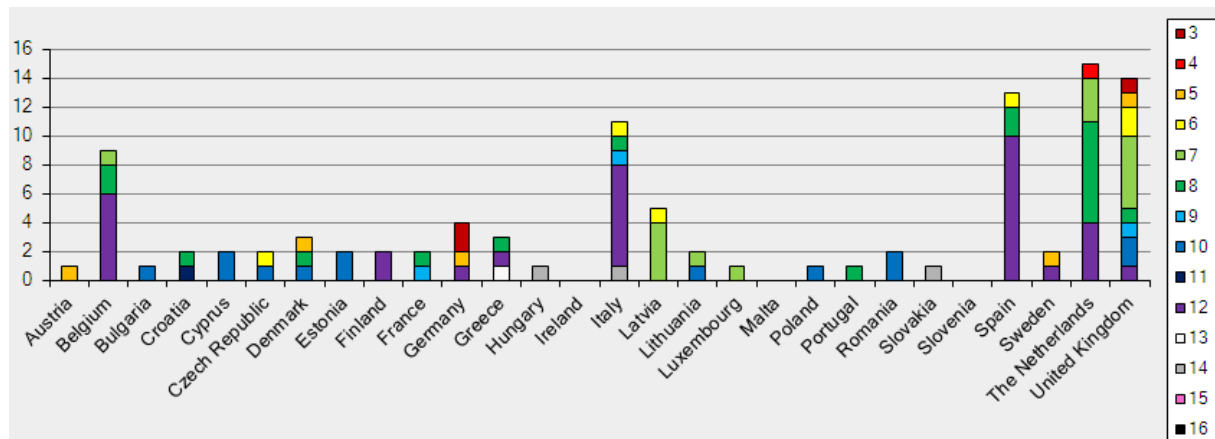
The next question is only answered by those respondents who indicated that the voice of the child is heard during international child abduction court proceedings. The total number of respondents is 102.

**Chart 35. What particular age should the child have reached?**



As can be derived from chart 35, 33 of the 102 respondents indicated that the child should have reached the age of twelve to be heard during international child abduction court proceedings.

Chart 36. What particular age should the child have reached?



As can be derived from chart 36, two of the four respondents from Germany indicated that the child should have reached the age of three. Also one respondent from the United Kingdom indicated the age of three.

The age of seven is indicated by the majority of the respondent from Latvia (4 of the 5) and the relative majority of the respondents from the United Kingdom (5 of the 14).

According to the relative majority of the respondents from the Netherlands (7 of the 15) the child should have reached the age of eight.

The respondents in Bulgaria (1 of the 1), Cyprus (2 of the 2), Estonia (2 of the 2), Poland (1 of the 2) and Romania (2 of the 3) indicated that the child should have reached the age of 10.

According to the majority of the respondents in Belgium (6 of the 9), Finland (2 of the 2), Italy (7 of the 11) and Spain (10 of the 13) the child should have reached the age of twelve.

The age of fourteen is indicated by the only respondent from Hungary, one respondent from Italy and the only respondent from Slovakia.

### Conclusion

There were various answers of respondents from different Member States regarding the hearing of the child. Article 11 paragraph 2 Brussels II bis Regulation lays down rules for the hearing of the child. It states: *'When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity.'* Consideration 19 of the preamble of the Brussels II bis Regulation states that *"The hearing of the child plays an important role in the application of this Regulation, although this instrument is not intended to modify national procedures applicable.* From this consideration can be derived that the national rules regarding the hearing of the child stay applicable besides the Brussels II bis Regulation. Therefore the diversity of answers of respondents from Member States of the European Union can be explained.

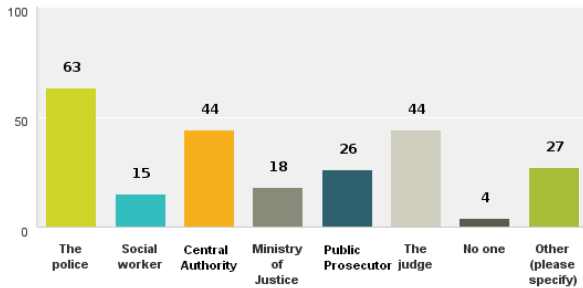
Advised is that The Brussels II bis Regulation should pay attention to the application of the hearing rules applicable in the country of enforcement of the return order.



### 3.11 The enforcement of the return order

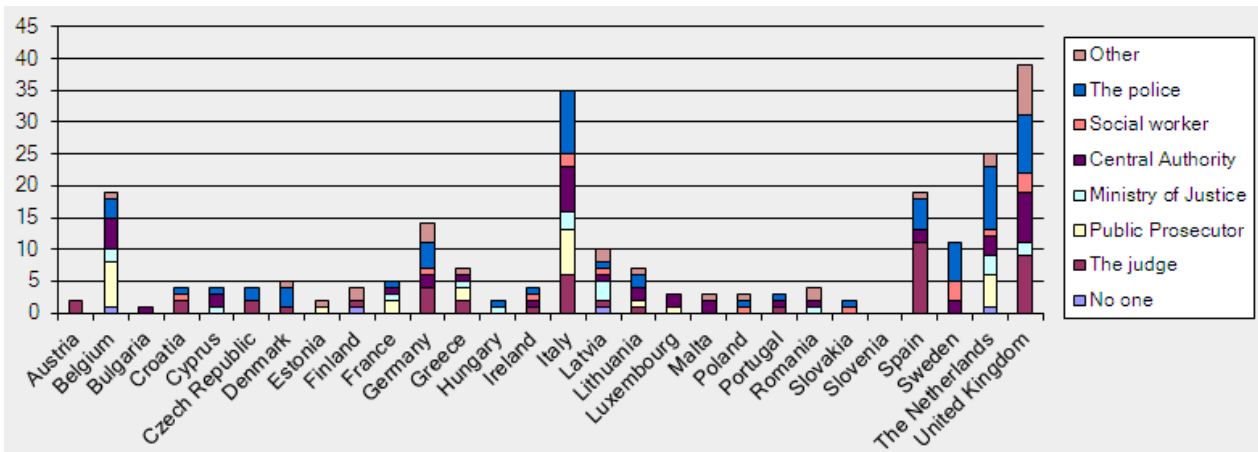
#### Result

**Chart 37. Which authority is responsible for the enforcement of the return order?**

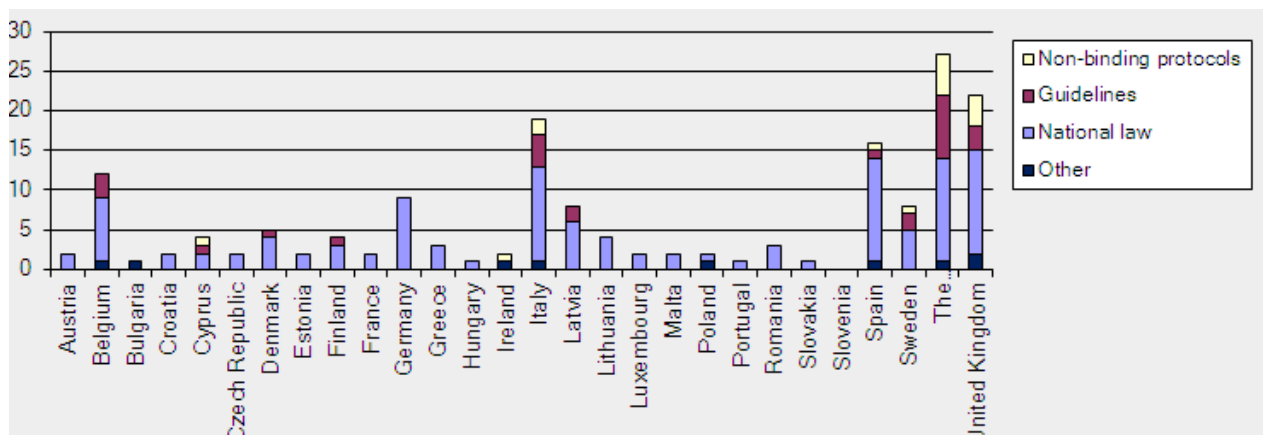


As can be derived from chart 37, 20% (27 of the 133) of the respondents indicated another authority as the responsible authority for the enforcement of the return order. The bailiff was mentioned by 15 of the 27 respondents as another responsible authority.

**Chart 38. Which authority is responsible for the enforcement of the return order?**

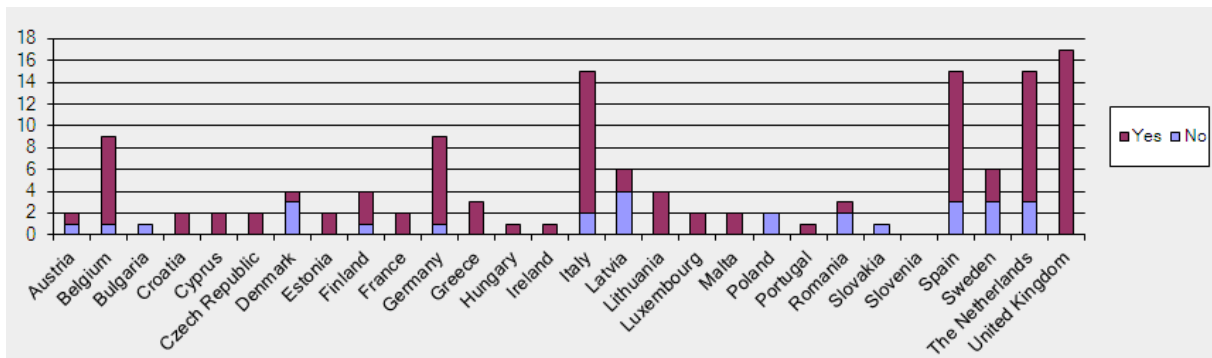


**Chart 39. Which of the following enforcement instrument are available in your country in international child abduction court proceedings?**



According to the respondents in 25 of the 27 countries national law is available as an enforcement instrument.

**Chart 40. Can you request the judge to determine how the return of the child should be organised?**

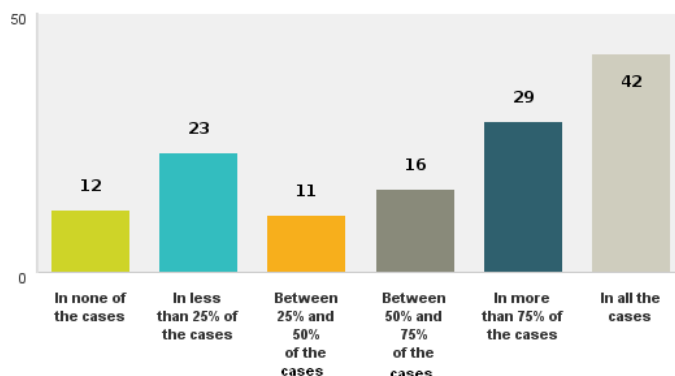


As can be derived from chart 40, the majority of the respondents in 19 of the 27 countries indicated one may request a judge to determine how the return of the child should be organised.

According to the majority of the respondents in 6 of the 27 countries, one may not request a judge to determine how the return of the child should be organised. This is the case in Bulgaria (1 of the 1), Denmark (3 of the 4), Latvia (4 of the 6), Poland (2 of the 2), Romania (2 of the 3) and Slovakia (1 of the 1).

Regarding Austria and Sweden, it is uncertain whether one can request a judge to determine how the return of the child should be organised because the answers of the respondents were equally divided.

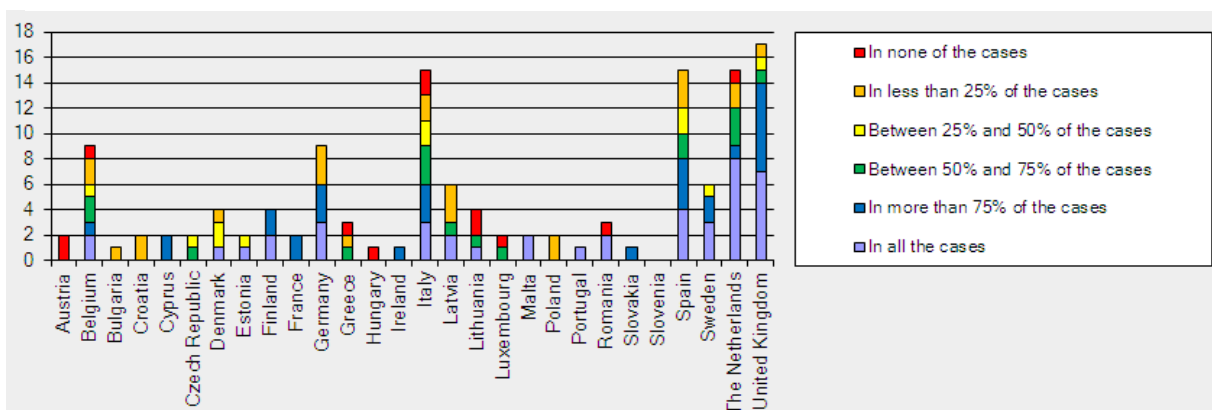
**Chart 41. In what percentage of international child abduction cases that you have dealt with has the child actually returned or been returned after the judicial decision ordering the return of the child?**



53% of the respondents (71 of the 133) state that in more than 75% of the cases they have dealt with the child returned.

26% of the respondents (35 of the 133) state that in less than 25% of the cases they have dealt with the child returned.

**Chart 42. In what percentage of international child abduction cases that you have dealt with has the child actually returned or been returned after the judicial decision ordering the return of the child?**



As can be derived from chart 42 the respondents from Austria, Bulgaria, Croatia, Denmark, Greece, Hungary, Luxembourg and Poland indicated that children in their countries, in the majority of the cases they have dealt with, did not return after the judicial decision ordering the return of the child.<sup>9</sup>

### Conclusion

The results do not provide a clear answer regarding which authority is responsible for the enforcement of the return order. Respondents from the same country gave different answers. In addition, various combinations of responsible authorities came forward from the answers of the respondents. The results show that not all respondents have knowledge about which authority is responsible for the enforcement of the return order in their country. In some European countries the enforcement of the return order of the child, issued by a judge after the court procedure is not implemented

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<sup>9</sup> In the fore mentioned countries only few respondents participated in the questionnaire, so no general conclusions can be made.

### 3.12 Criminal offence

#### Result

Chart 43. Is international child abduction a criminal offence in your country?

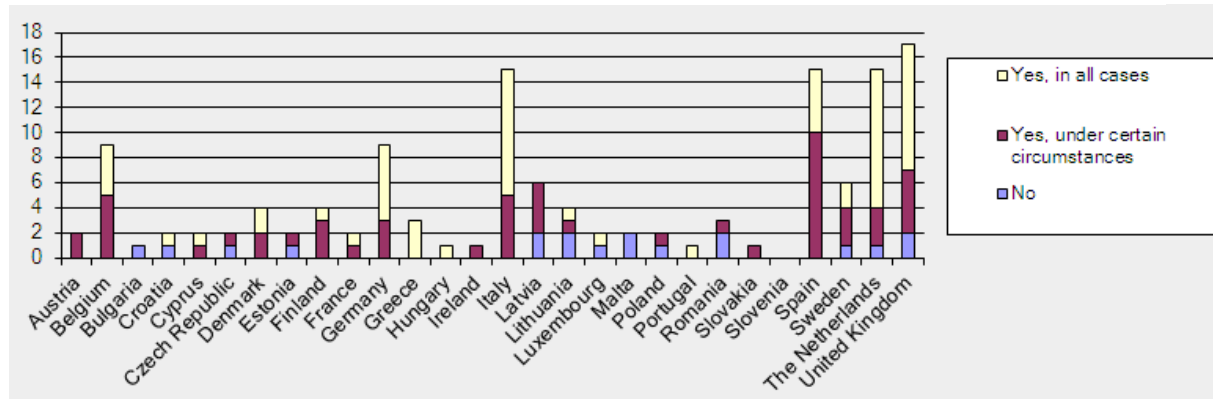


Chart 43 shows that, in the opinion (of the majority) of the respondents in 7 of the 27 countries, international child abduction a criminal offence is in all cases. This is indicated by the respondent(s) in Germany (6 of the 9), Greece (3 of the 3), Hungary (1 of the 1), Italy (10 of the 15), Portugal (1 of the 1), the Netherlands (11 of the 15) and the United Kingdom (10 of the 17).

In the opinion (of the majority) of the respondents in 8 of the 27 countries, is international child abduction a criminal offence under certain circumstances. This is indicated by the (majority) respondent(s) in Austria (2 of the 2), Belgium (5 of the 9), Finland (3 of the 4), Ireland (1 of the 1), Latvia (4 of the 6), Slovakia (1 of the 1), Spain (10 of the 15) and Sweden (3 of the 6).

In the opinion (of the majority) of the respondent in 4 of the 27 countries international child abduction is not a criminal offence. This is indicated by the (majority of the) respondent(s) in Bulgaria (1 of the 1), Lithuania (2 of the 4), Malta (2 of the 2) and Romania (2 of the 3).

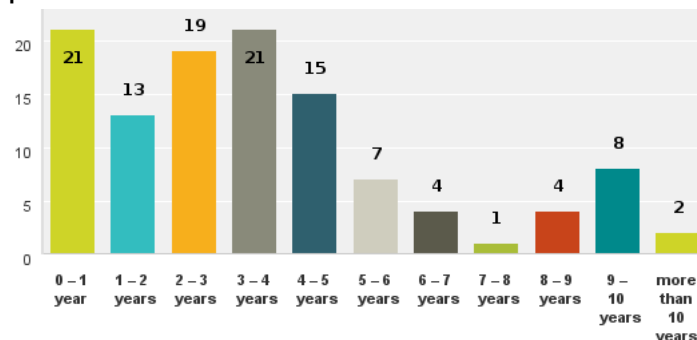
Regarding Cyprus, Denmark and France, it is unclear whether international child abduction is in all cases a criminal offence or only under certain circumstance because respondents from these countries gave different answers.

With regard to Croatia, Czech Republic, Estonia and Luxembourg there is uncertainty as to whether international child abduction a criminal offence because respondents gave conflicting answers.

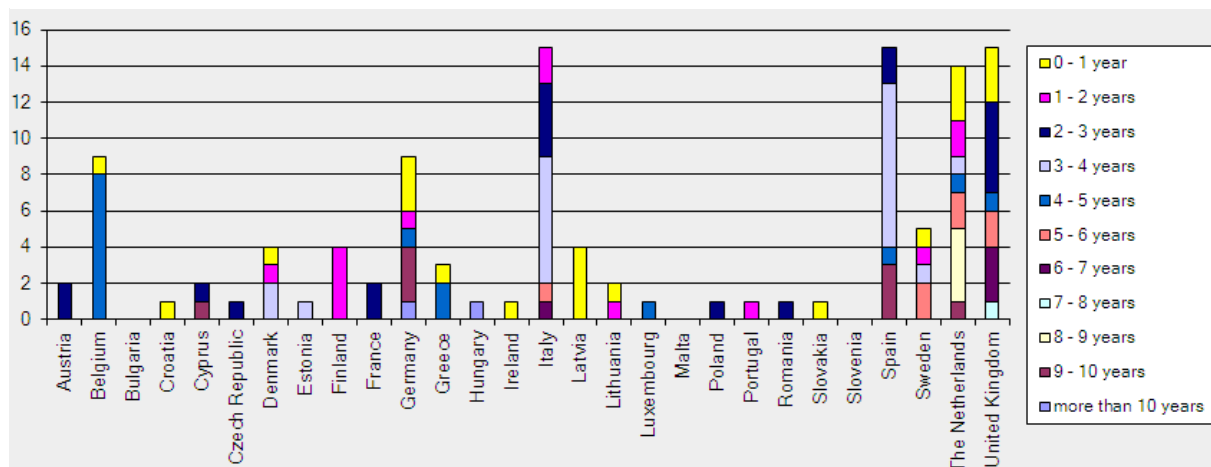
#### Custodial sentence

#### Result

Chart 44. What is the maximum custodial sentence for international parental child abduction?



**Chart 45. What is the maximum custodial sentence for international parental child abduction?**



As can be derived from chart 45, the majority of the respondents in 16 of the 25 countries, indicated that the maximum custodial sentence varies between zero and four years.

The majority of the respondents in 4 of the 25 countries indicated that the penalty in their country higher is. This is indicated by the respondents from Belgium (8 of the 9: five years), Greece (2 of the 3: five years), Hungary (1 of the 1: more than ten years), Luxembourg (1 of the 1: five years).

There was a large diversity in the answers of the respondents from Cyprus, Germany, Sweden, the Netherlands and the United Kingdom. No clear answer has been provided by the respondents regarding the maximum custodial sentence for international child abduction in their country. The answers of the respondents indicated that the maximum custodial sentence for international child abduction in their country ranges from zero to ten years.

The divided answers from the respondents from Germany, Sweden, the Netherlands and the United Kingdom are partly related to the fact that in those countries more respondents took part in the study, so more different answers came forward. Therefore less clear view can be given.

Nevertheless, also in Belgium, Italy and Spain more respondents took part in the study. Respondents from those countries could certainly give a clearer view with respect to the maximum custodial sentence.

### Conclusion

From the answers of the respondents can be derived that the maximum custodial sentence which can be imposed for international child abduction varies significantly per country.

The results indicate that most of the respondents who took part in the study do not know what the maximum custodial sentences are for international child abduction.

From the forgoing conclusions can be derived that specialists in international child abduction law are not per definition familiar with the possible criminal aspects of international child abduction. This can likely be explained by the fact that the respondents who participated in the questionnaire are specialised in private international law and not in criminal law. However, even in case that international child abduction is not a criminal offence in the country where the lawyer practices law, it is important that the lawyer is familiar with the possible consequences of international child abduction in other countries. Therefore training is desired.

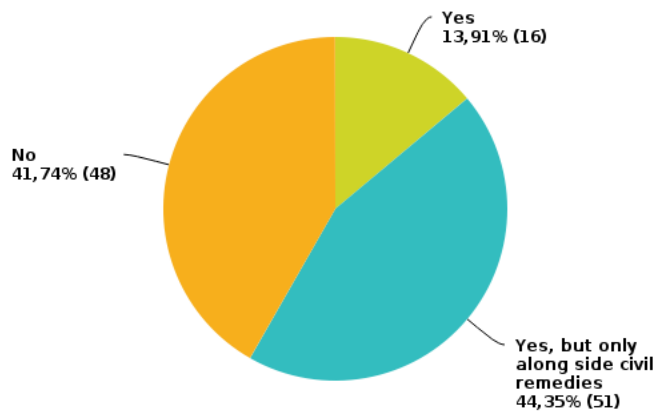
Criminal prosecution

Result

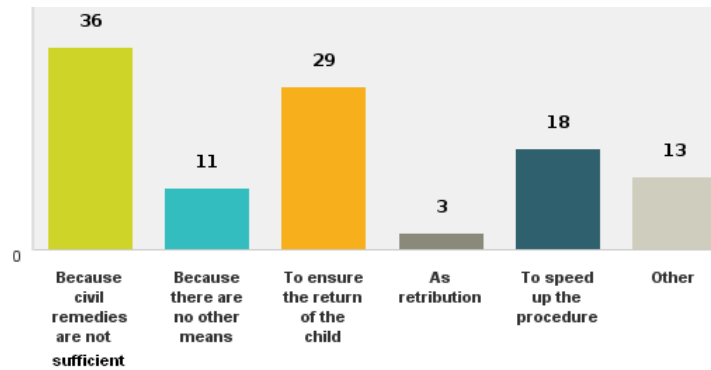
The majority of the respondents who use criminal prosecution as an instrument in international child abduction cases only used criminal prosecution alongside civil remedies.

The following questions were only answered by those respondents who indicated that they have used criminal prosecution as an instrument in international child abduction cases. Therefore, none of the respondents from Bulgaria, Ireland, Luxembourg, Malta, Poland, Romania and Slovakia answered the following questions. The total number of respondents is 60.

**Chart 46. Do you use criminal prosecution as an instrument in international child abduction cases?**



**Chart 47. Why do you use criminal prosecution as an instrument in these cases?**



The majority of the respondents used criminal prosecution because civil remedies were not sufficient.

22% of the respondents (13 of the 60) indicated another option. Other reasons mentioned by the respondents were location of the child and in non-convention cases, to provoke a willingness to negotiate in the abducting parent and as additional pressure or to prevent abduction.

**Chart 48. Do you advise the left-behind parent to file a report at the police in case of international child abduction?**

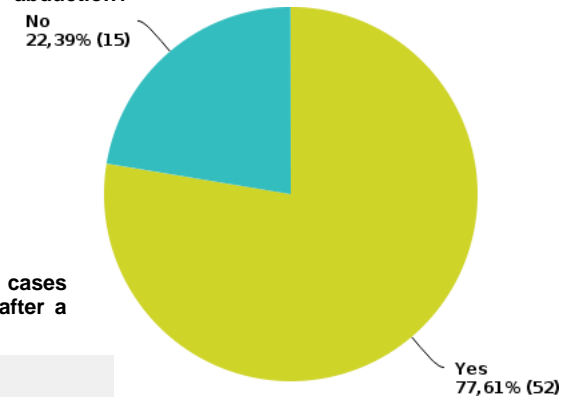
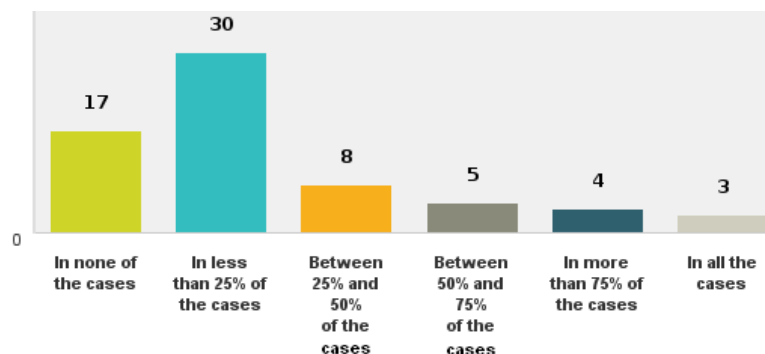


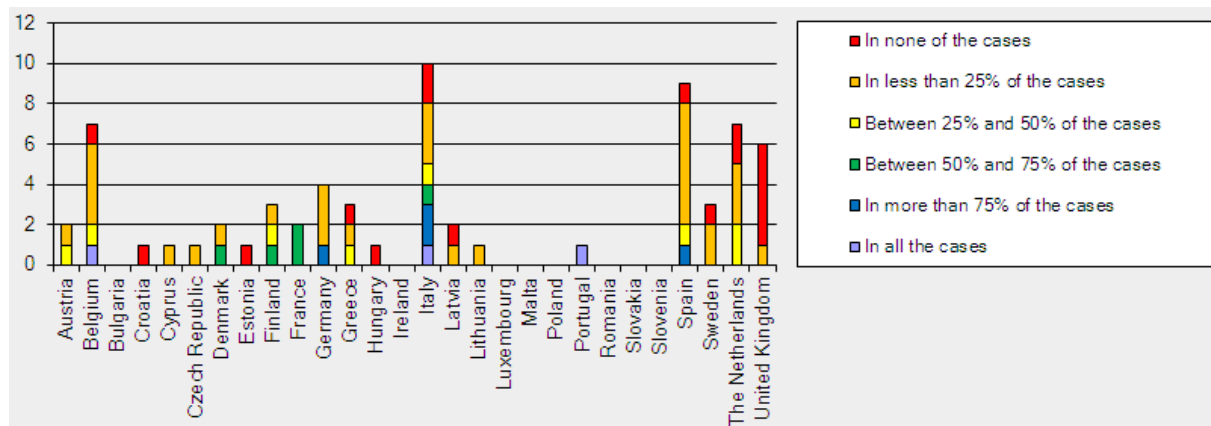
Chart 48 shows that 78% of the respondents (52 of the 67) advised the left-behind parent to file a report at the police in case of international child abduction.

**Chart 49. In what percentage of international child abduction cases that you have dealt with is the abducting parent prosecuted after a police report has been filled?**



As can be derived from chart 49, 70% of the respondents (47 of the 67) believe that in less than 25% of the cases they have dealt with, the abducting parent is prosecuted after a police report had been filled.

**Chart 50. In what percentage of international child abduction cases that you have dealt with is the abducting parent prosecuted after a police report has been filled?**



The respondents who indicated that in none of the cases that they have dealt with, the abducting parent was prosecuted after a police report had been filled are from Belgium (1 of the 7), Croatia (1 of the 1), Estonia (1 of the 1), Greece (1 of the 3), Hungary (1 of the 1), Italy (2 of the 10), Latvia (1 of the 2), Spain (1 of the 9), Sweden (1 of the 3), the Netherlands (2 of the 7) and the United Kingdom (5 of the 6).

The respondents who indicated that in more than 75% of the cases that they have dealt with, the abducting parent was prosecuted after a police report had been filled, are from Germany (1 of the 4), Italy (2 of the 10) and Spain (1 of the 9).

The respondents who indicated that in all of the cases that they have dealt with, the abducting parent was prosecuted after a police report had been filled are from Belgium (1 of the 7), Italy (1 of the 10) and Portugal (1 of the 1).

The answers of the respondents from France and Italy may indicate that an abducting parent in those countries is more likely to be prosecuted after a police report has been filled as compared to other countries.

Conclusion

Respondents from the same country gave often different answers regarding how often the abducting parent was prosecuted after a police report had been filled. The knowledge of the respondents in regard to the prosecution of an abducting parents differs greatly per respondent. There is little consistency in bringing actions against abducting parents by the prosecution.

In general may be concluded that the respondents who took part in this study are not well known with the criminal legal provisions concerning international parental child abduction. There is a lack of knowledge. This can be explained by the fact that the respondents who took part in the research are specialised in private international law (which is also indicated by 63% of the respondents) and not in criminal law.

### 3.13 Legal aid

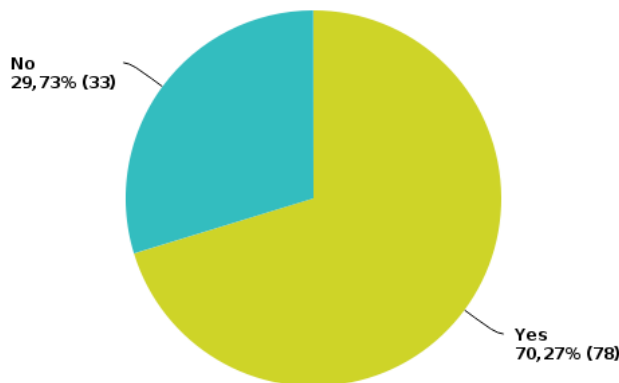
#### Result

According to the majority of the respondents in 22 of the 27 countries, their country provides legal aid for parents in international child abduction cases.

According to the respondents from Cyprus (2 of the 2), Italy (9 of the 15) and Slovakia (1 of the 1) their country does not provide legal aid for parents in international child abduction cases.

With regard to Luxembourg (1 of the 2) and Poland (1 of the 2) it is uncertain whether legal aid is available for parents in international child abduction cases, since the answers of the respondents were equally divided.

**Chart 51. Are you familiar with the Article 26 procedure of the 1980 Hague Abduction Convention?**

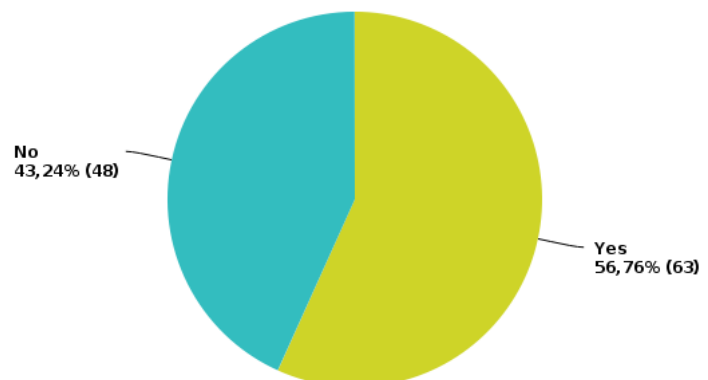


As can be derived from chart 51, 70% of the respondents were familiar with the Article 26 procedure of the 1980 Hague Abduction Convention.

The following questions concerning legal aid were answered by the respondents who indicated that their country provides legal aid in international child abduction cases. Therefore, none of the respondents from Cyprus and Slovakia answered the following questions. The total number of respondents is 111.

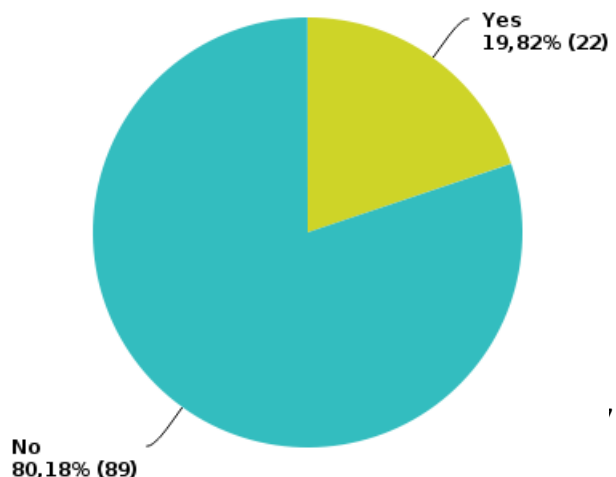
**Chart 52. Are you familiar with the Article 50 procedure of the Brussels II bis Regulation about European legal aid?**

Chart 52 shows that 57% of the respondents were familiar with the Article 50 procedure of the Brussels II bis Regulation.



**Chart 53. Have you worked on basis of European legal aid in the past?**

Chart 53 shows that 80% of the respondents have never worked on the basis of European legal aid.





### 3.14 Mediation

#### Result

Chart 54. Which of the following statements are correct about mediation in your country?

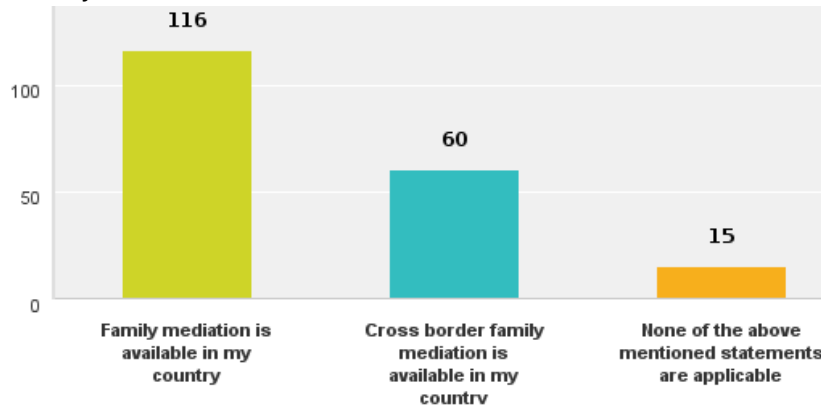
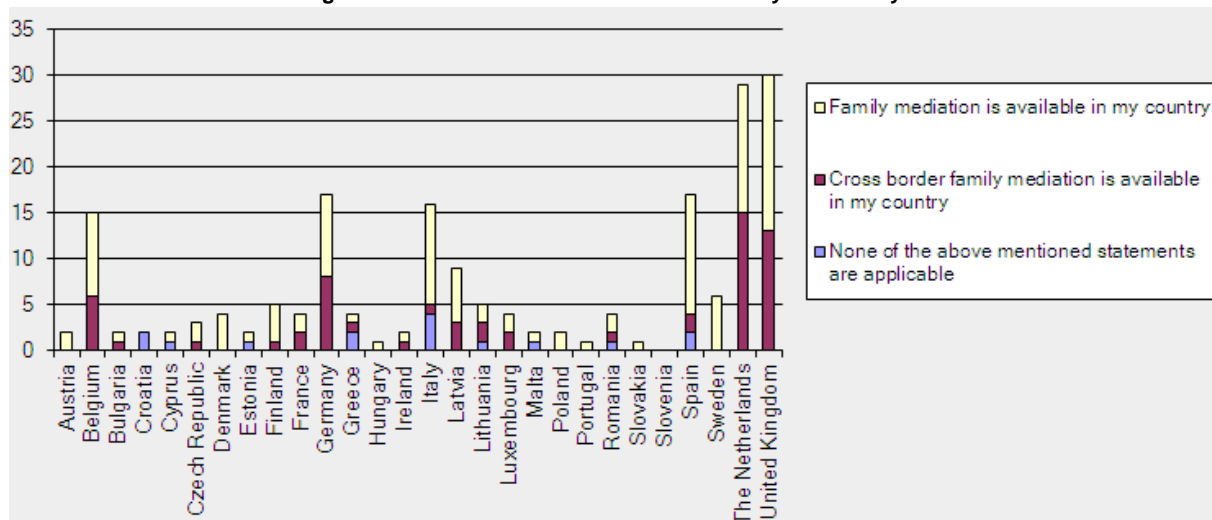


Chart 55. Which of the following statements are correct about mediation in your country?



As can be derived from chart 55, mediation is according to the majority of the respondents available in 21 of the 27 countries.

According to the respondents in Croatia (2 of the 2) and Greece (2 of the 3) is family mediation not available in their country.

The answers of the respondents from Cyprus, Estonia, Lithuania and Malta do not provide a clear answer regarding the question whether family mediation is available, since half of the respondents in those countries indicated that it is available and the other half answered that it is not available.

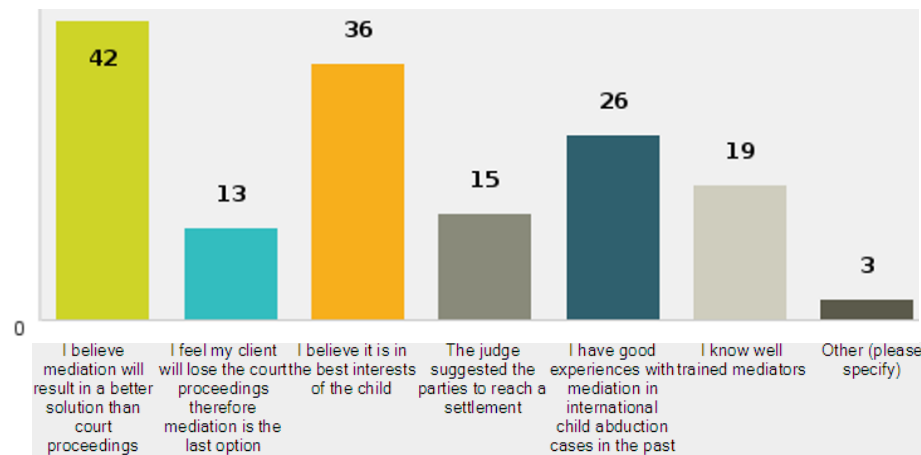
According to the respondents, cross border family mediation is available in 8 of the 27 countries. This is indicated by the respondents from Belgium (6 of the 9), Bulgaria (1 of the 1), France (2 of the 2), Germany (8 of the 9), Ireland (1 of the 1), Luxembourg (2 of the 2), the Netherlands (15 of the 15) and the United Kingdom (13 of the 17).

The answers of the respondents from Czech Republic, Latvia and Lithuania do not provide a clear answer regarding the question whether cross border family mediation is available, since half of the respondents in those countries indicated that it is available and the other half answered that it is not available.

The answers of the respondents show that in most countries (16 of the 27 countries) cross border family mediation is not available in case of international child abduction.

The following questions concerning mediation were answered by the respondents who indicated that they had dealt with a cross border family mediation in an international child abduction case. No respondents from Austria, Croatia, Cyprus, Denmark, Estonia, Ireland, Malta, Poland, Portugal, Slovakia and Sweden answered the following questions. The total number of respondents is 47.

**Chart 56. What is your motivation to recommend your clients to participate in cross border family mediation?**



Most respondents recommend their clients to participate in cross border family mediation because they believe mediation will result in a better solution than court proceedings.

**Chart 57. Why would you recommend your client not to participate in cross border family mediation?**

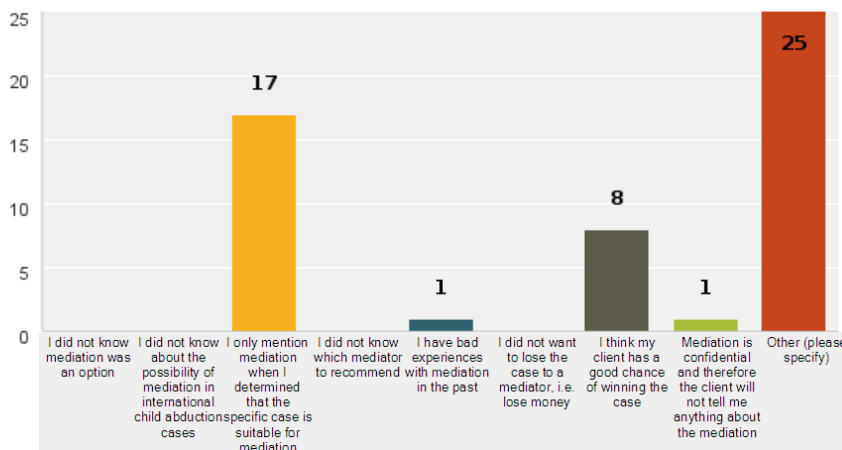
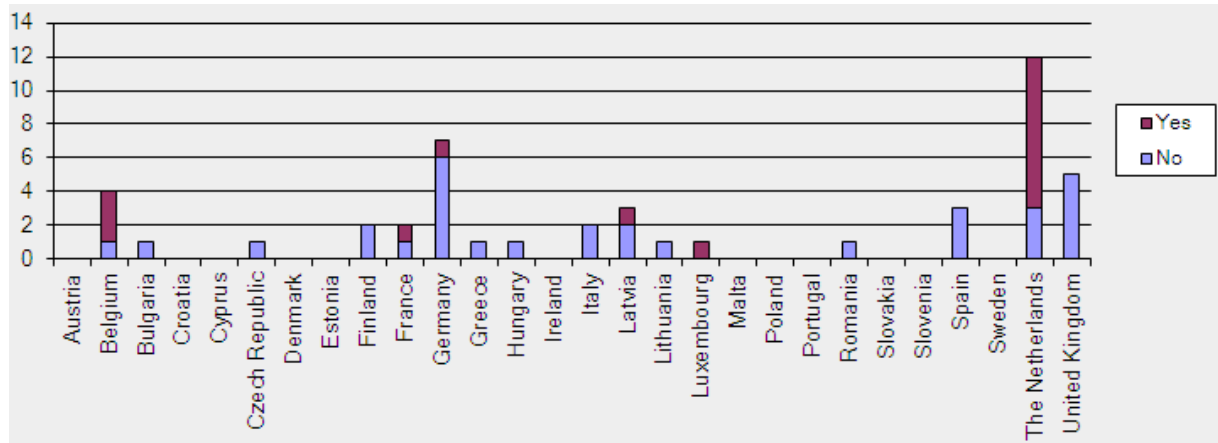


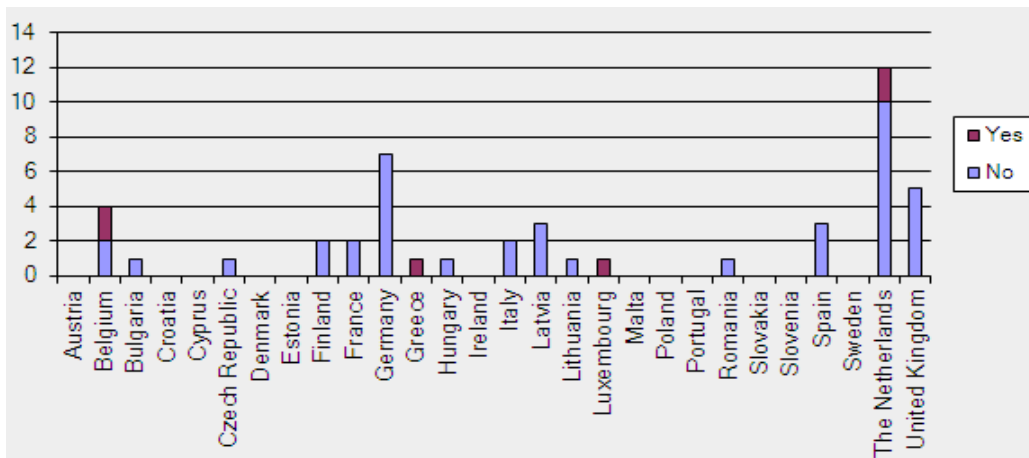
Chart 57 shows that most respondents (25 of the 47) indicated other options than the mentioned options. Other indicated reasons were high hostility, violence, criminal aspects, vulnerability or that mediation between the parties had been unsuccessful in the past.

**Chart 58. If parents reach a Memorandum of Understanding is it automatically legally binding in your country?**



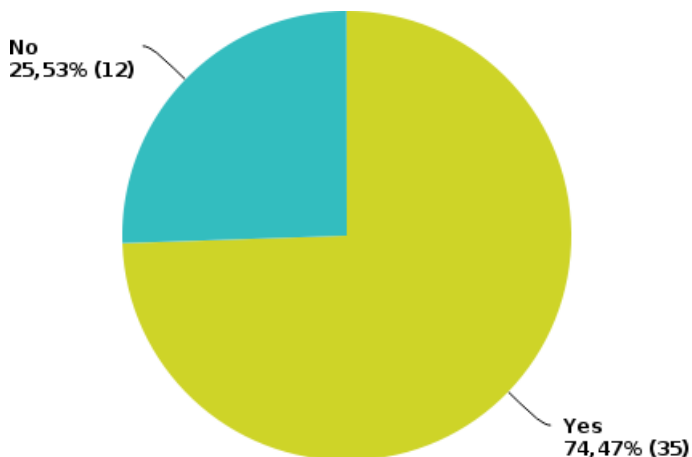
According to the majority of the respondents in 12 of the 16 countries, a Memorandum of Understanding is not automatically legally binding. According to the majority of the respondents in Belgium (3 of the 4), Luxembourg (1 of the 1) and the Netherlands (9 of the 12), a Memorandum of Understanding is automatically legally binding in their country. The answers of the respondents from France do not give a clear view regarding the question if a Memorandum of Understanding is automatically legally binding, since respondents gave conflicting answers.

**Chart 59. Can the Memorandum of Understanding be legally enforced in your country without a court order confirming the mediation agreement?**

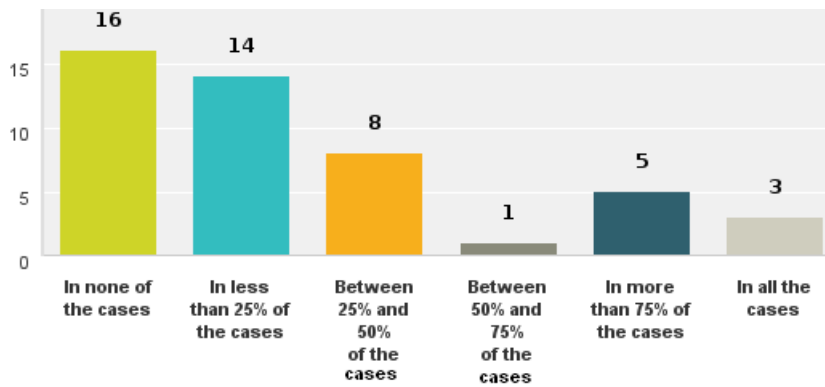


As can be derived from chart 59, in the opinion of the majority of the respondents in 13 of the 16 countries, the Memorandum of Understanding cannot legally be enforced without a court order confirming the mediation agreement

**Chart 60. Do you think it is necessary to have arrangements in the Brussels II bis Regulation about cross border family mediation?**



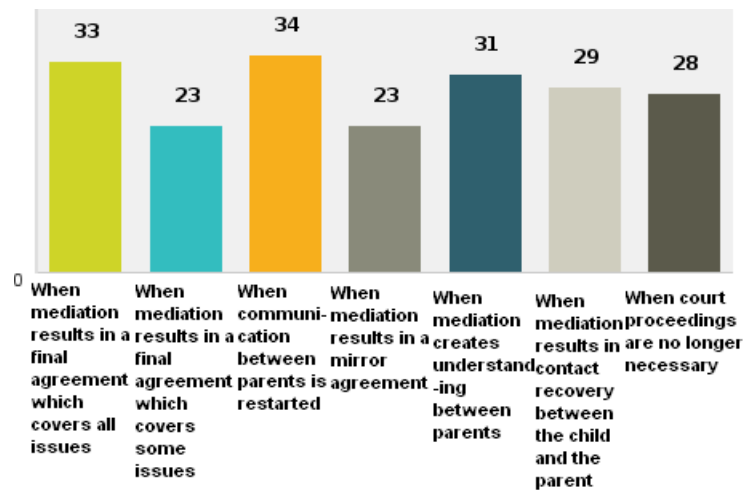
75% of the respondents indicated that they thought it was necessary to have arrangements in the Brussels II bis Regulation about cross border family mediation.



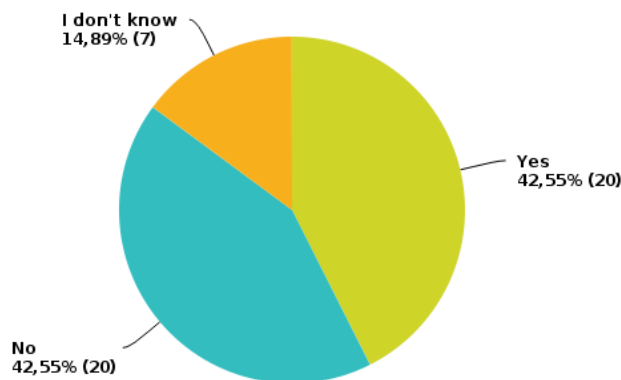
**Chart 61. What percentage of cross border family mediations that you have dealt with came to a final agreement?**

**Chart 62. In which case do you find cross border family mediation successful?**

Chart 62 shows that a combination of the mentioned factors can be seen as relevant factors for a successful mediation. The answers also indicated that all of the mentioned factors can be seen as relevant.



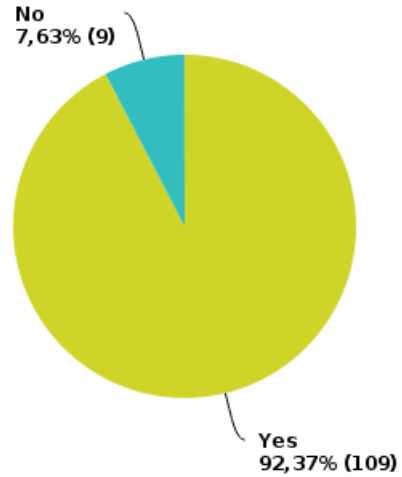
**Chart 63. Over the last year has there been an increase of cross border family mediation in abduction cases among your clients?**



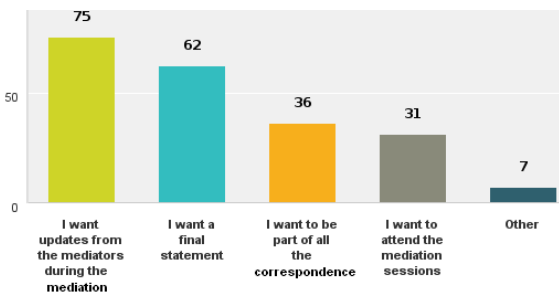
The respondents from Belgium (1 of the 4), Czech Republic (1 of the 1), France (1 of the 2), Germany (4 of the 7), Hungary (1 of the 1), Latvia (1 of the 3), Lithuania (1 of the 1), Romania (1 of the 1), Spain (1 of the 3), the Netherlands (6 of the 12) and the United Kingdom (2 of the 5) indicated that they have had an increase of cross border family mediation in abduction cases over the last year.

**Chart 64. Are you as an international child abduction lawyer interested in cooperation with cross border family mediators?**

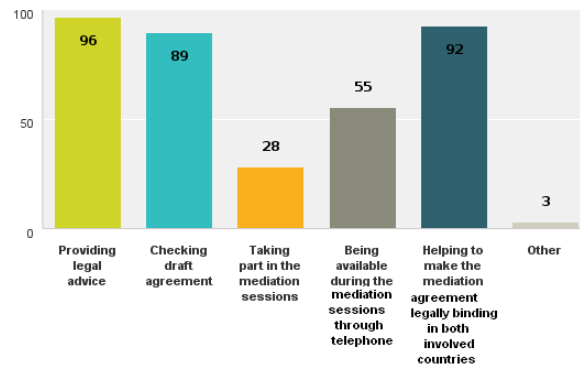
Chart 64 shows that 92% of the respondents indicated that they are interested in cooperation with cross border family mediators.



**Chart 65. How do you as a lawyer want to be involved in cross border family mediation?**



**Chart 66. How do you see your role in the cross border family mediation process?**



**Chart 67. Have you ever dealt with an international child abduction case as a cross border family mediator?**

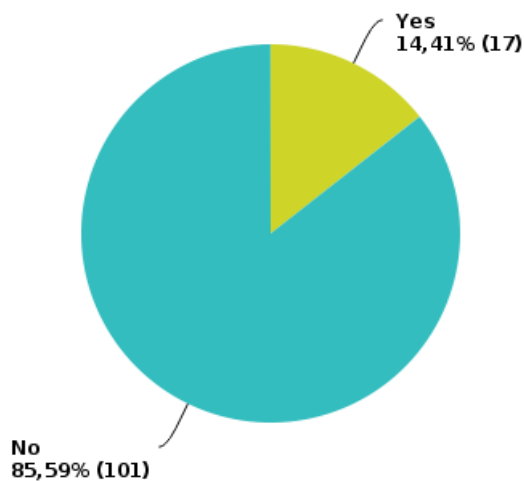


Chart 67 shows that 14% of the respondents have dealt with an international child abduction case as a cross border family mediator.

## Conclusion

An increase of cross border family mediation in abduction cases is to be expected because of the implementation of the Guide to Good Practice on Mediation which is published by the Permanent Bureau of The Hague Conference on Private International Law. The guide promotes good practices in mediation cases which fall under the scope of the 1980 Hague Abduction Convention.<sup>10</sup>

An increase may certainly be expected in connection with the fact that 92% of the respondents indicated that they are interested in cooperation with cross border family mediators.

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<sup>10</sup> See objectives and scope of the *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Mediation*, p. 12 (published by The Hague Conference on Private International Law Permanent Bureau, 2012).

### 3.15 The platform for legal professionals

**Chart 68. Would you be interested to join the platform for legal professionals?**

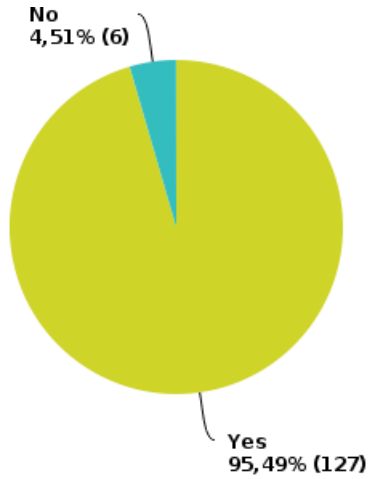
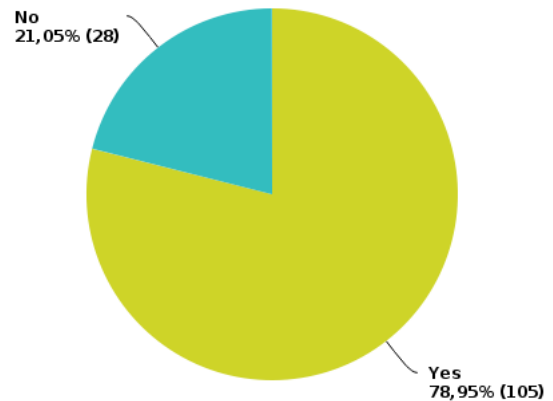


Chart 68 shows that 96% of the respondents indicated that they are interested in joining the platform for legal professionals.

**Chart 69. Do you want to give input in the platform?**

Chart 69 shows that 79% of the respondents indicated that they want to give input in the platform.



### 3.16 Table of charts

Chart 1. How long have you been practising law?

Chart 2. How long have you been handling international child abduction cases?

Chart 3. How many international child abduction court proceedings have you conducted in the last five years?

Chart 4. Is there a certified association of family lawyers in your country?

Chart 5. Which of the following is applicable to you?

Chart 6. Who represent the parties in legal proceedings before the competent judicial authority?

Chart 7. Whom have you represented in the legal proceedings in the past?

Chart 8. Are you familiar with the workings of the following international instruments?

Chart 9. Is jurisdiction concentrated in international child abduction cases in your country?

Chart 10. How many courts in your country have jurisdiction in international child abduction cases?

Chart 11. How many instances of appeal are available in child abduction cases in your country?

Chart 12. What is the average duration of an international child abduction court proceeding in your country, starting from the moment the petition is submitted to the court until the final judgement? (*Per respondent*)

Chart 13. What is the average duration of an international child abduction court proceeding in your country, starting from the moment the petition is submitted to the court until the final judgement? (*Per country*)

Chart 14. Have you ever dealt with an Article 15 declaration under the 1980 Hague Abduction Convention?

Chart 15. In what percentage of international child abduction cases that you have dealt with did the court order the return of the child?

Chart 16. In what percentage of international child abduction cases that you have dealt with did the court order the return of the child? (*Per country*)

Chart 17. In the cases you have dealt with on which ground was the refusal to return the child most often based?

Chart 18. Have you ever dealt with cases in which the judge refused to return the child due to the following factors i.e. safe return or separation of sibling?

Chart 19. In what percentage of international child abduction cases you have dealt with was an appeal on the ground of refusal successful?

Chart 20. What is your opinion with regard to the application of the grounds of refusal?

Chart 21. What is your opinion with regard to the application of the grounds of refusal? (*Per country*)

Chart 22. Do you think that the best interests of the child are currently sufficiently taken into account in international child abduction court proceedings?

Chart 23. Do you think that the best interests of the child are currently sufficiently taken into account in international child abduction court proceedings? (*Per country*)

Chart 24. What do you advise parents in international child abduction cases?

Chart 25. Have you ever had any problems concerning enforcement without exequatur of return and access orders (Article 40, 41 and 42)?

Chart 26. Are you aware of the overrule procedures under Brussels II bis Regulation (Article 11 (8))?

Chart 27. Have you heard about the possibility of direct judicial communications of Article 11 (6)(7), 15 (6) and 55 (c) Brussels II bis Regulation?

Chart 28. Have you ever used the 1996 Hague Child Protection Convention in international child abduction cases? Yes

Chart 29. What is the average duration of a relocation proceeding, starting from the moment the petition is submitted at the court until the final judgement?



**Chart 30. What is the average duration of a relocation proceeding, starting from the moment the petition is submitted at the court until the final judgement? (Per country)**

**Chart 31. Which of the following is a role of the Central Authority?**

**Chart 32. What role does the Central Authority fulfil in international child abduction cases to non-convention states?**

**Chart 33. Is the voice of the child heard during international child abduction court proceedings?**

**Chart 34. Is the voice of the child heard during international child abduction court proceedings?**

**Chart 35. What particular age should the child have reached?**

**Chart 36. What particular age should the child have reached?**

**Chart 37. Which authority is responsible for the enforcement of the return order?**

**Chart 38. Which authority is responsible for the enforcement of the return order?**

**Chart 39. Which of the following enforcement instrument are available in your country in international child abduction court proceedings?**

**Chart 40. Can you request the judge to determine how the return of the child should be organised?**

**Chart 41. In what percentage of international child abduction cases that you have dealt with has the child actually returned or been returned after the judicial decision ordering the return of the child?**

**Chart 42. In what percentage of international child abduction cases that you have dealt with has the child actually returned or been returned after the judicial decision ordering the return of the child?**

**Chart 43. Is international child abduction a criminal offence in your country?**

**Chart 44. What is the maximum custodial sentence for international parental child abduction?**

**Chart 45. What is the maximum custodial sentence for international parental child abduction?**

**Chart 46. Do you use criminal prosecution as an instrument in international child abduction cases?**

**Chart 47. Why do you use criminal prosecution as an instrument in these cases?**

**Chart 48. Do you advise the left-behind parent to file a report at the police in case of international child abduction?**

**Chart 49. In what percentage of international child abduction cases that you have dealt with is the abducting parent prosecuted after a police report has been filled?**

**Chart 50. In what percentage of international child abduction cases that you have dealt with is the abducting parent prosecuted after a police report has been filled?**

**Chart 51. Are you familiar with the Article 26 procedure of the 1980 Hague Abduction Convention?**

**Chart 52. Are you familiar with the Article 50 procedure of the Brussels II bis Regulation about European legal aid?**

**Chart 53. Have you worked on basis of European legal aid in the past?**

**Chart 54. Which of the following statements are correct about mediation in your country?**

**Chart 55. Which of the following statements are correct about mediation in your country?**

**Chart 56. What is your motivation to recommend your clients to participate in cross border family mediation?**

**Chart 57. Why would you recommend your client not to participate in cross border family mediation?**

**Chart 58. If parents reach a Memorandum of Understanding is it automatically legally binding in your country?**

**Chart 59. Can the Memorandum of Understanding be legally enforced in your country without a court order confirming the mediation agreement?**

**Chart 60. Do you think it is necessary to have arrangements in the Brussels II bis Regulation about cross border family mediation?**

**Chart 61. What percentage of cross border family mediations that you have dealt with came to a final agreement?**

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**Chart 63. Over the last year has there been an increase of cross border family mediation in abduction cases among your clients?**

**Chart 64. Are you as an international child abduction lawyer interested in cooperation with cross border family mediators?**

**Chart 65. How do you as a lawyer want to be involved in cross border family mediation?**

**Chart 66. How do you see your role in the cross border family mediation process?**

**Chart 67. Have you ever dealt with an international child abduction case as a cross border family mediator?**

**Chart 68. Would you be interested to join the platform for legal professionals?**

**Chart 69. Do you want to give input in the platform?**



## 4. Conclusions LEPCA questionnaire

### General information

Nearly one thousand international family law lawyers from all twenty-eight current European Union Member States were approached for the LEPCA questionnaire. Lawyers from twenty-seven Member States participated in the questionnaire. No lawyers from Slovenia participated.

In total, 166 lawyers responded. Of the 166 respondents, 133 respondents completed the questionnaire. All respondents have dealt with international child abduction cases. The majority of the respondents (45 of the 133) had been practising law for more than twenty years. 60% of the respondents (77 of the 133) had been handling international parental child abductions cases for up to ten years. 84% of the respondents (112 of the 133) have conducted fewer than 16 international child abduction court proceedings in the last five years. 73% of the respondents (97 of the 133) indicated that they are specialised in international child abduction law. 63% of the respondents (84 of the 133) indicated that they are specialised in private international law.

### Court proceedings

The majority of the respondents in 8 of the 27 countries indicated that jurisdiction in international child abduction cases is not concentrated in their country. The Fourth Special Commission concerning the 1980 Hague Abduction Convention made recommendations for the concentration of Hague Convention return cases in a limited number of courts. According to the opinion of the respondents, in 11 of the 27 countries more than fifteen courts in their country have jurisdiction in international child abduction court proceedings. The more judicial or administrative authorities that have jurisdiction, the more scattered the experience will be among the judges concerned, and thus an increased fear of lack of consistency in legal practice. The importance and desirability of concentrating jurisdiction in Hague Convention return cases has been stressed and principal advantages are to be gained. The positive experiences with concentration of jurisdiction have been widely recognised.

### Appeal

According to the majority of the respondents in 13 of the 27 countries there is only one right of appeal. On the other hand, the majority of the respondents in 11 of the 27 countries indicated that one can appeal to more than one instance. Limitation of the number of appeals can be important in order to avoid long delays causing legal uncertainty for the child and the parents. However, limitation of appeal instances has not been accomplished in all twenty-seven jurisdictions, regardless of the encouragement of the Special Commission to introduce limitations on the grounds of appeal. The Hague Abduction Convention requires expeditious proceedings to avoid delay in return. Experience has shown that the appeal procedures in Hague Abduction cases can cause long delays before the matter is finally determined. Provisions are recommended to limit the number of levels to which appeal can be made against a court decision on a Hague return application. We encourage national authorities to limit the number of appeals in international child abduction cases in their system.

### 1980 Hague Abduction Convention

Of the 133 respondents who have dealt with international child abduction cases, 130 are familiar with the working of the 1980 Hague Abduction Convention.

Almost 50% of respondents (64 of the 130) indicated that the average duration of an international child abduction court proceeding in their country is less than six months. In 21 of the 27 countries the experiences of the respondents ranged between less than six months and less than two years. Longer durations were mentioned by 7 of the 130 respondents from

six different countries. Different experiences may express the lack of strict timeframes in national law for the various steps to be taken in international child abduction court proceedings.

The Special Commission has also made recommendations in this respect. It has been emphasised that expedition is essential and the most expeditious procedures should be available. We encourage national authorities to implement strict timeframes in their system for international child abduction court proceedings.

The number of return orders ordered by the court in the cases the respondents have dealt with, ranged from 0% to 100% within one country and within different Member States.

61% of the respondents (79 of the 130) indicated that in more than 50% of the cases they have dealt with, the court ordered the return of the child. Moreover, 77% of the lawyers indicated that in fewer than 25% of their cases was an appeal on the grounds of refusal successful. The perception of the respondents is in consistency with the findings of the statistical analysis of applications made in 2003 [Do you mean 2003? The latest study is 2008 which found 80% of appeals upheld the first instance decision] under the 1980 Hague Abduction Convention. 81% of all the appeal decisions of applications made in 2003 under the Hague Abduction Convention upheld first instance decisions.

Appeal instances in Hague return cases should be limited. In the majority of the Hague cases the appeal process causes long delays in return. There is even less need for appeal when jurisdiction of Hague return cases is concentrated in a limited number of courts. Concentration of jurisdiction ensures specialisation and more expertise.

The opinions of the respondents were divided regarding the question if the best interests of the are sufficiently taken into account in international child abduction court proceedings.

### **Brussels II-bis Regulation**

91% of the respondents (121 of the 133) are familiar with the working of the Brussels II-bis Regulation.

70% of the respondents (85 of the 121) regard a court procedure for the return of the child as a provisional measure. Most respondents find it necessary to also additionally litigate in the country of habitual residence.

Half of the respondents (35 of the 71) indicated that they have had problems with enforcement of return orders. This supports the findings of a comparative legal study and an empirical study carried out in 2006, which also identified problems with regard to the enforcement of Hague return orders.

81% of the respondents (98 of the 121) indicated they are aware of the overrule procedure under Brussels II-bis Regulation.

68% of the respondents (82 of the 121) indicated they have heard about the possibility of direct judicial communications of Article 11(6), 11(7), 15(6) and 55(c) Brussels II-bis Regulation.

### **1996 Hague Child Protection Convention**

77% of the respondents (93 of the 121) are familiar with the working of the 1996 Hague Child Protection Convention.

41% of the respondents (43 of the 105) who were familiar with the working of the 1996 Hague Child Protection Convention had used the Convention in international child abduction cases.

### **Relocation proceedings**

50% of the respondents (67 of the 133) had started legal proceedings for international relocation. According to the majority of the respondents (39 of the 67), the average duration of a relocation proceeding takes between six months to one year. By commencing a relocation proceeding, an international child abduction may be prevented. It is important that

parents are well informed about the possibilities of starting a relocation procedure in the country of habitual residence.

### **Central Authority**

95% of the respondents (126 of the 133) indicated that they had contact with their Central Authority. The majority of the respondents in 15 of the 27 countries indicated that a role of their Central Authority is to provide information, locate the child, enforce the return order and organise mediation. According to eleven respondents from seven different countries the Central Authority in their country does not organise mediation. Article 7(c) 1980 Hague Abduction Convention specifies that the Central Authority shall take all appropriate measures to secure the voluntary return of the child or to bring about an amicable resolution of the issues. Nonetheless, the Convention does not oblige the Central Authority to organise mediation, it only refers to the obligation to try and reach an amicable resolution. Moreover, not organising mediation is different from not informing about mediation.

### **The child**

76% of the respondents (101 of the 133) indicated that generally the voice of the child is heard during international child abduction court proceedings, as long as the child has reached a particular age.

There were various answers of respondents from different Member States regarding what particular age the child should have reached to be heard during international child abduction court proceedings. Thirty-three of the 102 respondents indicated that the child should have reached the age of twelve to be heard.

Article 11(2) Brussels II-bis Regulation lays down rules for the hearing of the child. However, national rules regarding the hearing of the child stay applicable besides the Brussels II-bis Regulation. Therefore the diversity of answers of respondents from Member States can be explained. A great deal of diversity can though be problematic for the enforcement. The Brussels II-bis Regulation should also pay attention to the application of the hearing rules applicable in the country of enforcement of the return order.

### **The enforcement of the return order**

The police were most often mentioned (by 63 of the 133 respondents) as a responsible authority for the enforcement of the return order. However, the answers of the respondents do not clearly indicate which authority is responsible for the enforcement of the return order. Respondents from the same country provided different answers. In addition, various combinations of responsible authorities came forward. The results show that not all respondents have knowledge about which authority is responsible for the enforcement of return orders in their own jurisdiction.

The majority of the respondents in 19 of the 27 countries indicated that they may request a judge to determine how the return of the child should be organised.

53% of the respondents (71 of the 133) indicated that in more than 75% of the cases they have dealt with the child was actually returned after the judicial decision ordering the return of the child. 26% of the respondents (35 of the 133) indicated that in fewer than 25% of the cases they have dealt with the child has been returned after the judicial decision ordering the return of the child.

### **Criminal offence**

Respondents from 7 of the 27 countries indicated that international child abduction is a criminal offence in all cases in their country.

The majority of respondents in 16 of the 25 countries indicated that the maximum custodial sentence varies between zero and four years. However, respondents from the same country indicated various answers. This shows that most of the respondents who took part in the

study do not know what the maximum custodial sentences are for international child abduction.

From the answers can be derived that the maximum custodial sentence for international child abduction varies significantly per Member State within the European Union.

58% of the respondents (67 of the 115) used criminal prosecution as an instrument in international child abduction cases. 60% of the respondents (36 of the 60) used criminal prosecution because civil remedies were insufficient. 48% of the respondent (29 of the 60) used criminal prosecution to ensure the return of the child.

78% of the respondents (52 of the 67) advised the left-behind parent to file a report at the police in case of international child abduction. 70% of the respondents (47 of the 67) indicated that in less than 25% of the cases they have dealt with the abducting parent was prosecuted after a police report had been filled. The answers of the respondents from the same country regarding how often the abducting parent was prosecuted after a police report had been filled, diverged. This shows that the experiences of the respondents with the prosecution of abducting parents vary greatly per respondent. There is little consistency in bringing actions against abducting parents by the prosecution.

In general it may be concluded that the respondents who took part in this study are not well informed about the criminal legal provisions concerning international parental child abduction. The respondents who took part in the research are specialised in private international law. Specialists in international child abduction law are not by definition familiar with the possible criminal aspects of international child abduction. However, even in cases where international child abduction is not a criminal offence in the country where the lawyer practices law, it is important that the lawyer is familiar with the possible consequences of international child abduction in other countries. Therefore training in this respect is desirable.

### **Legal aid**

The majority of the respondents in 22 of the 27 countries indicated that their country provides legal aid for parents in international parental child abduction cases.

70% of the respondents were familiar with the Article 26 procedure of the 1980 Hague Abduction Convention.

57% of the respondents were familiar with the Article 50 procedure of the Brussels II-bis Regulation about European legal aid. 80% of the respondents have never worked on the basis of European legal aid.

### **Mediation**

According to the majority of respondents, mediation is available in 21 of the 27 countries. Cross-border family mediation is available in 8 of the 27 countries.

75% of the respondents (35 of the 47) indicated that they think it is necessary to have arrangements in the Brussels II-bis Regulation concerning cross-border family mediation.

92% of the respondents indicated that they are interested in cooperation with cross border family mediators.

### **The platform**

Almost all respondents (127 of the 133) indicated that they are interested in joining a platform for legal professionals dealing with international child abduction cases.

## **5. Conclusions and recommendations of the LEPCA conference, May 2014**

Conclusions and recommendations made by the General Assembly of the LEPCA conference held in the Hague, The Netherlands, from 7<sup>th</sup> until 10<sup>th</sup> May 2014  
The general assembly of the LEPCA conference consisting of the participants of the LEPCA conference discussed the issues who did arise from the survey during the workshops and  
The following remarks were made ;

- 1) There are different approaches in EU Member States as to whether courts should apply the principles of the Hague Convention to cases with non-party states.
- 2) In the EU, lawyers are in favour of hearing the child by people who are deemed qualified to do so according to the legal culture of their country. This could be, for example, a trained judge, a welfare officer or a psychologist.
- 3) After a decision ordering the return of the child, a child should be granted a reasonable time [ prior to the enforcement of the decision in order to take leave of the parent, other family members and friend. The length of the reasonable time has to be determined based on the situation on the spot and the attitude of the abducting parent. This item was debated.
- 4) Mediation should have a more explicit and specific placing in the Brussels II-bis regulation with regard to international parental child abduction cases.
- 5) The General Assembly stressed that returning a child to a specific country should be separated from the question who cares for the child, which is an issue in the main proceedings.
- 6) Training in international family law should become part and parcel of the national training programme of all family lawyers and mediators.
- 7) The time limits of Art 11 (3) of Brussels II-bis need to be clarified. In any event, they should clearly apply to:
  - a) the time taken to issue court proceedings;
  - b) the time taken for the first instance proceedings to be concluded;
  - c) the time taken for appeals to be concluded.
 Ideally, timing should also cover the enforcement process. At any rate, separate time periods should be specified for each of the above stages.
- 8) The added-value of the overrule procedure contained in Art 11 (6)-(8) of the Brussels II-bis regulation is highly controversial. The current overrule procedure should be improved in order to achieve the principles of mutual trust and cooperation.
- 9) There should be more practical guidance as to the completion of the certificates used in the Brussels II-bis regulation in order to avoid misunderstanding and delay.
- 10) Existing and future networks of professionals involved in parental child abduction, including mediators and lawyers, should be strengthened and promoted in order to improve cooperation and skills and encourage the exchange of knowledge.
- 11) Cooperation should be encouraged between criminal and civil law authorities in order to ensure that criminal proceeding do not hamper the safe return of the child and the abducting parent.



- 12) As a result of the 1996 Hague Child Protection Convention, mediators, lawyers and judges are under an increased obligation to acquire knowledge of foreign law regarding the acquisition of parental responsibility.
- 13) Lawyers should be involved in the full process of cross-border mediation from beginning to end. Therefore, information regarding the working method of mediators, professional mediation organisations and well-trained mediators involved in cross-border family mediation is required.
- 14) It should be possible in all States to permit a child's relocation to another state. In determining whether to permit relocation, the child's welfare should be the paramount consideration and there should be no presumption for or against relocation. If relocation is permitted the court should make clear provision for the child's continued contact with the left-behind parent. The option should be looked into if the child should be represented by a guardian *ad litem* in an international child abduction court proceeding. The participants argued that they wished to discuss the issues further in the future.

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4. Report of the working group on cross border mediation by partnerorganisation Mikk, Germany



09/1/2014

## **Research Report**

# **The motivation of lawyers to support mediation in international parental child abduction cases under the 1980 Hague Convention**

An interview study conducted  
by Dr. Katharina Kriegel-Schmidt  
for



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## 1. An outline on research design and research process

This section outlines the aim and design of the study as well as the steps that were undertaken from the beginning of the project in May 2013 until its end in December 2013. It also briefly explains the methods that were used for the interview study.

The goal of this study is to illuminate what motivates lawyers to support mediation when they are involved in international child abduction cases under the 1980 Hague Convention<sup>11</sup>. On the basis of seven interviews conducted with lawyers in Germany it gives an important insight into the following questions:

- **Why and how do lawyers support mediation in CA cases?**
- **Which concerns/fears/reservations do lawyers have regarding mediation in these cases?**

The overall aim of the study is the development of concrete ideas and proposals to promote the cooperation of lawyers in the field of mediation in international child abduction cases.

Initially the working group RESEARCH planned to conduct interviews with lawyers who could be seen as representatives of four different groups: representatives of those who support mediation, those who are against it (or express strong concerns), those who have changed their minds over the last few years in one direction or the other (from pro to con or from con to pro). In the end, one important result of the study is that it became obvious that a clear distinction between lawyers who support and those who oppose mediation is somewhat misleading.

From the beginning of the project in May 2013 until the end of the project in December 2013 I undertook five working stages, as seen in Figure 1 below:

Stage	Aim	Dates
<b>Stage 1:</b>	Field research on IPCA Developing the design of the study	May-June 2013
<b>Stage 2:</b>	Evaluating the design of the study (pre-test- phase)	July 2013
<b>Stage 3:</b>	Conducting the interviews	September until Mid-November 2013
<b>Stage 4:</b>	Transcribing, interpreting and evaluating the data	Mid-October until December 2013
<b>Stage 5:</b>	Describing the results and writing the final report	End-December 2013 until January 2014

**Figure 1: Working stages**

<sup>11</sup> International child abduction cases under the 1980 Hague Convention: hereafter also referred to as “CA-cases”

**In the first stage** it was particularly important to do research in the field of International Child Abduction Cases under the 1980 Hague Convention and to focus on the impact of lawyers and their role in these proceedings. Based on the findings of this first phase, I developed over 20 categories and 80 hypotheses linked to the motivation of lawyers to support/oppose mediation in CA-cases.

The compilation of hypotheses at this stage of the research could be divided into various main categories to understand how the lawyers' motivation of lawyers was influenced by their knowledge and experience in different aspects concerning CA-cases and mediation (1), by individual factors such as individual role perception, financial considerations etc. (2), by environmental/structural factors such as the Hague proceedings, the parties represented, the countries involved etc. (3) and by the attitude and behaviour of other parties involved in a CA-proceeding, for example the opposing lawyer, judges or mediators (4).

Following the decision to conduct guideline-based, semi-structured expert-interviews, a guideline was then designed for phone-conducted interviews.

**Stage 2** consisted of testing and evaluating the interview-guideline. The final version of the interview-design was translated into English and was sent to the Advisory Board of LEPCA in July 2013, which then approved the design. In the meantime more than twenty lawyers working in Germany were contacted via e-mail and were invited to participate in the interview-study. They received a followed up call a week later. Of twelve lawyers who offered to participate, I chose a random sample of seven lawyers.

In **stage 3** the interviews were conducted on the phone. Every interview was recorded and the lawyer's identity remained anonymous. An average interview lasted 30 minutes.

**Stage 4** was the most extensive step which consisted of transcribing, interpreting and evaluating the data. After having transcribed the interviews, I developed a profile for each interviewee. In order to develop a code system, the interview material of altogether 105 pages had to be read and worked through carefully several times. Certain quotes have been selected in order to illustrate the findings<sup>12</sup>. Ultimately I was able to identify a variety of important categories that were related to the research question. Each category provides several explanations and complex patterns to allow for a more elaborate comprehension of the motivation of lawyers who support mediation in CA-cases.

The overall findings allowed to develop the first map of profiles of lawyers and their opinion of mediation (→5) and also resulted in various recommendations of action to promote the cooperation of lawyers in the field of mediation in CA-cases (→6.2).

In **stage 5** the final report was written.

The results of this study will be presented at the LEPCA-conference in Den Haag in May 2014.

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<sup>12</sup> The original quotes in German are not part of this research report. They are all compiled in the central research data pool



## 2. Structural data: Specific attributes of the interview participants

Seven lawyers were interviewed. Their attributes are shown in Figures 2-8 below.

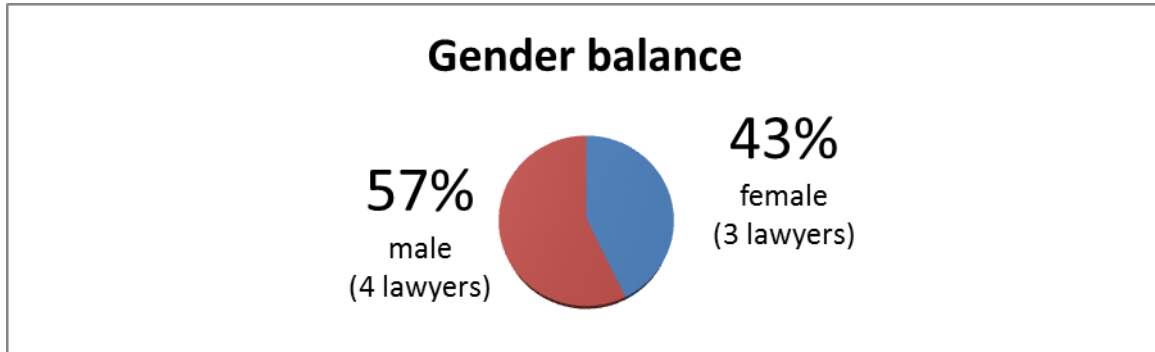


Figure 2: Specific attributes of the interview participants: Gender balance

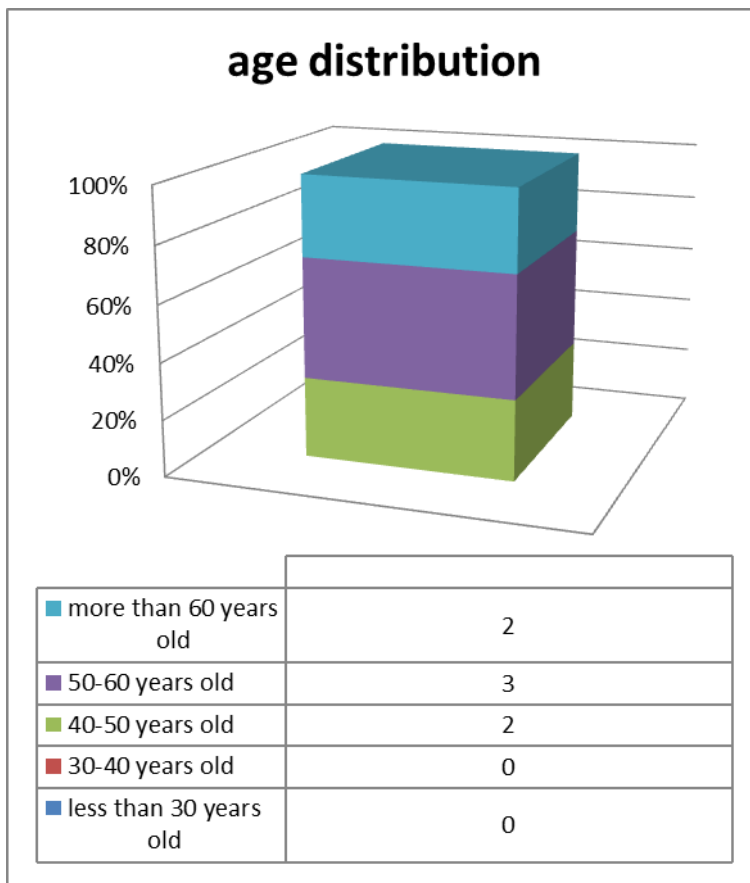


Figure 3: Specific attributes of the interview participants: Age distribution

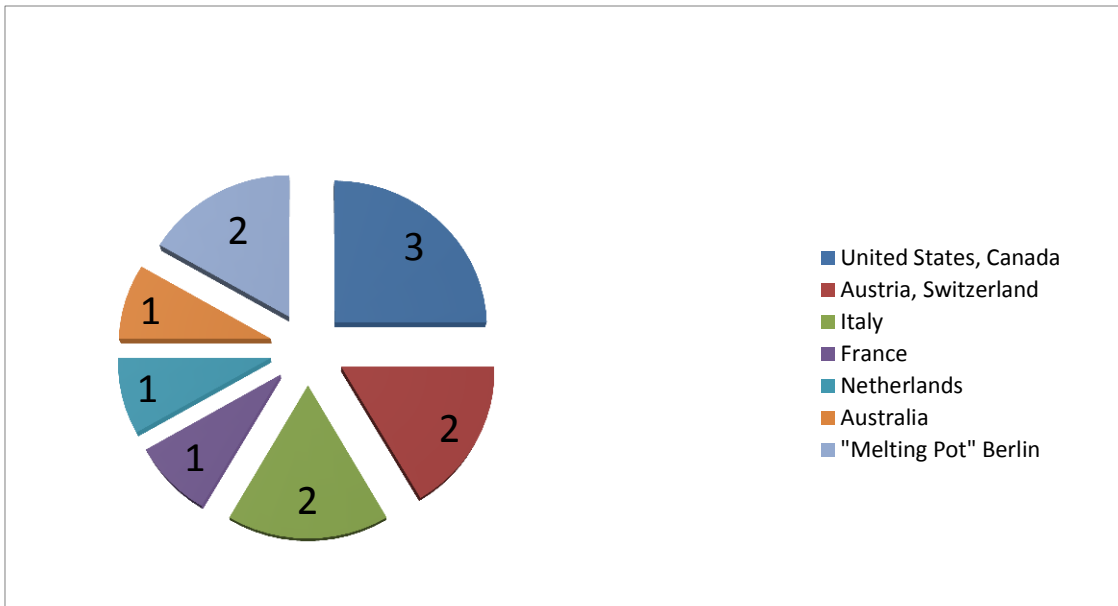
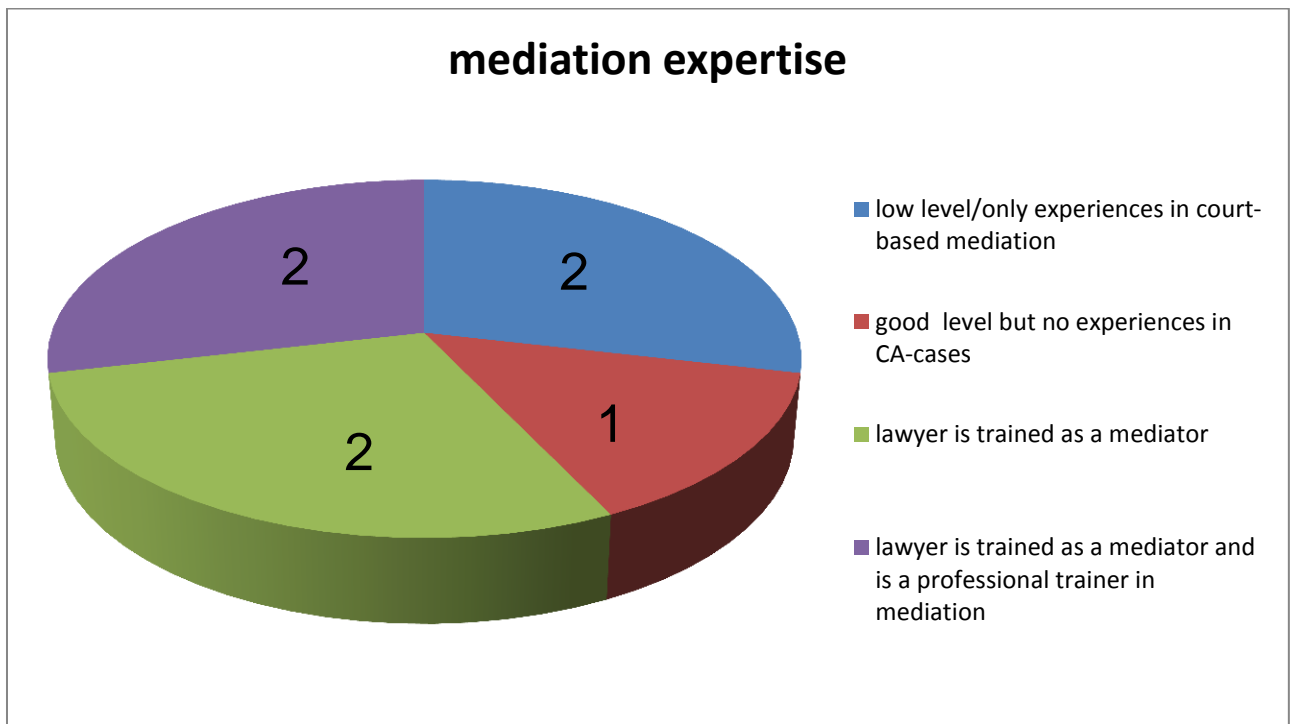


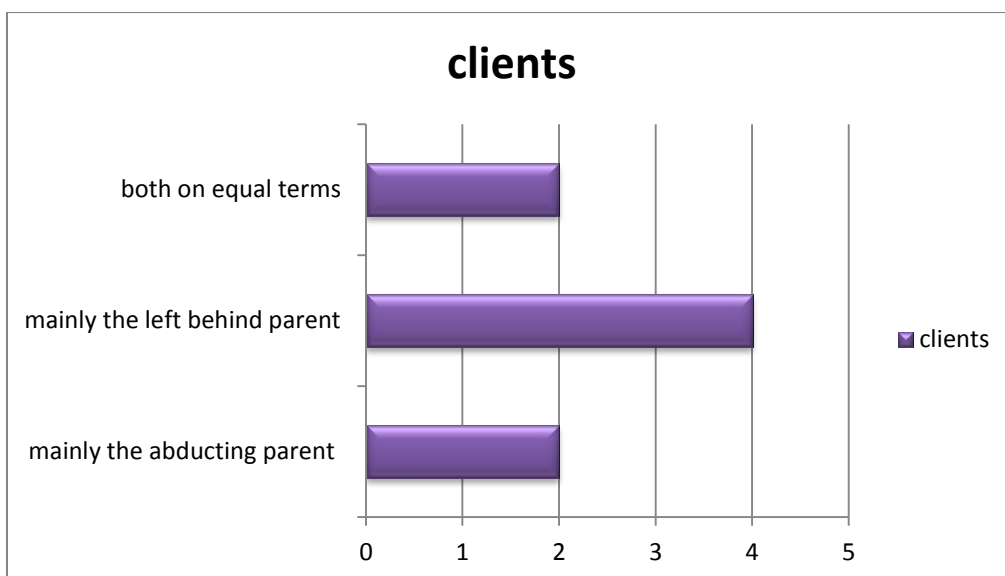
Figure 4: Specific attributes of the interview participants: International scope mentioned by lawyers



Figure 5: Specific attributes of the interview participants: Location of lawyers: Stuttgart, Frankfurt am Main, Hamburg, Potsdam, Berlin (3x)

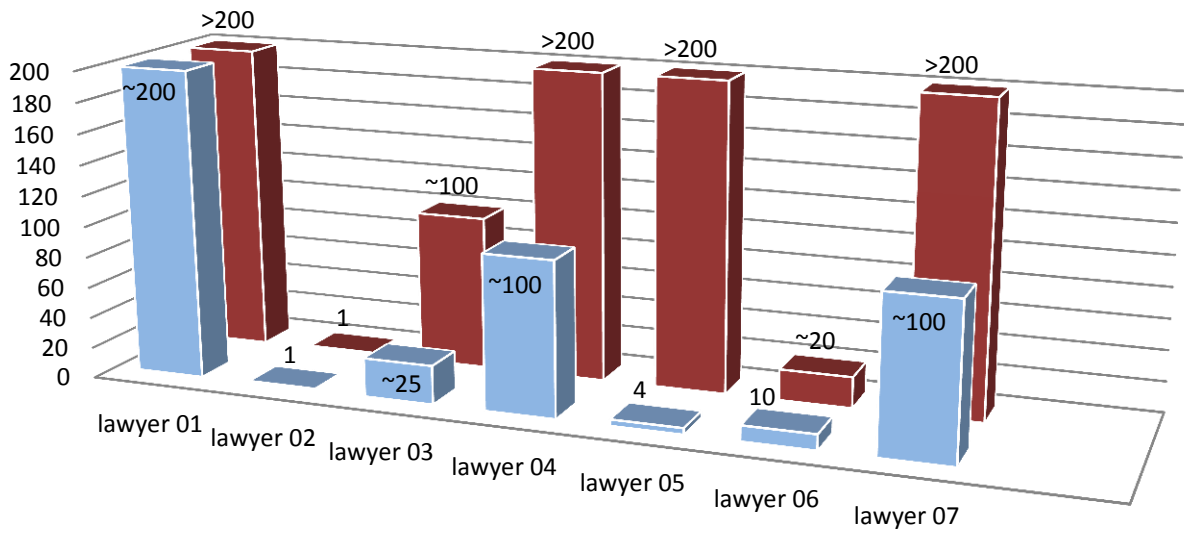


**Figure 6: Specific attributes of the interview participants: mediation expertise**



**Figure 7: Specific attributes of the interview participants: profile of clients**

### Number of CA-cases with proceedings going on/ Number of CA-cases with proceedings not yet started



	lawyer 01	lawyer 02	lawyer 03	lawyer 04	lawyer 05	lawyer 06	lawyer 07
CA-cases with proceedings going on	200	1	25	100	4	10	100
CA-cases with proceedings not yet started	200	1	100	200	200	20	200

■ CA-cases with proceedings going on      ■ CA-cases with proceedings not yet started

Figure 8: Specific attributes of the interview participants: Number of CA-cases estimated by lawyers (Hague proceedings going on and before Hague proceedings)

### 3. The overall findings

Upon analyzing the results of the seven interviews it was seen that lawyers' motivation to support or to oppose mediation in CA-cases is much more complex than it had been first assumed. Lawyers could not in fact be categorised simply as supporters or opponents of mediation. On the contrary, the findings indicate **rich patterns of knowledge, beliefs and action**, which may lead to a lower or higher grade of motivation to support mediation in each case.

Furthermore the findings suggest that the motivation of lawyers has **less to do with a fundamental support or rejection of mediation** than it does with the **question of the right time regarding the Hague proceedings**:

Apart from the regular 1980 Hague Convention cases the lawyers I interviewed deal with an important amount of cases which do not yet fall under the Hague Convention because proceedings have not (yet) started: At this very early stage lawyers believe that **their most important task is to motivate parents to keep out of CA-cases**. In this context they are very much **in favour of professional mediation** or actions that they themselves describe as mediation.

When Hague proceedings have already started, **time** also seems to play a crucial role: **The stage of the Hague proceeding at which the lawyer joins in, regulates his/her motivation for mediation**.

Last but not least lawyers who, for various reasons, prove to be sceptical of mediation in the process of Hague proceedings, nevertheless support mediation after the child has been returned to the country of residence.

What proves to be the **right time** for mediation depends very much on the specific patterns of knowledge and beliefs of each lawyer.

Finally, **the action/ situation of the parent** seeking help from a lawyer seem to be of great importance: The motivation towards mediation differs depending on the perspective: **A lawyer dealing with a parent who has taken the child is confronted with different challenges than the one dealing with the left-behind-parent**. Each perspective provokes quite different thoughts regarding the question whether or not and how to support mediation in CA-cases.

These main results indicated briefly are examined in more detail later on. They will also be complemented by various other interesting findings.

#### 3.1 An overview of impact factors

Which factors determine whether or not a lawyer will support mediation in CA-cases?

In order to provide some orientation, an overview of impact factors is shown in Figure 9 below.

During the interviews lawyers emphasised a number of issues, which later during the analysis were found to be key topics for the question of their motivation. They were grouped into so-

called impact factors, factors which impacted the motivation of lawyers to recommend, advise or even push clients to mediation in CA-cases or on the contrary to turn down the possibility of mediation by not mentioning it or advising against it.

The analysis produced three different levels of impact factors:

Each factor can be assigned to **one of two main sections moderating motivation**:

At the first level we find on the one hand **prior conditions** of motivation. Prior conditions include all factors that are not based on the wanting or abilities of the individual lawyer but foster the conditions in which the lawyer may exercise his actions. On the other hand we have **subjective factors** of motivation including all those which are directly or indirectly linked to the personal qualities of the lawyers, including their beliefs, decisions and actions.

The second level of impact factors maps different categories belonging to either prior conditions or subjective factors. These categories include all of the findings regarding the question of why lawyers support or do not support mediation in CA-cases. They can be summarised as follows:

Prior conditions of motivation include 1) **the situation of the client**, 2) the so-called **influential players** that the lawyer is in touch with during the course of a CA-case proceeding, 3) the **regional context** a lawyer is working in as well as the **national context** of the case if he works abroad, 4) the **case frequency** regarding his own experience but more importantly regarding the experience of the opposing counsel or the judge he is confronted with.

Subjective factors of motivation include 1) **the lawyers' knowledge of the law** as well as **his subjective framework** of what is happening or meant to happen, 2) **the mission he is engaging in** – here I found quite different concepts of mission and 3) **the perception of the client**, his abilities, needs and qualities.

All of these categories at the second level of impact factors can be specified in detail (→3.2).

The most important factors mediating motivation and belonging to one of these categories are those which have been thoroughly mentioned and expended upon in the interviews. They are shown at the third level:

When talking about the situation of the client, it seems of great importance **whether the lawyer is dealing with the parent who is about to commit child abduction** or who has already done so **or whether the lawyer is contacted by the parent who has been left behind**.

Of the utter most importance for the motivation to support mediation in CA-cases is the **starting point of the mandate**, in other words whether the client seeks help before a Hague proceeding is opened or at some later point when the courts have already engaged in the process.

**The attitude and behaviour of the client** and his definition of the situation can be seen as another important factor shaping the lawyers motivation to support or not support mediation in a specific CA-case.

It is not surprising that **other players**, who are involved in CA-cases, each with their own attitude and actions will have an impact on the motivation of a lawyer to support mediation.

Interestingly, I found that in many cases it is **the opposing counsel** who could potentially play the crucial role of impeding a lawyer on his/her way to accompany his/her client to mediation.

**Judges** also seem to be a heavy influence on the lawyers' motivation to support mediation as well as **the frequency of CA-cases** concerning both players: judges and lawyers.

Regarding the subjective factors of motivation, it is vitally important how the lawyer personally defines his or her role in CA-cases. **The interpretations of the lawyers' mission and the frames supporting this mission in CA-cases prove to be astonishingly different.** It is clear that one subjective frame will more likely lead to a support of mediation than another.

How motivated a lawyer is also depends on how lawyers interpret **the intercultural dimension of the CA-cases** and what consequences they draw from their perspective on culture and cultural differences for the process of mediation.

Last but not least, it seems to be of vital importance what mediation means to the lawyer: **The perception of mediation and the knowledge concerning mediation vary greatly** and so does the motivation to support mediation. What happens during a mediation, what ought to happen in mediations, how can or cannot mediation contribute to a conflict situation – Here we find various ideas among lawyers.

Another important link exists between the motivation to support mediation and **the risks of harm, which are estimated by the lawyer for either parents or children** in CA-cases.

Overall it is important to point out that the big picture is less about the basic rejection or acceptance of mediation and more so about the importance of how different aspects are taken into consideration as well as the interplay between them.

The three levels of impact factors are shown in Figure 9 below. This illustration is also to be found in the annex of this report (→ p 34).

The factors will be explained in detail in the next section.

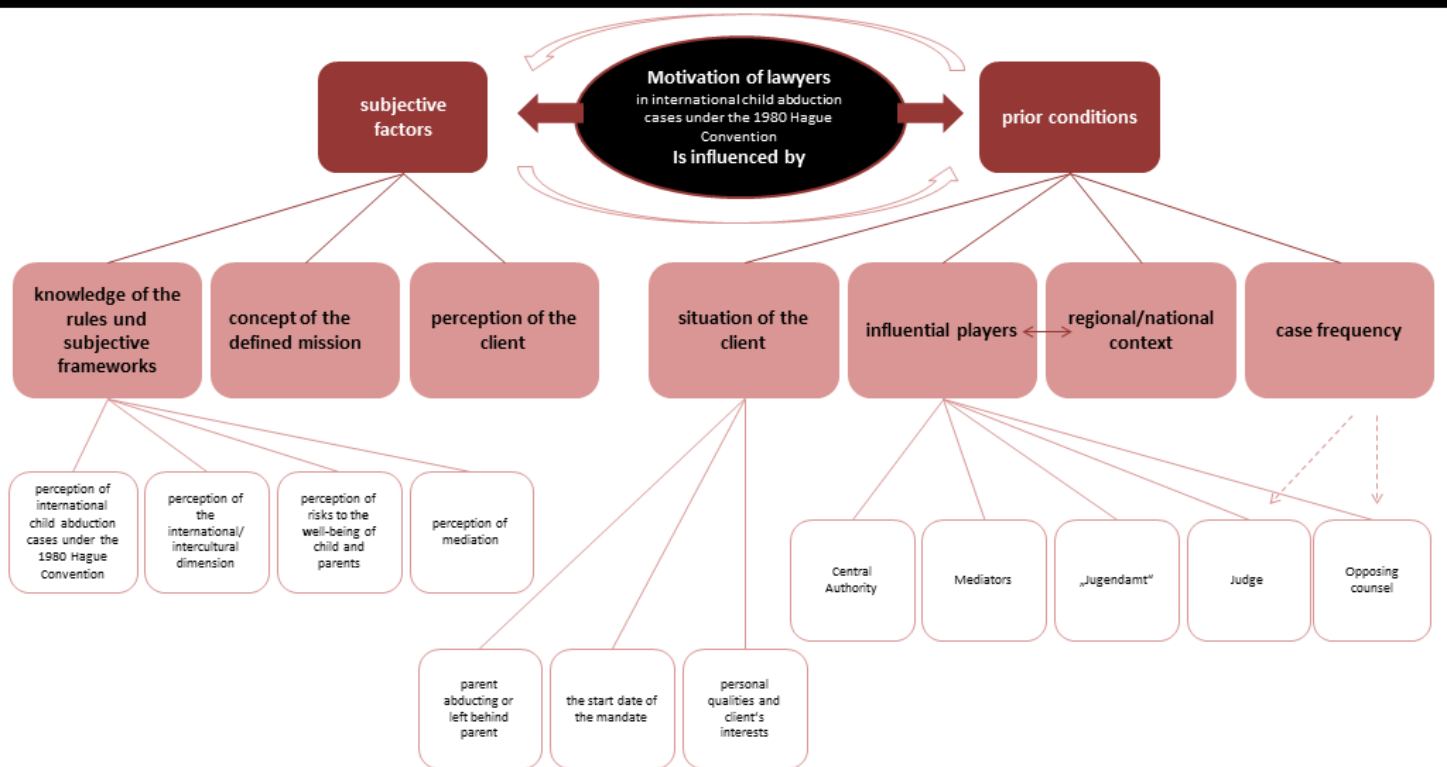


Figure 9: An overview of impact factors shaping the motivation of lawyers to support mediation in CA-cases

### 3.2 Analysis of the results

Due to the limited scope of this study, all results must be interpreted according to what they are able to tell us: They give us an important insight into the different possible ways of thinking and actions of seven lawyers who are engaged in international child abduction conflicts and offer the first important insights towards answering the question at hand.

The results can be followed up and thoroughly developed by larger scale research projects in the future. If, at the same time, a lawyer is seen as a representative of an entire group of other lawyers, the findings may also be interpreted as keys to a better understanding of the complex reality of this professional group asked to promote mediation in CA-cases.

It is impossible to make large-scale generalisations using a study of this size.

What is possible, however, and should nevertheless be done is to 1) **develop actions** which fit the subjective frameworks and needs of these seven lawyers because they form a part of the professional group of lawyers in Germany, which might represent a much larger group of lawyers and 2) seriously **consider further research** to either validate one or more of the interesting results from this study or to look at specific groups of lawyers who were not taken into account during this study, eg. young lawyers who may already have different conceptions of family, children's and parents' needs and ways to settle conflicts or conduct research on international lawyers working in Germany who might also differ in their way of action towards mediation when they are working for the parent living abroad.



### 3.2.1 Subjective factors

#### 3.2.1.1 The lawyers' knowledge of the Hague proceedings and his subjective frameworks regarding CA-cases

The results show that the lawyers have quite similar perceptions of the Hague proceedings, yet have very different perceptions of the risks anticipated for both the children and the parents, as well as the challenges posed by intercultural matters and very important: of mediation itself. Those perceptions are linked directly to the lawyers' concept of their mission in CA-cases and therefore to his/her motivation to support mediation. The term perception here is used deliberately because it includes both: the knowledge that a lawyer might have on a topic and the subjective interpretation made from this knowledge which then results in a subjective framework.

##### **The perception of 1980 Hague Convention cases**

This perception of the 1980 Hague Convention is, apart from one lawyer, identical. It is perceived to be a proceeding which defines the return of the child who had been abducted and takes into consideration the competences and sovereignty of the countries involved: It is a regulation concerning the place of jurisdiction and therefore perceived as a tight procedure in the case of CA.

Only one lawyer sees the 1980 Hague Convention as originally designed to ensure the well-being of the child. Apart from that all lawyers are very aware that the 1980 Hague Convention is neither a convention on the well-being of the child nor one that is meant to solve the problems that arise for parents and their children after a separation.

The differences between the lawyers occur when each individual defines their mission in such cases. In general one can conclude: Either the lawyer sees his challenges in a narrow legal frame which means only the return of the child in the event of cross-border abduction or he extends his responsibility to other problems at stake, for example the conflict between the parents regarding the future situation. The latter case will more likely lead to the support of mediation in CA-cases.

Problems regarding the knowledge on Hague Proceedings in CA-cases are reported when it comes to cooperating with the opposing counsel:

The lawyers I interviewed have encountered serious lacks of knowledge concerning Hague Proceedings from the opposing counsel which then makes it difficult in their eyes to explore possible ways of encouraging parents to participate in mediation.

##### **The perception of the risks for parents and child**

Lawyers share the burdens with their clients in CA-cases. They speak of traumatic experiences for parents and their children.

Interestingly enough there seems to be a difference regarding the motivation of the lawyer to support mediation in CA-cases, depending on which burdens are seen to be the most difficult to bear for the clients and how they can be reduced.

One of the lawyers focuses on the burdens of the parents and perceives mediation as unbearable for them in this situation because mediation would require negotiations and cause even more delay in this emotionally straining process. The burden for the child seems less important to this lawyer.

Another lawyer focuses on the risks for the child (and the legal consequences) in the case of a delay of the process. He believes that mediation causes delays and therefore represents a risk for the well-being of the child.

Other lawyers focus the well-being of the parents and the child and see their great motivation for mediation in reducing burdens and solving the conflicts. They argue that mediation can deal with all the questions and problems concerning the well-being of child and parents; something the tight proceedings under the Hague convention cannot offer.

### **The perception of the international/intercultural dimension in CA-cases**

The perception of the intercultural dimension in CA-cases influences the support of mediation. There are highly different interpretations about the role of culture and its impact on mediation.

On the one hand there are concerns that cultural differences are too important to be handled in mediation. On the other hand there are lawyers who see the importance of this intercultural dimension and see mediation just as the instrument that can effectively deal with different cultural backgrounds.

The intercultural dimension is not only taken into consideration for the benefits of mediation but is also reflected concerning the international cooperation between lawyers who might have to cooperate in convincing parents to engage in mediation in CA-cases:

One lawyer points out how difficult it is for both American and German lawyers to cooperate in CA-cases because they know too little about the different legal systems. Another lawyer emphasises the important role of intercultural awareness and argues that lawyers need to know about cultural differences in order to understand the different ways of acting for example of a German mother and American father.

### **The perception of mediation**

The motivation to support mediation in CA-cases has to do foremost with the perception of mediation as such. Besides the different expertise in mediation and knowledge concerning mediation, lawyers assume that mediation has different goals in CA-cases:

Whereas one lawyer sees the great opportunity of mediation to work with the parents on two alternatives regarding the future situation of the child, another lawyer believes that mediation can only be about a compromise on the place of residence and therefore makes not much sense in the context of Hague-proceedings.

Not all experiences with mediation in CA-cases are good ones. Lawyers have also experienced mediations that fail and hence experience a lack of motivation working towards mediation in CA-cases.

What role a lawyer anticipates to have in mediation is another important factor for the support of mediation: The one who talks about court-based mediation and places himself in the

process of mediation will encounter more and straining personal effort whilst the other lawyer who sees his role as only accompanying a mediation talks of a great release of work and pressure thanks to mediation.

In some cases lawyers already define their actions in court to facilitate the CA-case-proceeding as mediation and therefore do not engage in actions towards professional mediation. In other cases it is exactly the frame of a professional mediation which is seen as necessary and useful for parents because it creates a new space with time to talk about things.

### 3.2.1.2 The concept of the defined mission

Lawyers in the interviews seem familiar with the specific case proceedings and legal implications of the 1980 Hague Convention. Yet one could say that they are on different missions.

There are some lawyers who believe that their task in a CA-case is exclusively to repatriate the child.

Defining the mission in that narrow legal sense does not mean that one is blind to problems. But in the lawyers' perception the problems are not suitable for mediation because they can be handled by the lawyer himself. Those problems mentioned concern questions of organising a smooth return of the child (and parent).

Other lawyers see the need to enlarge their scope of action in CA-cases because they feel the need to support the parents to trying to resolve their conflict, to reduce psychological burdens and tackle organisational problems related to the separation: The mission leading to mediation might be understood as one that starts from the fact that new problems arise from Hague proceedings:

One lawyer argues that compared with Hague proceedings mediation offers parents the possibility to work out two alternative solutions; one for the situation of residence of the child in one country, one for the residence in the other country. Other lawyers find mediation important because parents need to reconsider the needs of their child which according to the lawyers they don't do in Hague proceedings.

Scepticism of mediation will definitely change the mission of informing parents on behalf of mediation as one lawyer recalls: Because he didn't know much about mediation, he even dissuaded the parents to try mediation.

### 3.2.1.3 The perception of the client, his abilities, needs and qualities

One intriguing result of the interviews was to learn of **the lawyers' self-attributed role as experts in psychological diagnosis**: Even if the lawyer is in general completely convinced of the advantages of mediation and highly motivated to support it in CA-cases, he might advise against it if he thinks that the parent is incapable of mediation:

One lawyer disadvises mediation when he discovers parents lying during the proceedings. Another one thinks they are far too emotional to be able to negotiate in mediation.

This psychological diagnosis of the abilities of a client to engage in mediation can also be affected by the stage of the proceeding. Lawyers think parents are mentally less capable to engage in mediation the later the stage of Hague proceedings.

Another factor influencing the decision for or against mediation seems to be the cultural backgrounds of the clients. Whereas some lawyers argue that mediation is capable of dealing with cultural differences other lawyers argue against mediation for the reason of cultural differences between parents.

Only one lawyer sees all clients capable of at least trying mediation and consequently advises mediation to all parents he works with.

## 3.2.2 Prior conditions

### 3.2.2.1 The situation of the client

#### **Abducting parent or left-behind parent**

It is an interesting finding that a lawyer's motivation to support mediation in CA-cases is related to the different challenges that they face, depending on which parent they work for.

When working for the abducting parent, the foremost challenge for the lawyer is explaining the legal implications of the action.

The types of troubles that lawyers may encounter with this task are incomprehension and utmost fear and horror on the side of the parent. They also have to face the possible loss of the mandate of the client when being sincere about the legal situation. This can mean that there remains hardly any possibility for mediation.

The results seem to provide some evidence for the fact that lawyers who are working for the abducting parent may be supportive of mediation since their client is situated in a weaker legal position.

Basically the interviews have shown two different motivations for mediation regarding the lawyer of the abducting parent:

In the situation that the lawyer is very familiar with the Hague proceedings, he might encourage his client to engage in mediation just to maximise the advantages concerning his residence and relation to the child.

On the condition that the lawyer knows the Hague proceedings well he might encourage his client to engage in mediation in order to reduce the psychological burdens for parents and the child. Some lawyers in charge of the abducting parent especially worry about the fact that the child (and his parent) will experience a rather traumatising change of residence twice – once by their parent and the other time by the public authority.

On the other hand, the lawyer working for the left-behind parent has no reason or motivation to support mediation purely on behalf of legal positions. If he feels familiar with the specific case law under the 1980 Hague Convention, he assumes that the child will most likely be returned to his client. His motivation to support mediation lies elsewhere: He must have a perception of mission which goes well beyond the jurisdiction of the 1980 Hague Convention. In this case, the lawyer appears to be motivated for mediation in a CA-case because he can help the parents settle their conflict long term in seriously discussing and negotiating the present situation.

But a lawyer working for the left-behind parent might as well advise mediation when he fears that the legal position of his client might be weakened by mediation. Lawyers argue that mediation can be abused to delay the proceedings in order to try and keep the child in the country as long as possible.

Another problem related to a lawyer's support of mediation when they are working for the left-behind parent is that they have to convince the parent of the advantages of mediation regardless of his/her good and safe legal position to receive the child back: They argue that the left-behind parent has greater expenses when engaging in mediation. They also find it hard to motivate the left-behind parent for mediation when he has only come to win the proceedings which mean the return of the child.

### **Date of mandate**

Lawyers in this study see a tremendous burden that parents and children are exposed to when they are involved in Hague proceedings. They tell about CA-cases where police, child services and even private detectives got involved and remember children being brought away to one country just to be taken from the new setting again, this time by the authorities, against their will and disregarding the wishes of the abducting parent.

So all of them are highly motivated to advise the parent against just taking the child and leaving. If contacted in this early stage, they see their major task in explaining the legal implications and above all preventing a CA-case:

Following the strategy of preventing a 1980 Hague proceeding, the actions lawyers undertake can be interpreted as being in favour of mediation. They either explicitly advise mediation to the parents or themselves try to enter into agreements.

There are signs of approval of mediation in general, *before* or *after* a CA-case, but little (or no motivation at all) when the proceedings are already going on. If the stage of proceedings is already advanced, some lawyers seem to be particularly sceptical of supporting mediation.

### **Personal qualities and clients' interests**

Of course lawyers take into account what their clients do and wish for when they are seeking help: Regarding the decision to support mediation on their behalf, lawyers speak of a client's attitude ("Haltung"), which they perceive as more or less suitable for mediation.

But the interpretation of the results also suggests that it all comes down to the lawyers' subjective perception of the client and the influence he makes towards mediation because all seven lawyers have had very different experiences with their clients.

Comparing these experiences with the attitude of their clients to their own attitude, seen in the interviews, one can assume that there is a connection and that the lawyer tells much more about himself (and his perception of mediation, family matters and the well-being of a child) than about the assumed objective reality of his client. One lawyer stresses the probability that he will only be entrusted with a case by parents who share his motivation to settle the conflict by the means of mediation and not by those wanting to fight the normal proceedings.

### 3.2.2.2 Influential players in CA-cases

All professionals acting in CA-cases can be interpreted as having an impact on the lawyers' motivation to engage in mediation.

#### **Central authorities**

Central authorities are known by lawyers to play a key role. But they are mentioned without any greater detail regarding the motivation for mediation. In one case, the central authority was even seen in relation to bad mediation experiences because parents were pushed towards mediation which then failed to help.

#### **Mediators**

The motivation to support mediation in CA-cases clearly depends on the experiences lawyers have made with mediation and the work of mediators in the past. Some of the lawyers mentioned that they had had bad experiences with mediation: They argue that in general legal positions are neglected in a process of mediation and one lawyer remembers that the mediators tried to work on many things but not the important ones in a CA-case (for example how to organise the repatriation of the child).

Most of all, lawyers encounter trouble with the quality or content of the written mediation agreements:

On one hand they experience the burden to re-write the agreements in order to make them suitable for the proceedings.

On the other hand they state that mediators sometimes support parents to agree on solutions that are not possible regarding legal terms in a Hague proceeding (for example questions of parental custody). Two lawyers remembered several cases where parents did not approve of the mediation agreement and then conducted an even harder struggle during the proceedings.

Another worry which may lead a lawyer to advise mediation (besides the quality of the written agreements) is the lack of cooperation between lawyers and mediators. One lawyer claims that appropriate measures of mediation demand constant feedback from mediators and lawyers.

#### **“Jugendamt” (Child Protective Services)**

Lawyers express their reservations on the subject of “Jugendämter”: They are seen either overwhelmed by or poorly informed about the specific nature of CA-cases.

#### **Judges**

Judges have a direct impact on the motivation and the scope of action a lawyer perceives possible in working towards mediation in a CA-case. Lawyers perceive themselves as depending on the “good will” of the judge towards mediation especially in the question of time and support needed to organise mediation.

Judges, even further, are seen as being responsible for the recommendation of mediation towards parents.

This leads to the conclusion that lawyers might be more motivated to support mediation when they encounter judges who try to implement mediation. But lawyers experience local differences depending on the judge responsible for the case. In one case a lawyer speaks about Frankfurt: He explains that there is no judge responsible for CA-cases. According to his experience, judges in Frankfurt work according to a principle of rotation which makes it particularly difficult to support mediation.

### **The opposing counsel**

The opposing counsel can be seen as one of the most important influential players when it comes to a lawyers' action towards mediation in a CA-case. Both of them have to cooperate in order to make mediation possible.

A lawyer might be very willing to support mediation but if the opposing counsel is fighting in the normal manner, his motivation is severely affected.

Lawyers who believe that mediation is a very important way for parents to settle their conflict also face serious problem when they get in touch with the opposing counsel who has a tremendous lack of knowledge concerning the legal implications of Hague Proceedings in CA-cases. This lack of knowledge is experienced mostly when working with lawyers engaged by the abducting parent.

In addition to a suspected small case frequency, the lawyers in this study believe that many other lawyers are incapable of admitting to their serious lacks of knowledge regarding mediation.

Lawyers on the other hand who are sceptical of mediation (especially when proceedings have already started) because they see their mission exclusively in the repatriation of the child, are not satisfied when they meet lawyers who see more to the case than the legal positions implied by the Hague Proceedings. They then do not want to handle conflict matters other than the repatriation of the child.

Even if the interviews show that lawyers tend to be rather "helpless" on behalf of mediation when facing another lawyer who is opposed to it, there are some strategies to try to support mediation nonetheless. Interestingly enough the strategy mentioned does not so much consist of arguments on how mediation could help parents to settle their conflict (the usual and well-known arguments for mediation) but rather on arguments based on the logic of advantages for both lawyers (for example: to save precious time or to reduce the risk of losing the case).

#### **3.2.2.3 The regional/national context a lawyer is working in**

The regional context of the lawyer (eg. the town or district where he works) can be interpreted as a prior condition which affects his attitude towards mediation: The regional context defines the situation as the interplay between lawyers, judges, the "Jugendamt", mediators and mediation networks.

Depending on the court dealing with the CA-case and how the judge responsible for the proceedings acts on behalf of mediation, the lawyer himself will find it easier or harder to gain knowledge about mediation or even to promote mediation in CA-cases.

Whereas lawyers in general are aware of a positive attitude towards mediation in Berlin, they see difficulties in the Frankfurt region.

Besides regional/local differences in Germany, lawyers also encounter national differences regarding other lawyers' actions towards mediation depending on different cultural interpretations of CA-cases (one lawyer gives the example of the United States and Germany) and the Hague proceedings in general.

#### **3.2.2.4 Case frequency**

Judges and the opposing lawyers have been identified as influential players when it comes to mediation in CA-cases.

Lawyers in the interviews complained about the small amount of experience in CA-cases that the other lawyer and judges in general have had which according to them makes it hard to support mediation in CA-cases.

In addition to the fact that the motivation to gain knowledge in a field that is not the main business might be rather low for both, judges and lawyers, they also see a danger of the opposing counsel giving misleading or wrong advice to the parent, which in the end also reduces the possibilities of mediation.

### **4. A summary of lawyers' concerns/fears/reservations regarding mediation in CA-cases**

Throughout the interviews, irrespective of whether or not the lawyers expressed a strong will to support mediation in general, they did express concerns, fears and reservations regarding mediation in CA-cases. These are listed below. Each worry might provide important indications of how to strengthen the support of mediation:

1. The opposing counsel is suspected of being accustomed to escalating conflicts and therefore may adversely affect any effort made by the lawyer in support of mediation
2. The opposing counsel is suspected of fearing a loss of profit when it comes to mediation
3. The opposing counsel is suspected of fearing a loss of influence when it comes to mediation
4. Lawyers assume an upright importance of legal positions for their client and fear that they are not being sufficiently considered in mediation
5. There is a suspicion that mediation in Germany has been developed to improve the rights and legal position of the German mother and therefore is somewhat biased against left-behind foreign fathers
6. Mediation might be misused as a tactic by the abducting parent to delay the process
7. Mediation is bound to fail due to cultural differences that are far too influential to be overcome



8. Clients have claims that cannot be answered by mediation. Being honest about the legal positions and advising mediation might mean the loss of a client
9. Mediation tackles other problems than defined by the Hague proceedings
10. Mediation is not suitable for solving the problems clients face in CA-cases: Especially in the case of the left-behind parent, all help should be exclusively directed at enabling the other parent to return the child
11. Mediation requires wealthy clients; in reality the situation poses serious financial strains for both sides; especially on the side of the left-behind parent
12. Many parents are not sufficiently “qualified” to engage in mediation
13. There are serious doubts concerning the content of a mediation
14. Lawyers have encountered bad mediators and have experienced bad outcomes of mediation so that they are now reluctant to go to mediation
15. When Hague proceedings have already started, it is simply the worst time to propose mediation because parents are far too emotional to be capable of engaging in a negotiation process like mediation
16. Mediation means renouncing for at least one of the parents
17. Mediation requires certain conditions; not only the financial means but also children who are old enough to express what they want
18. When the proceedings have already reached a certain stage, the client is no longer willing or capable to participate in mediation
19. It is good to support mediation in a CA-case when there is a chance to maximize the benefits on behalf of the client, otherwise it is better to advice against mediation
20. Many written mediation agreements in CA-cases possess a very poor quality
21. There is too little cooperation between mediators and lawyers in CA-cases, especially when it comes to the written agreements
22. Mediation depends very much upon the opposing counsel: He can greatly influence whether a lawyer is motivated to support mediation
23. Mediation can result in an agreement which contradicts the legal implications of the 1980 Hague Convention (for example when parents agree to leave the child with the abducting parents while the Convention implies the repatriation)
24. Mediation is a contradiction to the accelerated Hague proceedings because mediation requires a “slowdown” in order to be efficient

25. Mediation is unsuitable for most stages *during* a Hague Proceeding. Everything should be done to help parents engage in mediation before Hague Proceedings even start or at the end of an CA case, after the child has been returned

It has to be emphasized once again that this is not a list of arguments from those lawyers who oppose mediation. Each argument might convince a lawyer who is definitely in favour of mediation to turn against it when Hague proceedings have already started or may convince a lawyer who usually expressing concerns about mediation to give it a try if the situation is considered to be suitable for mediation.

Knowing the precise fears/concerns and worries might help to develop plans of actions in order to increase the number of cases which convince lawyers to try mediation on behalf of their clients and/or to implement the kind of knowledge closely related to the expressed concerns.

## 5. Profiles of motivation: A map of lawyers' action towards mediation in CA-cases

The overall findings suggest that it is less useful, respectfully inadequate, to try to divide lawyers into either being clear supporters or opponents of mediation even if at first sight he seems to fit into one category or the other. But the further one delves into the subject, the more complex the question of motivation becomes. It is more likely to have a lawyer in favour of mediation but his support of it is linked to certain conditions or to have a lawyer disapprove of mediation in Hague proceedings yet voluntarily support the parents to engage in mediation before proceedings start than to hear a lawyer giving an absolute yes or no answer to the question of mediation.

The following **profiles** illustrate the differentiated views of mediation that lawyers have and reveal the reasons behind supporting/not supporting mediation.

These profiles are meant to be a first step in direction of a **typology** of lawyers' action towards mediation in CA-cases.

→ I work primarily for the left-behind parent  
→ I say yes to mediation!  
→ Mediation is an important supplement to the Hague Proceedings: mediation can solve all those open questions which have been created by the 1980 Hague Convention, including the psychological problems for parents that are almost impossible to bear. In mediation you can always work out two possible alternatives for both situations in a CA-case that the parents might have to deal with  
→ I can tell if clients are qualified to engage in mediation  
→ I am strongly committed to supporting mediation if mediation corresponds to the personality/abilities of my client  
→ If the opposing counsel is willing to use all means to try to win the case for the abducting parent, I am no longer willing to support mediation

→ I am working for the left-behind parent  
→ I generally say yes to mediation, but tend to oppose it during Hague proceedings!  
→ The 1980 Hague Convention is focused on the well-being of the child. Mediation on the other hand is focused on the interests of the parents who tend to neglect the interests of the child because they are only interested in determining who gets to keep the child. More than that: Mediation hampers the proceedings because it delays the early repatriation of the child which is without question very important for its well-being  
→ I would definitely support a mediation following the repatriation if parents are up to it

→ I am working for the abducting parent  
 → I say yes to mediation!  
 → Mediation is useful to maximise the chances of leaving the Proceedings as a winner for the parent who has abducted the child  
 → Nevertheless I think lawyers should do everything to avoid a Hague Proceeding by warning the parents about the legal implications and save the child from a double painful and damaging uprooting  
 → I would not always advise parents to engage in mediation. Mediation is suitable and promising for those who have rich international experience and who know that everything in life can be negotiated  
 → Taking everything into account, I think mediation will expand in future because more and more parents are willing to abandon their advantages for the sake of the child

→ I am working for the left-behind parent who lives in my country of origin  
 → I do not approve of mediation at all!  
 → I do not support mediation because mediation is in opposition to the 1980 Hague Convention. Engaging in Hague Proceedings means acting by law, mediation means acting by the will of the parents. Mediation cannot be successful because parents engaged in a CA-case want exact opposite outcomes. Mediation cannot be successful because there are cultural gaps. The agreements don't last. Mediation requires that children are already old enough and capable of saying what they want. Most of all mediation is in danger of being misused by the parent who has taken the child. Mediation has been designed to strengthen the rights of German mothers and is therefore not impartial  
 → The task for a lawyer is to reach an agreement between both parents before or within the Hague Proceedings  
 → If my client asks for mediation, will I strongly advise against it and say no  
 → Once the child has been returned I think mediation could be useful in helping the parents settle their conflicts because they are then on equal terms again and in a position to negotiate

→ I work for both the abducting and left-behind parents  
 → For me there is no real alternative to mediation!  
 → If there is no mediation at the beginning, parents are in danger of being involved in brutal Hague proceedings, if there is no mediation along the way, parents will never find a way out of their troubled situation  
 → I think all parents are suitable for mediation which is why I advise all of them to engage in mediation; especially before it comes down to a Hague proceeding. I even encourage those who say: "real men don't mediate." It is always worth a try  
 → Only if the opposing counsel is willing to try to win the case by using all means for the abducting parent, then I have reached my limits and will no longer try to impose mediation

- I work for the abducting parent
- I support mediation for abducting parents but I would always strictly advise against mediation for the left-behind parent!
- The 1980 Hague Convention is a devastating disaster. It is a proceeding against mothers which will always make them lose whereas I have had good experiences with parents engaging in mediation
- Mediation has been created to put those disadvantaged by law in a better position, so it is made for mothers. There are good chances to get the father in the process of mediation when the proceedings are still at the beginning because he is not yet aware of how good his position really is
- Mediation has to take place before the first instance; at any later stage of proceedings it is no longer suitable

- I work for both the abducting and the left-behind parents
- I am ambivalent when it comes to mediation: I tend to support it but I also have strong reservations against it!
- I am always willing to support mediation in order to prevent a Hague Proceeding
- During Hague proceedings I am more than sceptical because everything has to happen very quickly and mediations have to occur during the very short interim period which leaves us with the problem of very poorly written agreements which are open to various interpretations → Mediation means unbearable costs for the left-behind parent, as well as spending much more time and requiring much more confidence in a hopeless situation
- I rely on my own capabilities to reach agreements between parents, my own way of mediation so to say
- To convince a parent to engage in mediation is not a lawyer's job. His task is to inform clients about mediation when he thinks it could be useful and it is up to the clients then to decide on their own
- All hope for mediation, even at the beginning of a case is lost, if the opposing counsel is against mediation

## 6. Recommendations

### 6.1 Explicit Recommendations given by lawyers in the interviews

At the end of each interview the lawyers were asked what one should do regarding the role of mediation in international child abduction cases under the 1980 Hague Convention. The original answers are translated and listed below:

- ⇒ Consider the age of lawyers. I am convinced that it is much more important to inform young lawyers and law-students on behalf of mediation and its role in CA-cases than to concentrate on those who have worked as lawyers for a long time now
- ⇒ Identify and inform the nominated judges in charge of CA-cases on behalf of mediation. It is important that judges have enough knowledge regarding mediation in CA-cases and are willing to support mediation
- ⇒ It is important to consider the role of money and finances in order to support mediation: Often there is a serious need for financial support on the part of the (left-behind) parents to be able to engage in mediation
- ⇒ There is a need for events in Europe where both, lawyers and mediators can meet in order to talk about their experiences with mediation in CA-cases
- ⇒ When organising trainings on mediation in CA-cases they should be at the same time international, intercultural and interprofessional. What it should not be: an event for the press
- ⇒ What we need is a heightened political influence (especially Germany's political influence towards the United States to ask them to stick to the agreements of the 1980 Hague Convention)
- ⇒ Continue and expand the ambitious work of MiKK e.V.
- ⇒ Above all we need a legislature that sets its sights on promoting the child's well-being in Hague proceedings. Therefore one should consider the UN Convention on the Rights of the Child and its role for Hague proceedings
- ⇒ We need new procedural provisions which allow us for example to engage in online-mediations in the context of Hague proceedings
- ⇒ Expand the cooperation of international partner organisations which promote mediation in CA-cases and work together with the central authorities
- ⇒ Improve the international co-operation between courts in order to reduce the constant loss of information
- ⇒ We need an official recognition of more than just one language in order to minimise the burden of translations and loss of precious time

- ⇒ It would be very useful to develop short information guides about mediation in CA-cases which lawyers can display on their homepages
- ⇒ There is a great need for intercultural competence trainings for lawyers in CA-cases
- ⇒ Parents need to consider challenges when leaving the country and have to be well-informed!

## 6.2 Summary and Recommendations following the study

*What do lawyers need to support mediation in CA-cases? What can one do to promote the cooperation of lawyers?*

One aim of studying lawyers' motivation to support mediation in CA-cases was also to find answers to these two questions. Of course one might expect and wish for short and precise answers.

However the results of this study make it clear that the answers are not that simple. At least they do not consist of simply listing two or three things which would then make lawyers automatically support mediation in CA-cases.

Above all: Even a study this small shows that there is no such a thing as *the* lawyer being a strict supporter or opponent of mediation. What there is, on the contrary, is a number of lawyers who possess a number of quite different perceptions of mediation, of what clients need in CA-cases and also what mission should be followed as a lawyer in a CA-case.

Despite their different perceptions, there is one thing that connects all of the lawyers interviewed: They have all found CA-cases to be very challenging, emotionally straining and demanding not only for their clients but also for themselves as professionals trying to help.

This being said, they have developed their ways to act when a parent is seeking legal aid. Mediation in these cases is seen as an (important) option which they take (more or less) seriously. The lawyers' understanding, in the end, is that it is them who need to settle the CA-case which means that the importance given to mediation as a tool varies considerably.

When we ask ourselves what it is that a lawyer needs to support mediation, the answer heavily depends on

- the subjective way of dealing with a CA-case (the lawyers' action)
- his subjective framework to understand CA-cases and the role of mediation (the lawyers' knowledge)
- the prior conditions imposed on the lawyer which he cannot influence

Taking this into account, it is obvious that lawyers do not simply need more money or time or even knowledge to support mediation in CA-cases.

Supposing it does make sense to ask the question of what lawyers need, then the answer would have to be that it is **the complex interplay of subjective factors and prior conditions** that lawyers encounter in their work, which have to be taken very seriously and focused on.

Influencing lawyers means to create new possibilities for them to reflect upon their perception of mediation in CA-cases and to even change it. Lawyers consequently need possibilities to re-think possible ways in working towards mediation.

But the focus should not only be on the lawyers. Also and especially those who aim at getting lawyers to support mediation need something to create new ways of action. In addition to a deeper understanding of the professional situation of the lawyers, they also need a framework suitable for this complex situation and the group of influential actors they focus on.

Therefore the following recommendations are partly directed at the lawyers, partly to those trying to influence lawyers in favour of mediation:

### **1. Abandon the division of lawyers into those who support and those who oppose mediation**

*"The limits of my language are the limits of my world."*

*Ludwig Wittgenstein*

The phrasing of supporters and opponents of mediation seems to be not only misleading but less than useful in the context of CA-cases. This framework of a strong dualism does not seem to help the development of actions towards mediation:

The support of mediation in CA-cases is not necessarily linked to the support of mediation in general. Likewise the rejection of mediation in these cases does not necessarily mean an overall rejection of mediation. In this very specific context of international parental child abduction cases under the 1980 Hague convention, so-called "supporters of mediation" disadvise mediation (for example when they think that the clients are not capable of mediation) and so-called "opponents" guide parents to mediation (for example when they assume to gain more advantages for their client via mediation).

### **2. Take into consideration the role of the specific situation for a lawyers' decision to support or not support mediation in a CA-case**

One of the most important results of this study indicates that it depends on the specific situation and circumstances whether a lawyer tends to support mediation in a CA-case. Key factors for the decision are:

- the profile of the client: Is the lawyer working for the abducting or the left-behind parent?
  - o If the lawyer is working for the abducting parent it seems more likely that he will act in favour of mediation to logically improve their legal positions
  - o Mediation is more likely to be rejected for the same reasons (claims of legal positions) when working for the left-behind parent: In this case the motivation to support mediation has other reasons than "winning" the Hague proceedings
- The time that is considered to be right for mediation
  - o The same lawyer strongly supports mediation to prevent a Hague proceeding and objects to mediation once the proceedings have started



- the estimated personal qualities of the client and the decision of the lawyer whether the client might or might not be “capable” of mediation
- the client's international experiences
- the actions of the opposing counsel and whether he is working for or against mediation

To conclude: Besides the general attitude towards mediation which might be more or less positive, every lawyer I asked could turn out to be a lawyer who supports parents to engage mediation or rejects mediation. This decision strongly depends on the situation and moreover the subjective perception of what the situation needs to be effectively resolved.

Given these results, actions that are meant to lead to increase the motivation of lawyers to support mediation in CA-cases, will take situational factors more seriously.

### **3. Take lawyers seriously in their self-attributed role as experts in psychological diagnosis**

When trying to help clients, lawyers have, all along, attempted to decrypt the clients’ reality. They try to do so mostly with the help of psychological, economic and cultural keys.

The lawyers in our interviews showed that they consider themselves to be able to tell a) which case and b) which person is suitable for mediation.

In order to help, basically there are lawyers who consider themselves experts for both: psychological matters and mediation. This task is not a one easy to fulfil. Interview passages reveal that this self-attributed role also means being exposed to burdens.

What equally might happen is that each diagnosis of the suitability of a client has a lot more to do with one's own biographical background and individual beliefs than with the “objective” situation as such. All lawyers working in these cases are simultaneously fathers, mothers, sons, daughters and in some cases also grandmothers or grandfathers, so indirectly affected by the conflict.

However this self-attributed role as an expert in psychological diagnosis should be taken seriously when developing interventions for the support of mediation:

- It is surely necessary to provide lawyers (low threshold but nevertheless in exposed position) with important information and knowledge about psychological matters (for example research results showing whether or not there is such a thing as an “ability to mediate” which can be diagnosed even before mediation takes place)
- The organisation and support of psychological supervision for lawyers in CA-cases: Lawyers who engage in those conflicts are as mentally strained or stressed, respectfully even more than every other professional working with parents and children in escalated conflicts. Lawyers need the possibility to reflect on their own actions and ways of coping in order to ensure the quality of their actions and their own well-being

### **4. Increase the focus on the support of mediation regardless of the stage of a Hague proceeding**

When the support of mediation is linked to a specific stage in the Hague proceeding, important possibilities to promote mediation will be lost:

One result of the study shows that lawyers who are not necessarily in favour of mediation when a Hague proceeding has started will nevertheless support mediation *before* the proceeding. When asking about the motivation of lawyers to support mediation in CA-cases, it seems important to be aware of their situation to work with the parents way before such a proceeding starts and also their ambitions to prevent a Hague proceeding.

- If mediation is to be seen as an important way of settling international family conflicts, it should be more important that the mediation does in fact take place than the time when mediation takes place: If there are lawyers who see themselves as only being capable or interested in supporting mediation in a very specific stage of proceedings, for example before the proceedings start, then they should be supported to facilitate mediation for parents at any stage and therefore including this very early stage, even before the case is pending.
- When conducting further research on lawyers' motivation to engage in mediation, attention should be moved away from the necessity of mediation taking place during the proceedings of a CA-case to the time of mandate when parents first seek the help of lawyers.

The same recommendation includes those lawyers who only feel capable of supporting mediation after the child has been returned (and the proceedings ended).

By taking this point seriously, one can create new opportunities to establish mediation in CA-cases with the support of lawyers. This would mean to install a system of mediation-support which focuses on different stages of the Hague Proceedings.

## **5. Finance further research projects and studies concerning mediation in CA-cases**

Already this rather small study has produced a much more complex picture of lawyers' motivation in CA-cases than previously known. There are questions that require further

Research in order to be answered:

- How does a typology of a lawyers' action towards mediation look like in Germany? How does this differ from a typology in other countries? The link between these two questions is of utter importance since lawyers from different countries are bound to meet and need to cooperate.
- How are the results and effects of mediations which take place before or after a court proceeding different from those mediations which take place during a Hague proceeding?
- Are there any short-term or long-term effects on the well-being of children who have had to endure more than one changes of residence in the context of CA? This question seems to be of importance for lawyers who reject mediation because they fear that it could have bad effects on the child when he/she has to spend a longer time period in a country while his/her parents attempt to settle their conflict before returning to the other country.
- How does the new generation of lawyers cope with international parental child abduction conflicts? Are they more likely to support mediation and differentiated solutions due to their larger amount of knowledge about alternative conflict resolution methods, international experiences, and acceptance of diverse forms of family?

## 6. Distribute even more information on mediation to lawyers

The results of the study indicate that the motivation to support mediation depends on the image that the lawyer has of mediation. And the quality of knowledge is very different from one lawyer to the next.

There is a lack of knowledge regarding:

- The precise aims/tasks of a mediation in a CA-case
- The possibilities of a cooperation between lawyers and mediators during the course of a mediation
- The time span for a mediation in a Hague proceeding and the possibility of working “*en bloc*” (Some lawyers fear and imagine enormous delays when a mediation is to take place)

## 7. Adapt the way in which information is distributed about mediation

Regardless of whether new ways are created to encourage lawyers to support mediation or if one sticks with the old paradigm, it would surely be useful to adapt the distribution of information in order to incorporate the use of new media: The support of mediation by lawyers, can be positively influenced by providing adequate and easy-hand material. In these times of web 2.0 and electronic media, information material should not only consist of printed versions but a) should be easily adaptable for lawyers’ homepages so they can distribute information to parents easily and b) information about mediation for lawyers and/or parents should be distributed in ways simple and interesting to use, this means for example developing **educasts about mediation** in international conflicts (for homepages and mobile phone apps). Results of the study support this claim as they show that the traditional ways of distributing material is often ignored by lawyers or that they are tired of being addressed on behalf of mediation in the usual ways (for example invitations to trainings or flyers sent by post/e-mail) regardless of how important they might be.

## 8. Rethink the public presentation of mediation in CA-cases

German articles that have been published so far tend to concentrate exclusively on successful mediations in CA-cases. As important as this may be: It is not a thoroughly and genuinely positive image of mediation in CA-cases that will necessarily lead more lawyers to more support mediation.

The reality of mediation as it is experienced by lawyers is equally as complex and diverse as any other reality. And it is the bad experiences that hamper motivation.

Lawyers in the interviews showed serious concerns about:

- poorly written mediation agreements
- insufficient cooperation between lawyers and mediators
- inappropriate results of mediations
- poor work performance by the mediators

These experiences should be taken seriously as one side of the coin. It might be useful to create a public space where worrisome experiences with mediation outcomes or even poor mediation quality can be openly discussed. This could lead to an increase in the trust of a balanced picture of mediation and therefore facilitate a lawyer's willingness to try again even if they have had a bad mediation experience or two.

**9. Develop forms of training and knowledge transfer which are adapted to regional differences and to the genuine low frequency of CA-cases reported by judges/lawyers**

One relevant finding illustrates just how different the scopes of action regarding mediation are depending on the region in which the lawyer works. There are regions/cities with well-established mediation networks and others with none; courts with judges who support (and most important of all: know about) mediation and others that don't. As these conditions have a major impact on a lawyer's motivation to support mediation:

- Trainings should be adjusted to address different regional target groups of lawyers and to take the “regional mediation character” and “court/ judge-character” into special consideration
- Information about these differences should be actively collected and used to address lawyers

Moreover, the results indicate that many lawyers as well as judges only deal with a small number of CA-cases, which appears to be linked to the motivation to support mediation and seems to have been previously underestimated: Having had only a few cases means not only that they command little knowledge of the dynamics in Hague proceedings and/ or mediation but also that they have very reduced and inappropriate subjective frames of all elements concerned, as was demonstrated in the interviews.

Additionally the low amount of cases can cause a lawyer to not be motivated to take part in special programs or trainings.

If this link is proved to be true, then it is absolutely necessary to adapt ways to transfer knowledge about Hague proceedings and the role of mediation to the widespread number of lawyers with limited case frequency. This could mean adapting the time frame of trainings and/or using web 2.0 technologies as mentioned above (for example by offering virtual trainings or creating online knowledge-management-systems).

**10. Differentiate between lawyers who work for abducting parents and lawyers who work mainly with left-behind parents**

It might prove useful to develop different training forms for both, lawyers who mainly work with the abducting parent and those lawyers who primarily work with the left-behind parents.

The results illustrate that lawyers on each side face very different challenges and this clearly effects the motivation to support mediation. To address them separately might be a first but vital step towards bringing the lawyers from both ends to cooperate when it comes to mediation in CA-cases

**11. Make a difference between the aims of a Hague proceeding and the role of mediation**

Lawyers are well aware of differences or even the contradictions between the legal positions in a Hague proceeding and the aims of mediation. Maybe motivation of more sceptical lawyers can be increased by not denying this fact and by clearly stating the differences and explaining the possibilities of a link between the two.

## **12. Train mediators**

It is not only all about lawyers when it comes to the question of motivation to support mediation. If there are poorly written agreements or a lack of cooperation between mediators and lawyers, then mediators also need to be trained to correct this.

## **13. Train employees at the “Jugendämter” (Child service employees)**

*Jugendämter* in Germany are key locations when it comes to the work with parents and children. Nevertheless lawyers encounter staff that seems to be either overwhelmed by or poorly informed about the specific nature of international parental child abduction cases. The staff at these institutions should be integrated in measures supporting mediation in these cases.

## **14. Continue to inform the cross-border public about mediation in case of separation or divorce**

Lawyers tend to be influenced by the attitude of their clients towards mediation in a CA-case. If parents in conflict are more motivated to go to mediation, this may equally increase the motivation of lawyers to support mediation. Information about mediation in case of divorce should be distributed in many different forms and parents should also be supplied with arguments against mediation (by their partners, by their lawyers etc.) in order to be well-informed.

## **15. Organise (even more) meetings for both lawyers and mediators involved in CA-cases**

According to the results, it seems to be vital to bring professionals from both sides together in order to learn more about the challenges that everybody involved in such cases faces.

It might be useful to specifically address lawyers who have had bad experiences (eg. with poorly written agreements) and engage them as trainers. That way it would be possible to work with authentic material and to slowly improve the comprehension of risks that effect a lawyer's motivation to support mediation. If parents have participated in mediations in parental child abduction cases it might be worth getting in touch and asking them to join as guests: Lawyers who prove to be sceptics might be more interested in hearing about the perspectives of their clients than the perspective of other professionals.

## **16. Last but not least: Organise highly qualified intercultural trainings for lawyers**


The interviews show that there is an awareness of the intercultural dimension present in CA-cases. On the same hand, the quality of knowledge concerning cultural matters differs greatly. Research on intercultural mediation might help to provide highly qualified intercultural trainings specified for lawyers and the field of mediation in international parental child abduction cases.





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## Organising partner

### International Child Abduction Center, the Netherlands

[www.kinderontvoering.org](http://www.kinderontvoering.org)  
Ms. Els Prins  
Ms. mr. Maartje Schulte  
Ms. mr. Karina Rongen  
[www.lepca.eu](http://www.lepca.eu)

## Partner organisation

### Germany

MiKK, Berlin  
Mr Christopher Paul  
Ms Sybille Kiesewetter  
Ms Anke Loebel  
Ms Katharina Kriegel-Schmidt  
[www.mikk-ev.de](http://www.mikk-ev.de)

## Associate partners

### Belgium

Adverlat advocaten, Antwerp  
Ms Karin Verbist  
[www.adverlat.be](http://www.adverlat.be)

### Bulgaria

Professional Association of Mediators in Bulgaria, Sofia  
Ms Rubina Minkova  
Ms Eliza Nikolova  
[www.pamb.info](http://www.pamb.info)

### France

Cabinet CBBC, Paris  
Ms Véronique Chauveau  
Mr Alexandre Boiche  
[www.cbbc-avocats.com](http://www.cbbc-avocats.com)

### Italy

Pontecorvi Mannaerts & Triboldi, Rome  
Ms Angela Mannaerts  
Ms Paola Moreschini  
[www.pmt-lex.com](http://www.pmt-lex.com)

### Poland

ITAKA, Centre for missing people, Warsaw  
Ms Anna Kowalczyk  
Ms Joanna Matus  
Ms Anna Nita  
[www.zaginieni.pl](http://www.zaginieni.pl)

### Romania

Focus, Romanian Center for missing and sexually exploited children, Bucharest  
Ms Liliana Rosu  
Ms Gabriela Coman  
[www.copiiidisparuti.ro](http://www.copiiidisparuti.ro)

### Spain

Tulp Abogados, Madrid  
Ms Adriana de Ruiter  
[www.tulpabogados.com](http://www.tulpabogados.com)

### Sweden

Advokaten Catharina Tholin AB, Sundsvall  
Ms Catharina Tholin  
[www.advokat-tholin.se](http://www.advokat-tholin.se)

### United Kingdom

Brethertons Solicitors, London  
Mr Simon Craddock  
[www.brethertons.co.uk](http://www.brethertons.co.uk)

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