

Summary

Owing to the increasing mobility of citizens within the EU and their increasing willingness to live in another Member State, the number of cases of international parental child abduction has grown considerably.

These are cases where, against custody and residence orders, one parent takes the joint child or children to another country. The child concerned is thereby denied his/her right to a life with both parents.

The Hague Convention on Child Abduction should protect children in cases of international parental child abduction but despite this there are numerous cases where enforcing the Convention, as far as it is even applicable, is not successful.

The European Parliament recognised this problem as early as the eighties and appointed a Mediator for International Parental Child Abduction to work together with parents towards finding their own solution to the conflict with the child's best interests in mind.

As Mediator I am currently looking after around 30 cases of international parental child abduction and I am confronted with many kinds of problems both with the administration and laws of the relevant states and in the personal lives of those concerned.

In the following progress report I would like to present my activities as Mediator and discuss the existing problems in the area of international family law so that regulations can be made to improve the situation for those children and parents concerned.

PROGRESS REPORT

Evelyne Gebhardt, MEP

European Parliament Mediator for International Parental Child Abduction



Brussels, 1 March 2007

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Children's rights form an important part of human rights, and the EU and its Member States have committed themselves to the protection of these rights through European and international treaties. Children have full human rights. Some of these rights are applicable exclusively to or in a particular way for children, for example, the right to education or the right to contact with both parents. In order to realise the latter and give it a political dimension, in the late 1980s the European Parliament created, on the initiative of former President Lord Plumb, the position of a Mediator for International Parental Child Abduction.

The first Mediator, Marie-Claude Vayssade, held office from 1987 to 1994. My predecessor Mary Banotti occupied the position from 1995 to 2003.

I took over the position in December 2004.

A. MEDIATOR FOR INTERNATIONAL PARENTAL CHILD ABDUCTION

Owing to social changes in Europe, in particular growing divorce rates and people's ever increasing mobility, a dramatic rise in cases of parental international child abduction has been recorded in recent years. The victims of this are the children who are denied their right to a life with both parents.

This is taking place despite the fact that with the Hague Convention on International Child Abduction one of the most important multilateral conventions on child protection was created. This convention assumes that a legal custody order should be made, generally in the child's place of habitual residence. In the event that a parent abducts a child to another country that is a member of the Hague Convention on Child Abduction the child should be returned to his/her previous place of residence as soon as possible. However, this does not mean that there are no problems implementing and enforcing the regulations in certain cases.

To begin with, this applies to cases involving countries which are not members of the Hague Convention.

My duty as European Parliament Mediator is to try to guide the conflicting parties - usually the parents - towards voluntary, out-of-court procedures to resolve the conflict.

I must decide from case to case if both parents are motivated enough for this and assess what type of commitment is appropriate and what successful outcomes there may be.

I am currently looking after around 30 cases of parental child abduction and around ten of these require intensive support.

I am contacted as much by EU citizens as left-behind parents from the whole world and I look after cases where those concerned reside in Belgium, France, Spain, Germany, Poland, Italy, Ireland, Portugal, Sweden, Hungary and Great Britain as well as the USA, Georgia, South Africa, New Zealand, Paraguay and Canada.

The affected parents contact my office either by telephone or email, for which I have also had my own email address created: MediationChildAbduct@europarl.europa.eu.

The next step is to open our own website where the most important information about the Mediator's activities as well as information and helpful addresses about this subject will be found.

Due to the increase in cases of international parental child abduction I urgently needed support to carry out my work.

As I managed to persuade the European Parliament administration to create a supporting position for the Mediator's office, since August 2006 I can count on the collaboration of Magdalena Kleim (Tel: 0032 (0)28 32170; [magdalena.kleim@europarl.europa.eu](mailto:magdalen.kleim@europarl.europa.eu)).

B. MEDIATOR'S ACTIVITIES

1. Looking after cases of child abduction

When carrying out duties as the European Parliament Mediator the main task is to try to resolve the parents' conflict in the best interests of the child concerned. This can happen if the parents are given the option of mediation and then, as long as both parents are willing to use mediation to resolve the conflict, suitable mediators are found.

Mediation is an out-of-court, voluntary arbitration offer in the event of relationship and custody conflicts between parents. It is carried out with respect for each party's own responsibilities with the help of neutral communicators - the mediators. It is a confidential meeting where any outcome is possible and where there should be no winners or losers. The parents should, with the help of the mediator, come to reasonable, long-term solutions themselves that support the needs of the child and are acceptable to both parents.

Because of the often great geographical distances between the parents, the ambiguity of court procedures and the legal uncertainties that arise when different legal cultures meet, mediation is, in many cases, the only way to reach a fair balance between the parties and to find a personal solution to the conflict over residence and custody rights for the child concerned.

2. Networking

The efficiency of my work as Mediator depends considerably on the quality of collaboration with other institutions such as the European Commission, the Council of the European Union and Members of the European Parliament.

In this respect, personal discussions with the responsible contacts in the EU Commission are of great importance. Information is exchanged at regular meetings to find suitable solutions and to work towards improvements on a European level. This can also cover areas that are closely related to cases of international parental child abduction.

As Mediator I also take part in children's rights related meetings at the European Parliament and regularly contact colleagues whose parliamentary work deals with areas concerning children's and family rights.

A further area of my work as Mediator is to create an effective network with the national Central Authorities, the relevant departments for cases of international parental child abduction according to the Hague Convention on Child Abduction (Convention on the civil aspects of international child abduction - HCCA). The Central Authorities are responsible for working with the Central Authorities in other HCCA contracting states to realise the aims of the HCCA (Article 7 of the HCCA). They must share information about their state's laws as well as information about child protection services available in their state, facilitate communication, assist the responsible authorities, support amicable arrangements and release information about the place of residence of children illegally taken or kept behind.

Collaboration with the Central Authorities generally goes smoothly, and I receive the desired support.

However in some cases requests are ignored or information is withheld, and this hampers the chances of successful mediation.

This is justified on the grounds that the position of European Parliament Mediator is to be seen only as an internal position and is not an authority in the sense of the HCCA.

As this attitude does not help to resolve conflict in cases of international parental child abduction, I try to visit the relevant Central Authorities as much as possible when travelling to HCCA contracting states so that, by means of a personal meeting, I can create the basis for any necessary collaboration.

Regulation (EC) No 2201/2003 (Brussels IIa Regulation), in force since 1 March 2005 has, where applicable, priority over the HCCA.

Under this Regulation, all decisions about parental responsibility, including child protection measures, are recognised and enforced in the other EU Member States (except Denmark) irrespective of a link to any other marital procedures or of whether they concern joint children of spouses, without requiring a special recognition or enforcement procedure. Additionally, the responsible court of a Member State in which the child has grown up shall decide on parental responsibility.

The introduction of this law can result in a considerable improvement in resolving child-related conflict, as one parent who wants to take a child away from the other parent can obtain an enforceable order only in the child's place of habitual residence before abduction. In this way he/she has no legal advantage over the other parent, who previously had to deal with a legal culture that was often foreign to him/her.

It may be expected that, because of this law, the motives for parental child abduction within the EU may be reduced. However, a corresponding interim summary from the European Commission about the efficacy of the Brussels IIa regulation is still pending.

In addition, the regular exchange of information and cooperation with NGOs working in this area is very important.

For example, together with the British organisation REUNITE who campaign to resolve conflict in the area of parental child abduction, I organised an event in December 2005 in the European Parliament, with support from the then President Mr Josep Borrell, to present the new edition of a guidebook outlining how a Member of Parliament can best act if they receive a related request from a parent affected in his/her country.

I would also like to mention the collaboration with the Jacqueline Princess of Croÿ Foundation. We support each other in the fight for children's rights.

Within the framework of my activities, cooperation with mediation experts, psychologists, child psychologists, teachers, social workers and lawyers as well as judges worldwide is just as necessary as collaboration with Interpol and national police authorities.

Additionally, my activities include regular participation in the Hague Convention conferences, which took place in Malta and The Hague in 2006.

As European Parliament Mediator I support the creation of a Polish-German mediation group (following the example of the German-French mediation group) that can be called upon in cases of parental child abduction where the parents and children concerned are from Poland and Germany.

In order to make MEPs more aware of the topic of parental child abduction, to give it a political dimension and also improve the current situation for the children concerned, I submitted a proposal for an own-initiative report to the LIBE committee.

C. PROBLEM AREAS

1. Problems reported by concerned parents

Support can be provided as far as is required when contact is made with the authorities in the country where the child is staying.

This is predominantly the case if, for example, a parent complains of a lack of cooperation with or between the authorities, such as, for example, the Central Authorities or local police authorities.

Affected parents also often report difficulties finding support for matters related to legal procedures such as carrying out a return procedure pursuant to the Hague Convention, accessing documents, or court decisions being issued without first hearing of the foreign parent.

They mention considerable violations by the authorities against the child's right to both parents, such as late recruitment of the Central Authorities' help and a lack of support from local police authorities when a parent has disappeared with a child, in order to impede a child's return.

A further area of criticism by affected parents concerns the local authorities' and institutions' lack of objectivity as they provide more support to the local parent than to the foreign parent. The extent to which the abduction of the child was illegal or is even seen as a punishable act is only satisfactorily investigated in a small number of cases.

A further difficulty mentioned by the affected parents is that, due to lengthy procedures for returning children and/or limited visiting rights, alienation between the parent and child can occur.

Manipulation of the children to put the other parent at a disadvantage is another difficulty with which parents in cases of child abduction are confronted (PAS - Parental Alienation Syndrome). The child then shows a strong aversion towards one parent. In this case mediation becomes more difficult as parents use their children as weapons against each other.

Return procedures for a child pursuant to the Hague Convention are made more complicated by differences in national legal systems and legal cultures (including conflict of jurisdiction provisions). Mediation also suffers as, in many cases, parents are offered this out-of-court arbitration method either too late (as a last resort) or not at all.

2. Problems reported by the Mediator

Unfortunately I am often contacted by concerned parents only once the conflict situation between both parents has already escalated, which makes a mediation attempt considerably more difficult. This is also true for cases where a parent turns to me after the dispute in court has not provided a satisfactory outcome for them and it seems that success in court procedures is not likely.

In some such cases the parents are not seriously interested in trying mediation.

This then leads to false expectations with regard to the activities of the European Parliament mediation office.

In this vein parents mainly request:

- Influence on existing court decisions or administrative legal decisions from an authority.

- Amendments to national family law or procedural rules.
- The abolition/creation of national institutions.
- Legal advice.

Causes of further difficulties lie in the subjective viewpoint of a few self-help organisations and of those affected by cases of international parental child abduction, who have built up a considerable measure of frustration, due to often lengthy and unsuccessful conflict with the ex-partner, foreign authorities, courts and institutions. This is, for cases in which they themselves are affected, usually also understandable.

My communication options with some Central Authorities are in need of some further improvement.

Unfortunately, in many cases the lack of professionalism and knowledge of legal provisions on the part of the local police authorities as reported by parents affected by international child abductions is confirmed. In certain cases the local police authorities and other administrative authorities lack the will or conviction to implement the Hague Convention consistently and deal with the foreign parent. Sometimes, knowledge of the 1980 Hague Convention provisions is very limited, and this leads to unnecessary conflict escalation between the parents. The assessment of what will serve the child's best interests is then influenced by personal considerations and not valid legal regulations.

D. THE MEDIATOR'S PUBLIC WORK

Due to the increasing number of cases of international parental child abduction and increasing networking activity, the creation of a post in the European Parliament to support my office became essential, which is why I urgently sought personal support in this matter from the European Parliament administration.

Since September 2006 a specialist lawyer has been assisting me with my work.

This puts me in a position to see to cases of parental international child abduction better and more effectively, to intensify relationships with specialist contacts and build relevant networks as well as carrying out more public work for the office.

I place great importance on regular dialogue with contacts in the European Commission. As part of this cooperation we not only discuss specific cases but also draw up and exchange suggestions for improving legislation.

The same applies to a regular information exchange with the permanent office of the Hague Conference on Private International Law.

1. Proposals for further improvements to resolving international parental child abduction

As a contact for parents affected by international parental child abduction who are seeking help, I have been able to gain insights into the problem on many levels and also become familiar with different types of cases of international parental child abduction. Because of this deepened knowledge, I would like to take this opportunity to submit proposals to improve the situation of those concerned, particularly affected children, which could provide the basis for changes to legal provisions.

- One of the main aims should be to strengthen professional mediation as an alternative dispute settlement method to conventional court procedures.

Currently in most Member States the only form of mediation on offer, if any, is voluntary mediation offered by an NGO. A permanent inclusion of mediation, particularly in the course of divorce and custody proceedings, has still not been achieved to a sufficient level. Those in conflict all too rarely choose a professional mediator on their own initiative.

Based on experiences to date, a mediation attempt as part of an international dispute over parental contact should be undertaken as early as possible - while there are no winners or losers and the conflict has not yet led to a complete communication rupture.

EU citizens should be convinced of the value and efficacy of alternative dispute settlement methods, and mediation in particular. These methods generally offer a more cost-effective, speedier and less complex alternative to court procedures. In the event of unsuccessful mediation, the citizens would not lose the right to a legal review as a last resort.

As Mediator for child abduction cases I place much hope in the European Parliament and Council Directive on certain aspects of mediation in civil and commercial matters.

- Additionally, as a preventive measure, more information work to promote mediation between bi-national parents must be carried out in the EU so as to make parents aware that such situations can be defused from the start.

There is also a need for improved and wide-ranging public information about international conventions as well as the available contacts and help routes in specific cases, so that affected parents can be helped as quickly and expertly as possible.

- Because the affected parents and national Central Authorities fear that, if mediation fails, their case may not meet a court's time-limit, the mediation option is frequently not even considered. It would therefore be a good idea if the Member States would take the necessary steps to ensure that parents could initiate legal proceedings after mediation failure without finding that the time-limit had expired.

In this light, the start of mediation should have the effect of suspending the limitation period.

- In addition, enforcing mediation decisions should be considered in order to strengthen the status of mediation and make the decisions binding. This could be implemented by registering the mediation decision in a competent court.
- So that the courts and authorities are as knowledgeable as possible about the issue of international parental child abduction, I would also propose a concentration of competence as regards courts and authorities in EU Member States so that these sensitive cases are dealt with throughout by trained and experienced professionals.

Collaboration between authorities should be increased to remove bureaucratic obstacles. This mainly concerns the collaboration between the Central Authorities, but also other authorities concerned with residence or custody proceedings.

Despite improvements in recent years, delays in proceedings are still considerable obstacles to maintaining contact between the left-behind parent and the child, which can lead to the child becoming alienated from the parent.

- Creation of a social awareness that child abduction is fundamentally wrong and the abductor must not profit from his/her actions as a matter of principle.

2. *Europe-wide children's rights strategy*

I would also like to whole-heartedly support the children's strategy raised by EU Commission Vice-President Mr Franco Frattini. Many appeals and requests have been made from practical experience, such as the introduction of clear-cut EU-wide definitions of terms such as 'child abduction' or 'place of habitual residence'.

I hope for the speedy improvement of the legal and practical conditions for children in Europe who have been taken to another country by a parent.

For this reason I suggest the following proposals for the legal structure:

- Inclusion of existing EU agencies such as SOLVIT and creation of online services for those affected
- Support for training for judges, lawyers and mediators
- Harmonisation of the legal provisions concerning the child-parent relationship
- Strengthening of children's rights