

STUDIES IN PRIVATE INTERNATIONAL LAW

INTERNATIONAL CHILD ABDUCTION

The Inadequacies
of the Law

Thalia Kruger



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INTERNATIONAL CHILD ABDUCTION

International child abduction occurs when one parent wrongfully (ie in breach of the parental responsibility of the other parent) takes a child to a country other than that of the child's habitual residence, or wrongfully keeps a child in such country. The author of this work was part of a research team that conducted a study, partially funded by the European Commission, to examine this problem in Belgium and Hungary, analysing cases from 2007 and 2008 and interviewing the affected parents. This book is a revised version of the Belgian research report, which sets the problem of child abduction within its international context. It looks at the families in which abductions took place, how preparations were made for abduction, the quest for the return of the child (including legal proceedings) and the aftermath of the abductions. Throughout the book, the results of the quantitative and qualitative data are explained. What emerges is that when a child is abducted, the solutions offered by the law are often inadequate. Family conflict is a complex societal issue and child abduction is a severe form of family conflict. Rather than responding to child abduction with strict and contentious legal proceedings, the book argues that solutions based on respect, psychological assistance and a search for consensus should be favoured.

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Volume 6: International Child Abduction: The Inadequacies of the Law

Thalia Kruger

SERIES EDITORS' PREFACE

This book is the first in a trilogy on international child abduction that will be published by Hart in the Studies in Private International Law Series. The other two relate to mediation and to the impact of the EU Regulation that deals with child abduction (Brussels IIa). This book encompasses all aspects of international child abduction through the lens of an empirical study of the open files on abductions to and from Belgium in 2007 and 2008. It sheds light on the operation of the Hague Child Abduction Convention of 1980, on Brussels IIa (referred to in the book as Brussels IIBis), on the bilateral agreements that Belgium has with Morocco and Tunisia, and on cases of child abduction where no international instrument applied. However, the book is not a piece of traditional, analytical legal scholarship. It does not engage in a systematic legal analysis of the provisions of the Hague Convention, of Brussels IIa, or of the Bilateral agreements. Instead the book reveals to us the stories of the left-behind parents, a few of the abducting parents, and many of the professionals involved (eg lawyers, judges, psychologists, and people working for Central Authorities). As a result it greatly enhances our understanding of the effects that international child abductions have on people. It helps those of us who are private international lawyers to contextualise the work we are doing and to be challenged to engage with and understand the human suffering involved. Insights are given as to how the levels of human suffering can be reduced but the author does not impose her ideas: much is left to the reader to draw his or her own conclusions from the rich diet of empirical material presented in terms of statistics and extracts from interviews.

Whilst the statistical information presented by the author is sometimes nuanced and must be studied in the context of the author's detailed discussion in the text, some notable facts that struck us as readers are highlighted here. 70 per cent of abductions in the survey were done when the parents had already separated (p 42); 65 per cent of abductions were done by mothers (a figure broadly consistent with other empirical research findings) (p 75) but in abductions to the Middle East and North Africa a large majority were by fathers (p 78); 75 per cent of abductions were done by the parent with whom the child principally resided (p 84); 52 per cent of abductions took place during holiday time (p 91); 60 per cent of abductions were done in families with only one child (p 50) but where families had more than one child the abducting parent abducted all the children in 91 per cent of the cases (p 94). The interviews revealed that in several cases abductions were done when only one parent had wanted the child to be born (p 62), that mental illness is associated with some cases of abduction (p 65), and that in some cases abductions follow on clashes between parents about the child's

education or health care (p 68). The success rate for Hague Convention cases where the child had been abducted from Belgium and returned to Belgium as a result of Hague proceedings was 67 per cent and the average length of the abduction in cases in which the child was returned was 11 months (p 115). Perhaps surprisingly the success rate for the Brussels IIa Regulation in the same category – cases where the child was abducted from Belgium and returned to Belgium as a result of Brussels IIa proceedings – was lower at 65 per cent with an average length of the abduction being 14 months (p 117–18). This superior performance of the Hague Convention over Brussels IIa is also recorded at p 185–86. Amazingly, and inexplicably, the best return rate and duration figures were for cases where there was no international instrument applicable, ie 76 per cent and 6 months (p 152–53). However, the overall statistics on duration of abductions show Brussels IIa as marginally better than the Hague Convention but both with an average of between 7 and 8 months whereas the cases with no legal instrument had an average of 20 months (p 167). Encouragingly, counter-abductions took place in only 7 out of 382 abduction cases (p 154).

However, the book is not just a rich mine of statistical information. It often gives us insights into the minds of abducting and left-behind parents and the impact on the children. On page 204 an abducting mother records how her 14-year-old-child learnt that abduction is a wrongful act that may not have any punishment and attributed this to his assertion that he could do what he wants because society would not punish him. Thalia Kruger concludes from her interviews with parents that society needs to give more support to families that have been through an abduction after the child has been returned (p 211). One of her final conclusions is to reinforce the findings of earlier research that enforcement of return orders remains one of the most difficult issues in child abduction cases and that ‘creativity is necessary to find adequate solutions’ (p 229).

This book is another important piece in the puzzle of understanding the phenomenon of parental child abduction and how global society should respond to it. It is also rooted firmly in the context of one European country, Belgium, and how it responds to international child abduction. The research is meticulous and therefore the data is reliable and illuminating.

Paul Beaumont
Jonathan Harris

PREFACE

This book is based on the results of a research project commissioned by Child Focus, in cooperation with the Katholieke Universiteit Leuven and the Université Catholique de Louvain. The project was funded 75% by the European Commission. The Belgian Ministry of Justice also contributed financially.

The author was the main researcher in that project, but the ultimate result would not have been possible without the efforts of others.

First of all, the project was managed by Child Focus, a Belgian non-governmental organisation working with missing and sexually exploited children. The project manager, Hilde Demarré, ensured the smooth running of the research and assisted with some of the interviews and the coding of the data. Child Focus's Chief Executive Officer, Kristine Kloeck, Chief: Study and Prevention, Ellen Stassaert, and that department's administrative assistant, Muriel Michiels, supported the research. The academic partners, Professor Marie-Claire Foblets of the Katholieke Universiteit Leuven and Professor Sylvie Saroléa of the Université Catholique de Louvain provided valuable advice, especially with regard to the methodology. They read and commented on previous versions of the research report and book.

The Belgian Ministries of Justice (Central Authority for mutual legal assistance in civil matters, of which international child abduction forms a part) and Foreign Affairs were closely involved in the research. The ministries could not be involved in the project as formal partners. However, their cooperation was an indispensable part of the study. They provided data from their administrative files to complement the data assembled at Child Focus. Particular thanks go to Josiane Paul, Karlijne van Bree and Salomé Petter.

In order to comply with Belgian privacy legislation, the involvement of an intermediary organisation was necessary. Mr Baudouin Vanderhulst, honorary ambassador, took this role upon himself on a voluntary basis. Without his hours of toil, this project would have been impossible.

Apart from the project partners, a Steering Committee, composed of people who had broad knowledge and/or practical experience of international child abduction, advised the researcher at various meetings. Its members were Daniel Bernard (Magistrat de Liaison for Belgium in Morocco), Hanne Claus (case manager at Child Focus), Sabine De Bauw (Judge at the Court of Appeal, Ghent), Kristine Kloeck (Chief Executive Officer of Child Focus), Anne Leclercq (public prosecutor), Julien Magotteaux, previously Sigrun Debaillie (State Department of Family Affairs), Josiane Paul (Central Authority for mutual legal assistance in civil matters, situated within the Ministry of Justice), Salomé Petter (Ministry of

Foreign Affairs), Silvia Pfeiff (Advocate), Nicolas Sauvage, previously Eimear Long (legal officers at the Hague Conference on Private International Law), Karlijne Van Bree (Central Authority for mutual legal assistance in civil matters, situated within the Ministry of Justice), Baudouin Vanderhulst (Former ambassador to Algeria; intermediary for purposes of the transfer of data), Karin Verbist (Advocate). The unit on civil justice within the European Commission's Directorate General (DG) on Justice, Freedom and Security was invited to participate in the Steering Committee, but declined on the basis that the European Commission co-financed the project and it could therefore not be involved in this manner. This book includes views and opinions that I have developed in the course of doing the research and analysing the data. They in no way bind the institutions represented in the Steering Committee.

The comparative legal research was enhanced by the papers the third year law students of the KU Leuven wrote for the tutorial of Foundations of the Law (2009). The information was complemented with the aid of Andrea Schulz, Head of the German Central Authority and Edward Devereux, a barrister in London.

A similar study to this one was undertaken simultaneously by Kék Vonal, a Hungarian non-governmental organisation. While the research teams were in contact with each other, the studies were primarily conducted independently. The Hungarian project was the subject of a separate research report. Where possible, the results of the Hungarian research have been included in this book by way of comparison. These results were not published in their entirety, due to privacy constraints.

My father, Albert Kruger, as always, read my work and corrected errors. Eric, Dagmar and Kobe accepted me into their family that had been broken up but not shattered by the separation of dad and mom. They created the space I needed to complete this work.

In the last instance, a warm word of thanks goes to all the participants who were willing to be interviewed. These include professionals who took the time to share their knowledge and insights, and parents who gathered their energy to explain some of the most difficult experiences they have lived.

Thalia Kruger,
Leuven, December 2010
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