JUST-JCOO-AG-2020
Actions grants to promote judicial cooperation in civil and criminal justice
JUSTICE PROGRAMME
GA No. 101007436

Improving the Situation of Children in International Child Abduction cases through Judicial CoopeRation and Family Mediation iCare

WP 2 Research, Data Collection and Methodology

D2.2 Comparative Analysis Report

WP leader: Defence for Children International - Italy

CERTH
CENTRE FOR RESEARCH & TECHNOLOGY HELLAS

The iCare project has received funding from the European Union's Justice Programme (2014-2020) under Grant Agreement No 101007436. This document has been prepared for the European Commission however it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information ontained therein.

Project co-funded by the European Commission within the JUST Programme		
Dissemination Level:		
PU	Public	X
CO	Confidential, only for members of the consortium (including the Commission Services)	
EU-RES	Classified Information: RESTREINT UE (Commission Decision 2005/444/EC)	
EU-CON	Classified Information: CONFIDENTIEL UE (Commission Decision 2005/444/EC)	
EU-SEC	Classified Information: SECRET UE (Commission Decision 2005/444/EC)	
Document version control:		
Version	**Author**	**Date**
Version 1	Law and Internet Foundation	10/15/2021
Version 1.1	External Evaluator	10/20/2021
Version 1.2	Defence for Children International – Itally	10/25/2021
Version 1.3	MikK e.V	10/25/2021
Version 2	Law and Internet Foundation	11/03/2021
Version 2.1	MikK e.V	11/16/2021
Version 2.2	Defence for Children International – Itally	11/17/2021
Version 3.0	Law and Internet Foundation	07/12/2021
Version 3.1	Defence for Children International – Itally	16/12/2021
Version 3.1	MikK e.V	22/12/2021
Version 4.0	Law and Internet Foundation	29/12/2021

Table of contents

Glossary 4

List of Abbreviations 5

1. About the project 6

1.1 Purpose and scope of the study 7

2. Comparative analysis of the current legal framework and gap identification 8

2.1 Purpose and basic principles of the 1980 Hague Convention and Brussels IIa Regulation 8

2.2 Comparative analysis on the 1980 Hague Convention and the Brussels IIa Regulation 10

3.Comparative Needs Assessment of the surveyed countries 13

3.1 Methodological approach 13

Table 1 15

Table 2 16

3.2 Administrative proceedings 17

Table 3 17

3.3 Judicial proceedings 18

3.4 Mediation 24

4. Brussels IIa-recast 30

5. Conclusion 34

Bibliography 37

6. Annex 1 iCare Questionnaire 38

ICare Questionnaire on existing needs 41

Administrative Proceedings (Central Authorities) 41

Judicial Proceedings 43

I. 45

II. 45

Mediation 47

Glossary

International child abduction	Children wrongfully removed to or retained in any Contracting State (Convention on the Civil Aspects of International Child Abduction 1980).
International family mediation	A process conducted by one (or several) impartial, qualified third person(s), the mediator. The mediator has no power to decide but helps the parties to regain communication and assists them in resolving their problem themselves. The agreement reached is a tailor-made solution for their dispute that ensures that their parental decisions take account of the best interests of the child, if a child is concerned. (E-justice.europa.eu: https://e-justice.europa.eu/content_crossborder_family_mediation-372-en.do).
Wrongful removal or retention	A child's removal or retention where: (a) it is in breach of rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention; and (b) provided that, at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. Custody shall be considered to be exercised jointly when, pursuant to a judgment or by operation of law, one holder of parental responsibility cannot decide on the child's place of residence without the consent of another holder of parental responsibility (Article 2, Council Regulation (EC) No 2201/2003).
Child	A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier (Article 1, Convention on the Rights of the Child 1989).
Best interests of the child	A threefold concept: a) a **substantive right**: the right of the child to have his or her best interests assessed and taken as a primary consideration then different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general; b) **a fundamental, interpretative, legal principle**: if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen; c) a **rule of procedure**: whenever a decision is to be made that will affect the specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned.
Restitutio rei	"Commonwealth, state, republic" (Merriam-Webster.com). It refers to matters of public matter/public interest.

Ex officio	By virtue or because of an office (Merriam-Webster.com)
Guardian *ad litem*	A guardian appointed by a court to represent in a particular lawsuit the interests of a minor, a person not yet born, or a person who by reason of an impairment or insufficiency of their personal faculties is not in a position to protect his/her interests.

List of Abbreviations

BIC	Best Interest of the Child
ICA	International Child Abduction
IFM	International Family Mediation
CA	Central Authority
CRC	Convention on the Rights of the Child
HCCH	Hague Conference on Private International Law

1. About the project

Taking the child's best interests as a priority, the iCare project will develop and implement novel tools and activities to improve the situation of children in International Child Abduction (ICA) cases through strengthening judicial cooperation and supporting the incorporation of International Family Mediation (IFM) as complementary to judicial proceedings. This is expected to contribute to a more child-friendly, cost-effective and time-efficient judicial process and to strengthen due consideration for the rights and the best interests of the child in ICA cases.

The iCare project aims at enhancing judicial cooperation and information exchange among Central Authorities, legal practitioners (judges, lawyers etc.) and family mediators and at improving the position of children in ICA cases. The project will produce (i) a detailed Methodology, inclusive of a Recommendations list, and (ii) an E-Platform for Central Authorities, legal practitioners and family mediators, together with (iii) an integrated AI Chatbot – the latter with the purpose of promoting the right of the child to information and increasing the knowledge working as a first point of reference for inquiries from children and parents (to check whether also parents shall make inquiries). The project will also provide outputs for awareness-raising, facilitation of mutual learning and effective dissemination (E-Platform, national Workshops, Webinars, Videos, Newsletter and a Final Conference).

This project is carried out by Law and Internet Foundation - LIF (Bulgaria), Centre for Research & Technology Hellas - CERTH (Greece), Defence for Children International – Italy, International Mediation Centre for Family Conflict and Child Abduction – MIKK e.V. (Germany), and European Federation for Missing and Sexually Exploited Children AISBL - MCE (Belgium). The project is implemented with the support of the Justice Programme of the European Commission under Grant Agreement No101007436.

1.1 Purpose and scope of the study

With the help of the present Report, the project Consortium seeks to determine current problems and challenges in international child abduction cases that Central Authorities, legal practitioners (lawyers, judges, prosecutors etc.) and family mediators face when dealing with them. This report is based on Deliverable 2.1 Report on stakeholder's needs and on the replies to the questionnaire, prepared under Task 2.1 Elaboration and distribution of Questionnaires by 62 stakeholders from the EU Member

States participating in the iCare project (Bulgaria, Italy, Greece, Germany, Belgium) and from additional countries such as The Netherlands and Poland.

The report will compare key aspects of the legal state of the art in the above-mentioned countries on handling parental child abduction cases and the usage of International Family Mediation (IFM) as an alternative way to resolve those disputes. Furthermore, the report will compare specific aspects of the legislative mechanisms namely the 1980 Hague Convention[1] and the Brussels IIa Regulation[2] – through this, the iCare consortium will identify if the current international legislation is sufficient to ensure judicial cooperation between the affiliated entities. The report will identify factors that could facilitate or hinder a swift and quick case handling and due consideration to the rights of the child, which is important to ensure the best interests of the child. Finally, a short overview of the upcoming Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction ("Brussels IIa Recast")[3] will be also presented in order to reflect if the upcoming legislative measures will be in accordance with the above-mentioned goals. The report will serve as a basis for Deliverable 2.3 Recommendations List Analysis report and Deliverable 2.4 iCare Methodology. The findings from the present report will be enriched and disseminated trough the relevant stakeholders at the events taking place under WP 4 iCare Capacity Building.

2. Comparative analysis of the current legal framework and gap identification

This section will present a short comparative analysis between the 1980 Hague Convention and the Brussels IIa Regulation. The goal of the section

[1] Hague Conference on Private International Law, *Hague Convention on the Civil Aspects of International Child Abduction*, 25 October 1980, Hague XXVIII.

[2] Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, *OJ L 338, 23.12.2003*, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32003R2201 (accessed 29th October 2021).

[3] Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, *OJ L 178, 2.7.2019*, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELLAR%3A524570fa-9c9a-11e9-9d01-01aa75ed71a1 (accessed 29th October 2021).

is determining the differences between the two pieces of legislation and identifying any legislative provisions that serve as setbacks for effective judicial cooperation between affiliated entities in the parental child abduction cases.

2.1 Purpose and basic principles of the 1980 Hague Convention and Brussels IIa Regulation

The 1980 Hague Convention was concluded on 25.10.1980, and as from July 2019 the number of contracting parties to this convention is 101 (including all EU Member States). The main objectives of the Convention are stated in Article 1 and are the following:

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

In the Preamble, the 1980 Hague Convention recognises the "paramount importance" of the "interests of the child" in matters related to his/her custody. The 1980 Hague Convention was adopted prior to the 1989 CRC, however, the former one was already a very modern legal test as far as the protection of children's rights is concerned. The 1980 Hague Convention's Contracting States abide by the notion that the interests of the child are of paramount importance in matters relating to their custody. This represents quite a strong wording that underlines a very strong commitment to the children involved in ICA cases.

In the Convention, several basic purposes are envisaged in order to protect the rights of children and ensure that their interests are secured. They non-exclusively include the following:

- To protect against the harmful effects of wrongful removal or retention;
- To deter parents from abducting a child in the hopes that they will be able to establish links in a new country that might ultimately award them custody;
- To provide an avenue for the timely adjudication of the merits of a custody or access dispute in the jurisdiction where a child is habitually resident. [4]

[4] J. Beedell and S. Duguay, "Habitual Residence": SCC Revamps Hague Convention Analysis with Hybrid Approach (01 May 2018), available at:https://gowlingwlg.com/en/insights-resources/articles/2018/scc-adopts-new-approach-to-habitual-residence/ (accessed 06.10.2021).

Beside the express reference to the paramount importance of the interests of the child, the 1980 Hague Convention is also very modern in envisaging among the exceptions to the immediate return rule, the objection of the child. More precisely, under art. 13.2, “The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views”.
Although the rule is not aligned to art. 12 of the CRC on the hearing of the child, it makes it possible for the abducted child to have a direct participation in the child abduction proceeding.
More precisely, art. 12 CRC provides that “States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”.
Whilst under art. 13.2 of the 1980 Hague Convention the age and maturity of the child are “conditions” to be satisfied for the hearing of the child to take place, under art. 12 of the CRC age and maturity are elements to be considered in order to give due weight to the views expressed by the child. Despite this relevant difference, art. 13.2 surely confirms the modernity of the original text of the 1980 Hague Convention, which, however, after the entry into force of the CRC had to be interpreted and applied in light of it by the States parties of both instrument.

The Brussels IIa Regulation is applicable in all Member States of the European Union with the exception of Denmark (Recital 31); it is applied directly by the competent courts, and it prevails over the national legislations. The Regulation is applicable from 1st March 2005. [5] and it complements the provisions of the 1980 Hague Convention while also providing coordination when the international child abduction is carried out within the European Union.

Brussels IIa Regulation tackles issues concerning jurisdiction and recognition and enforcement of decisions in matrimonial matters (i.e. matters concerning separation, divorce and annulment of marriage) as well as in parental responsibility matters. Its scope of application is, therefore, wider than the one of the 1980 Hague Convention, which is just a “forum” convention, establishing the rules of jurisdiction in case of child abduction, the principle of immediate return of the child in the State of (former) habitual residence as well as the exception to the above principle.

[5] Article 72, Brussels IIa Regulation.

More precisely, so far as parental responsibility matters are concerned, the scope of application of Brussels IIa Regulation is extended. It includes rights of custody and access; guardianship, curatorship and similar institutions; the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child; the placement of the child in a foster family or in institutional care; measures for the protection of the child relating to the administration, conservation or disposal of the child's property.
The current report will focus only on the matters that are related to handling international child abduction cases.

2.2 Comparative analysis on the 1980 Hague Convention and the Brussels IIa Regulation

Both the 1980 Hague Convention and the Brussels IIa Regulation share the goal of seeking to ensure the prompt return of the child to his/her country of habitual residence prior to wrongful removal or retention. [6] They also seek to deter from the harmful effects of child abduction. The Regulation does not affect the core of the 1980 Hague Convention. When a court of a Member State receives a request for the return of a child pursuant to the 1980 Hague Convention, it shall apply the rules of the Convention as further integrated by the specific rules under articles 11 para 1 to 5 of Brussels IIa Regulation. Furthermore, both legislative acts ensure that rights of custody, which exist under the law of one Member/Contracting State, are represented in the other.[7]

The Brussels IIa Regulation envisages some differences in comparison with the legislative regulations of the 1980 Hague Convention with the most distinctive one being the Regulation is applicable only to cases regarding Member States ("intra-European situations") and that, given the specific relationship existing among them due to the Membership of the EU, a special rule applies: the so-called "trumping order". More precisely, the Brussels IIa Regulation envisages a new procedure in relation to articles 11, para 6, 7 and 8, if the court of the State where the child has been abducted decides that the child should not return pursuant to art. 13 from the 1980 Hague Convention. Those provisions require the court which has issued a decision on non-return to transmit a copy of its decision together with the relevant documents to the competent court in the Member State of origin.

[6] Practice Guide for the application of the Brussels IIa Regulation, European Commission, DG Justice, EJN, p. 49.
[7] The EU Child Return Procedure in search of efficiency, International Judicial Cooperation in Civil Matters – European Family Law, p. 2.

This transmission can take place either via the competent courts in the two Member States or through their Central Authorities. The court of origin should give chance for the parties to make submissions in relation to their national law, within 3 months from the date of notification. If there are no comments from the parties within the 3-month time limit the competent court will close the case.

If submissions are made, a proceeding takes place before the courts of the State of habitual residence which has the final say on the case. More precisely, even if the courts of State where the child has been unlawfully transferred deny the prompt return of the child on the ground of one of the exceptions envisaged by the 1980 Convention, the court of the State of former habitual residence is allowed to order the return of the child and this latter return decision will "trump" the non-return one[8]
Moreover, in the specific cases of international child abduction, it is crucial that, if a court decision to return a child is upheld, such decision is implemented as quickly as possible. This fact leads to the need that the court decision must be enforced quickly in the other Member States. In relation to that, the Brussels IIa Regulation contains provisions that provide direct enforceability to such judgments as long as they are accompanied by a certificate. The consequence of this rule is that it is not necessary to apply for an "exequatur" procedure in the requested Member State, and that it is not possible to oppose the recognition.[9]

Once established the jurisdiction, no matter if either the 1980 Hague Convention is applicable or the Brussels IIa Regulation, the competent court will be decided on the basis of the procedural rules in force in the Member/Contracting States. Whilst in some Member States, as for example Italy, a specialized court has jurisdiction on child abduction matters ("Juvenile Courts"), in others such a specialized jurisdiction does not exist and, as a consequence, courts dealing with issues of civil law deal also with child abduction issues.
Both legal instruments envisage that the competent administrative or judicial authority shall reach a decision on the case for the return of the child within six weeks. The 1980 Hague Convention and the Brussels IIa Regulation use the term "expeditious" referring to the procedures which the national jurisdictions must carry out when dealing with a child return case. The resolution of the case within this timeframe is a subject to the procedural rules of the national law.

[8] Recital 12, Article 10, Brussels IIa Regulation.
[9] Ibid.

The Brussels IIa Regulation also envisages the right of the child to be heard during the return procedure “unless this appears inappropriate due to his or her age and degree of maturity”.[10] This provision corresponds to what is foreseen in the United Nations CRC, and more specifically in its art. 12, para 2 which establishes that the child should have the opportunity to be heard in any judicial and administrative proceedings that affect him/her. It should be taken into consideration that the views of the child should not be taken as determinative for the decision of the competent court that is handling the parental child abduction case. As regard to the right of the parents to express their views, the Brussels IIa Regulation considers it relevant just as a ground of non-recognition under article 23 lit. d). However, this does not apply generally to return orders, given that return orders, as already mentioned, once certified, can be executed without further check (*exequatur*).

The active participation of the child should not be mistaken with self-determination. He or she must have the right to decide with which parent would prefer staying but the court of social workers should be especially careful when or if they should be asking this question. Case law of Member States also does not give a solid response on what is the weight of the children’s voice. In some cases the objection of the child has been interpreted as a preference of a said child to live with the abducting parent, than as a objection to his return. In other cases, courts searched for a clear objection to a specific country. The simple preference to live with another parent has not been deemed a reason to deny return, based on Art. 13, para 2 of the Hague Convention. [11]

Furthermore, with specific reference to abduction proceedings, it might be very difficult to hear the abducting parent, since he/she is in another country (different from the one of the habitual residence of the child before the abduction) and since if returning to the State of origin the abducting parent may face criminal proceedings (this is the case of Italy, among others).

3.Comparative Needs Assessment of the surveyed countries

The present comparative analysis is based on the results from the questionnaires distributed in the project partner countries (Belgium, Bulgaria, Germany, Greece and Italy) as well as from two additional EU countries (Poland and The Netherlands). Good practices from these

---

[10] Art. 11, para. 2 Brussels IIa Regulation.

[11] European Parliament, 40 years of the Hague Convention on child abduction: legal and societal changes in the rights of a child, p, 14, available at https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/660559/IPOL_IDA(2020)660559_EN.pdf.

countries will be outlined as well as the pressing needs in the cases of international child abduction. The geographical scope of the analysis covers jurisdictions form across the European Union, providing a summary overview of key facts and figures, including good practice examples and challenges in such cases as well as the different approaches taken in the countries. It must be taken into consideration that the number of respondents in the survey questionnaire was limited and cannot be considered a representative sample of the situation in the respective countries. In light of these limitations, the survey responses are considered as indications of valid insights and hints to the professional practice of different stakeholders in cases of International Child Abduction, thus making it valuable for the project results. While we include also the responses from both Poland and The Netherlands in the count of countries, it must be stated that since the number of responses is too limited– a single response from Poland and two responses from The Netherlands respectively- we cannot consider them as samples providing overall information on those countries but they will rather present the views of the individual respondents.

3.1 Methodological approach

The content and structure of the questionnaire were drafted by the Law and Internet Foundation (LIF) as the leader of T2.1 Elaboration and distribution of Questionnaires, as well as D2.1 Reports on Stakeholder Needs, and were subject to multiple rounds of review before the questionnaire document was sent out to the respective stakeholders. All partners within the Consortium (Law and Internet Foundation - LIF (Bulgaria), Centre for Research & Technology Hellas - CERTH (Greece), Defence for Children International - DCI (Italy), International Mediation Centre for Family Conflict and Child Abduction - MIKK E.V. (Germany), and European Federation for Missing and Sexually Exploited Children AISBL - MCE (Belgium)) used their own networks in order to reach out to the Central Authorities, family lawyers, prosecutors, family judges, as well as other stakeholders (summarized in Table 1 below) in each of the countries within the project Consortium, and also in additional countries outside of it (namely Poland and The Netherlands).

The content and different sections of the questionnaire are structured as follows:

- Administrative Proceedings – the questions under this section include the number of ICA cases handled in each country, including those that were not processed by the Central Authority but went to

the courts directly; the number of employees at each Central Authority than work on ICA cases; whether the national Central Authority refers parents to lawyers in such cases and whether it informs them of the option of mediation. The Administrative Proceedings section aims to better clarify the administrative situation in each country in respect to handling ICA cases and whether there are any administrative hurdles that hinder the swift handling of such cases, as well as identify whether a need for improvement exists in this context.

- Judicial Proceedings – the questions under this section are further sorted out into two sub-sections, namely concerning Legal Aid and Court Proceedings. The first sub-section aims to clarify the nature and availability of the legal aid that may be available to parents in ICA cases and also whether there are specialized lawyers in the specific country/whether specialized trainings to lawyers are available for cases of international child abduction. The second sub-section aims to obtain more detailed and comprehensive information on the overall court proceedings in ICA cases, including whether all legal provisions under both the 1980 Hague Convention and the Brussels IIa Regulation are duly complied with in regard to the safe return of the child and thus evaluate whether further improvements are needed.

- Mediation – the questions under this section consider the very relevant aspect of the mediation option in ICA cases, the nature scope and availability of mediation, whether there are specialized trainings to mediators in regard to ICA cases, whether, for example, children are also seen by mediators in such cases or whether legal aid is available so that a better overall picture can be built on the use of mediation in practice.

The questionnaire concludes with a question asking the respondents to describe issues or problems that they may have identified during their work on ICA cases and when including international family mediation in these cases to obtain valuable inputs from professionals in the field which are especially valuable to the iCare project results.

For the purposes of consistency, the questionnaires were incorporated into a Microsoft Word document and each Consortium partner was responsible for disseminating it on a national level. The timeframe set for responses in Bulgaria was 26th April –21st of May, with 4 weeks in total granted to

stakeholders to provide their responses. While a total number of 30 filled questionnaires to be collected from all 5 countries was initially set as a project goal, in the end a total of 63 responses were received. The participation itself in filling in the questionnaires was on an anonymous basis and the informed consent of all respondents was appropriately sought and obtained through dedicated consent forms and information sheets included at the beginning of the questionnaires. The questionnaire is included in the Annex to this report.

Table 1

	Belgium	Bulgaria	Germany	Greece	Italy	Poland	The Netherlands	Responses pe stakeholder group
Central Authority	1	0	1[12]	0	1	0	0	3
Prosecutors	1	0	0	0	2	0	0	3
Mediators	2	1	5	0	3	0	0	11
Family Lawyers	1	1	1	0	10	0	0	13
Family Judges	0	1	3	2	4	0	0	10
Family Lawyers/Mediators[13]	0	0	3	0	0	1	1	5
Others	0	1 - President of the Management Board of the Attorneys' Training Center "Krastyu Tsonchev", Sofia, Bulgaria	1 - Licensed Clinical Social Worker, Member AAMFT	2 – judges (no judges in Greece handle family cases exclusively)	13: 5 – social workers; 2 – juvenile judges; 1 – psychotherapist; 3 – academia; 1 – researcher; 1 – mother of a minor with double citizenship	0	1 – Mediator/Working for center IKO (legal adviser)	18
Responses per country	5	4	14	4	33	1	2	63
Total number of responses	63							

The respondents all have extensive experience in the field – between 10 and 20 years, with some of them going even more. Table 2 bellow shows the range of experience of each stakeholder group.

[12] Central Authority **and** Legal Advisor.

[13] Indicates that the respondent to the questionnaire marked as relevant professional background both family lawyer and mediator.

Table 2

	Belgium	Bulgaria	Germany	Greece	Italy[14]	Poland	The Netherlands	Total number of stakeholders in each range group
0-5 years	0	0	1 – Central Authority and Legal Advisor	3 – 2 Judges; Family Judge;	6	0	0	10
5-10 years	1 - Prosecutor	1 – Mediator	0	0	7	0	0	9
10-20 years	3 – Central Authority; Prosecutor; Mediator;	3 – Family Judge; Family Lawyer; President of the Management Board of the Attorneys' Training Center "Krastyu Tsonchev", Sofia, Bulgaria	7 – 5 Mediators; 2 Family Lawyers;	1 – Family Judge	7	1 -Family Lawyer/Mediator	1 – Mediator/Working for Center IKO (legal adviser)	23
More than 20 years	1-Family Lawyer		6 – 2 Family Lawyer/Mediators; 3 Family Judges; 1 Licensed Clinical Social Worker, Member AAMFT	0	11	0	1 – Family Lawyer/Mediator	19

As seen from the Tables above, in Belgium, Germany and Italy the Central Authorities also participated in the questionnaires, providing invaluable perspectives on the topic of international child abduction. Some of the judges from Germany are also Hague Liaison Judges. Furthermore, the Italian questionnaires also cover the widest range of types of respondents beside the ones mentioned above such as social workers, juvenile judges, psychotherapists, academics, researchers, and even a mother of a child with double citizenship.

The iCare Consortium will consider the possible biases that could come when working with statistic data in order not to overestimate or underestimate specific parameters that were received from the iCare Questionnaire. There where several biases that were considered during the processing of the results of the survey. First, the consortium considered any biased estimators – a rule to calculate an estimate of a quantity based on observed data. The result of using the rule is an estimate (a statistic) that

[14] The Italian responses received summate the different ranges of experience without providing the number of stakeholder groups that fall within each one.

presumably reflects on the true results in the population. [15] The second thing that was considered is the selection bias were the "selection" takes away the randomness when choosing the subjects for the survey. Finally, non-response bias was considered when some people fail to respond to the questionnaires.[16] In the case where additional biases are observed the consortium will amend the results in relation to the upcoming deliverables in WP2.

3.2 Administrative proceedings

Not all the respondents had the necessary information regarding the number of child abduction cases. However, from the information that was provided to the Consortium, the biggest number of cases was recorded in Germany - incoming cases for 2019 – 241, outgoing cases for 2019 – 218, incoming cases for 2020 – 217, outgoing cases for 2020 – 209. The employees in the national CAs differ in accordance with the size of the countries, being approximately between 5 and 10.

The numbers recorded do not include cases that were not processed by the Central Authority but went to the courts directly (except for Greece where no information was provided in this regard). Case numbers per country can be evidenced in Table 3 bellow.

Table 3

	Belgium	Bulgaria[17]	Germany	Greece	Italy	Poland	The Netherlands
Incoming cases for 2019	39	31	241	1	N/A	N/A	51
Outgoing cases for 2019	27	19	218	N/A	N/A	N/A	56
Incoming cases for 2020	97	22	217	1	N/A	N/A	N/A
Outgoing cases for 2020	86	N/A	209	N/A	N/A	N/A	N/A

[15] Bias in Statistics: Definition, Selection Bias & Survivorship Bias available at https://www.statisticshowto.com/what-is-bias/ (accessed 6th December 2021).

[16] Ibid.

[17] http://www.vss.justice.bg/page/view/1082 - information available for 2019 and 2020 (in Bulgarian) (accessed 6th December 2021).

Only in Germany and The Netherlands, the CAs refer parents who are parties in child abduction cases to lawyers. In Greece and Belgium, the CAs sometimes make such referrals but not always to specialised lawyers in the field of international child abduction. Similarly, none any of the CAs in the covered countries keep a register/list with such referrals of lawyers specialised on representing parents in ICA cases, only The Netherlands refers parents to the International Child Abduction Center (Center IKO), which keeps such a list.

In four (Belgium, Germany, The Netherland, and Poland) out of seven surveyed countries, the CAs inform both parents (the abducting parent and the applicant respectively) in child abduction cases about the option of mediation. The questionnaires show inconsistency in this practice in Bulgaria, sometimes this option is presented only to the applicants, in other instances to both parties. This is done by letter or by phones, providing general information regarding the mediation option. The respondents from Greece outline that mediation is option and not a requirement in cases of child abduction due to the lack of qualified mediators.

3.3 Judicial proceedings

Legal Aid

In all seven countries, legal aid is available for parents in cases of child abduction. However, it is also means-tested in all of them, except in Poland. In four of the countries (Belgium, Germany, Italy, The Netherlands) there are lawyers specialised in the field. However, the respondents stated that in Italy they are difficult to identify by private citizens (it might however be useful to point out the existence of ICALI https://icali.it).
In Bulgaria, there are only lawyers specialised in family law. In the majority of surveyed countries there are training institutions that provide specialized training for family lawyers in the field of parental child abduction. However, some of the respondents from Italy have outlined that they have not participated in such due to the high costs of the trainings.

Court proceedings

According to the replies to the questionnaires received, four of the countries (Greece, Germany, Poland and The Netherlands) believe that their respective country comples with the 6-week period provided by the Hague

Convention/Regulation 2201/2003 (Art. 11 of the Hague Convention/Art. 11, para 3 of the Regulation) with the rest of the surveyed countries (Belgium, Bulgaria and Italy) answering in the negative.

In the majority of the jurisdictions (Belgium, Germany, Greece, Italy and The Netherlands) there are measures in place to prevent relocation of the child pending a return application. Only in Poland there is lack of such, while in Bulgaria there is some inconsistency in the answers, with two respondents providing that there is no information and two answering in the negative and the positive respectively.

The results from the questionnaires show inconsistency in the court requirements for an expert assessment from a psychologist or the social services when deciding if the return application should be approved. Only Bulgaria, Italy, and Poland firmly confirm that as a compulsory requirement.

In most of the countries surveyed (Germany, Italy, Poland and The Netherlands) there are specialized courts that are handling only international child abduction cases. In the countries without specialized courts (Belgium, Bulgaria, Greece), there are judges that are specialized in ICA cases, and provide specialised training for judges apart from Greece, where they do not undergo trainings for handling such cases. The existence of specialised courts may be explained in view of the development of the judicial system and the administrative distribution of judicial districts within the country. Demographic terms and migration of people should also be considered taking into account the fact that specialized courts exist in countries with large population and heterogeneous demographic structure.

In most of the countries surveyed, there are courts that have video conferencing suites for international child abduction cases allowing parties to appear remotely. Only in Bulgaria and Greece, there is a lack of such. This ensures that, even in the COVID-19 Pandemic which led to the delay or the cancelation to many civil cases, the pending ICA cases will end with court decision that will decide for the return of the child. Still when the child is participating in such cases the court should consider the situation and challenges when deciding if there should be a remote hearing. [18] In relation to that we should underline the fact that suitable rooms for the hearing of the child in such cases are still difficult to be provided.

[18] Council of Europe, Guidelines on videoconferencing in judicial proceedings, available at https://rm.coe.int/cepej-2021-4-guidelines-videoconference-en/1680a2c2f4, last assessed 2nd December 2021).

The answers to the question whether the judges and lawyers know the identities of the International Hague Liaison Judges and European Network Judges (ENJ) and what their role is show there is a medium to high level of awareness. However, some of the respondents outlined that despite the fact that EJN is useful for exchanging information and for joint training, they are too little known and there is a need to raise the knowledge on the topic.

The results from most of the countries surveyed show that children are sometimes heard during the proceedings in international child abduction cases. Only in Germany and Poland, this is a common practice, done on a regular basis. There are inconsistencies throughout all of the countries regarding the person who is talking to the child in case of such hearing - it could be a judge, social worker, psychologist, Guardian ad Litem. However, a clear practice has not been identified in any of the surveyed jurisdictions. Nevertheless, the majority of answers confirmed that the hearing of children is done in a child-friendly environment. In addition, a shared practice in all seven countries is to present to the judges and to the parties in a written report the results from a child's hearing if it is not done by the judges themselves.

The outcomes of the questionnaire also showed differences in the appointments of *Guardian ad litem* for the child or children concerned. In Bulgaria and Poland, such person is not appointed at all, in Greece and Belgium it is not a common practice. However, in Italy, Germany, and The Netherlands, it is done regularly depending on different circumstances such as the child's age.

Only in Poland, the child is not informed of the consequences of the international child abduction procedure. In Greece and Belgium this practice is inconsistent and unclear. In addition, the answers also show that even in the countries that the child is being informed, it is not a clearly defined who is doing it and if it is done in a child friendly manner. Following from this, it can be deduced that the right of the child to information in accordance with Article 13 of the CRC is not fully complied with.
Here, it is valuable to mention that the MiRI project (Minor's Right to Information in EU civil actions - Improving children's right to information in cross-border civil cases)[19], which aims to protect the fundamental right of the child to participate and express his/her views in proceedings which concern him/her, will also further the objectives of the iCare project. The main goal of the MiRI project is to identify current national practices

[19] MiRI - Minor's Right to Information in EU civil actions.

regarding the right of the child to be informed in the context of civil proceedings and to create guidelines to be applied uniformly across the EU. Therefore, the two projects can mutually benefit and build upon each other through sharing valuable information that is made public, as well as good practices in order to ensure the adequate protection of the right of the child to information and active participation in the proceedings thorough having his/her views heard and taken into account.

A major inconsistency has been outlined in the surveyed countries in respect to enforcement of return decisions by the courts in each country-namely that different authorities are responsible for carrying it out. Only in Bulgaria just one authority is outlined as responsible – the bailiff.

According to the answers, in Italy, The Netherlands, and Poland, the law enforcement authority is permitted by law to use (reasonable) force when enforcing the return of the child. It did not become clear from the questionnaires whether this is valid for the other four countries.

The results show that only in Bulgaria it is unclear whether the return order will usually suffice to guarantee that the order is enforced or the applicant parent will be required to return to court to seek further order for enforcement, while the respondents in the rest of the countries confirm that it is sufficient for enforcement. However, some answers show that this is valid only in theory, in Italy, and that in practice, coordination with the competent authorities in the child's State of refuge is also needed. Similarly, in Poland, there is an additional need on behalf of the applicant for a return order to file for a petition with the court for execution of the order.

The procedure of enforcement for a return decision has been described differently in the seven countries. In Bulgaria, the procedure is conducted by the competent bailiff responsible for the district of the child's place of residence upon request by the applicant parent. This is done by an invitation for voluntary handover of the child to the bailiff. In case of non-compliance, a fine is imposed as well as the bailiff may request the police to facilitate the enforcement decision in the presence of social workers.

In Italy, the Prosecutor's Office of the Juvenile Justice Department collaborates with the Ministerial Social Services in the execution of the return order. Sometimes the court may authorize the use of police force only against adults. Enforcement may take time, for interviews, to exercise persuasion on the abducting parent, to provide psychological support to both adults and minors, to agree on the methods of execution, which may

be expressly indicated in the court order (places, methods and times). After the issuance of the return decree, it is up to the Prosecutor's Office to activate the enforcement procedure *ex officio*, by contacting the social services of the Juvenile Justice Department. These social services contact the parties and ask whether there is spontaneous execution, i.e. whether voluntary enforcement can be achieved for example through collaboration on the return of the child. If not, it summons the abducting parent and orders them to come with the child and his/her documents. As a rule, the police are present to supervise in the event of offences (escapes, assaults or the search for the abducting parent).

The answers give little details regarding the procedure in Greece, however, they state that if the respondent parent does not comply with the return decision, the court imposes *ex officio* on him/her a fine up to 100.000 euros in favour of the applicant and imprisonment up to one year.

In Germany, the judge who orders the return of the child is responsible for the enforcement. By his or her authority, a bailiff is ordered who may call the police for support.

According to the respondents' answers, in Belgium the abducting parent is heard by the court about voluntarily executing the return decision. If no cooperation is provided, specific arrangements are made with the judicial authorities, taking into account the circumstances of the case and the child's wellbeing. A penalty can be imposed in the judgement for the abducting parent when he/she refused social police, and bailiff. In some cases when the child is in danger, the juvenile judge can place the child in a youth institution or in a foster family.

In The Netherlands when a parent does not cooperate on returning the child to the habitual residence after the judge ordered to do so, the lawyer of the left-behind parent can contact a public prosecutor. The Public Prosecutor is responsible for the enforcement of the return order. There is a possibility for the abducting parent to ask for a suspension of the enforcement, but this will only be granted on very limited grounds. The public prosecutor shall contact the child protection service as well as the police. They will try to come up with a solution in a way that is the least stressful for the child. In this regard, it is a common practice to allow the child to say their goodbyes to the abducting parent. Therefore, they will first try to find a solution with the abducting parent, so he/she cooperates in the process. However, if it's necessary to pick up the child, they will use a method that will impact the child the least (no uniform, no police car, no warning lights).

Despite all efforts, mentioned above, sometimes it turns out that police force is the only option, however, this is something that it is attempted to be avoided.

According to the respondent in Poland an applicant files a petition to execute an order and the judge gives the information to a social worker (*kurator* in Polish). The presence of the applicant is clarified to be obligatory on the day of execution. The social worker can ask the police authorities to assist during the picking up of the child involved. In practice, however, the respondent adds that this procedure does not function properly and they are unfortunately not aware of any successful execution in Poland in child abduction cases.

On the enforcement and the position of the child, it might be recalled that art. 56 of the new Regulation 2019/1111 makes it possible to suspend the enforcement or even to finally stop it[20].

3.4 Mediation

The majority of answers show that judges in cases of international child abduction cases are referring parents to mediation in the surveyed countries. Only in Greece there is lack of such practice. According to the questionnaire results, only the courts in the Netherlands maintain a list of mediators for referrals and some of the courts in Germany. The respondents from four of the surveyed countries (Germany, Belgium, the Netherlands, Poland) confirmed that there are specialized, bi-lingual cross-border mediators who also undertake mediations in child abduction cases. In Greece, there are not such professionals, while in Bulgaria and Italy there is a lack of information on the topic. Nevertheless, the majority of

[20] Article 56 **Suspension and refusal** (…) 4. In exceptional cases, the authority competent for enforcement or the court may, upon application of the person against whom enforcement is sought or, where applicable under national law, of the child concerned or of any interested party acting in the best interests of the child, **suspend the enforcement proceedings if enforcement would expose the child to a grave risk of physical or psychological harm due to temporary impediments which have arisen after the decision was given, or by virtue of any other significant change of circumstances.** Enforcement shall be resumed as soon as the grave risk of physical or psychological harm ceases to exist. 5. In the cases referred to in paragraph 4, before refusing enforcement under paragraph 6, the authority competent for enforcement or the court shall take **appropriate steps to facilitate enforcement in accordance with national law and procedure and the best interests of the child.** 6. Where the grave risk referred to in paragraph 4 is of a **lasting nature**, the authority competent for enforcement or the court, upon application, may refuse the enforcement of the decision.

respondents in surveyed jurisdictions support the claim that there is a need for such specialisation.

The answers show in all seven countries that mediation can take place during all stages of the proceeding in international child abduction cases. However, the respondents outlined the presence of inconsistency in the exchange of information between the mediators and the courts or the CAs. In the Netherlands and Poland the existence of such practice was confirmed. In Germany the Central Authority informs parents about mediation and refers them to the designated specialist NGO (MiKK) who organizes mediations for parents with specially trained cross-border mediators. Only in three out of the seven countries (Germany, Belgium, the Netherlands) there are specialised trainings for mediators for child abduction cases. In Germany the training is not specifically aimed at German mediators but has been available in English for international mediators from all over the world. Over 250 mediators from all over the EU have been trained in the field of cross-border mediation in the past 10 years by MiKK who conceived this specialist training The respondents from Bulgaria outlined that there are some training done but not very often, while in Poland there are not conducted at all. No information was provided by Italy and Greece on the topic.

Only in the Netherlands and Poland mediation aid is available to parents. There is general lack of information in the rest of the countries regarding this issue. The majority of answers outline that mediators do not see children in international child abduction cases. However, in four out of the seven countries (Bulgaria, Italy, Germany, Belgium) respondents said that there might be exception, despite the fact that it is not a common practice.

In each of the seven surveyed countries the respondents have outlined different issues and needs in the field of mediation, some of which overlapping with each other. One of the main points that have been repeatedly pointed out by the participants in the questionnaire is the lack of awareness regarding the option of mediation and its advantages. They also share the view that professionals such as judges, lawyers, and mediators in the field should enhance their competences on the topic. Some propose that the elaboration of guidelines and their European adoption will be profoundly helpful for enhancing the success rates of mediation. Furthermore, the need for cooperation and exchange of information between the mediators, courts, and CAs has also been outlined as a problematic topic in many of the answers. Some of the respondents outline that there are cases where the option of mediation is not possible due to

the nature of the circumstances such as domestic violence or presence of other type of crime. However, the majority of answers suggest that mediation is not chosen as a dispute resolution mainly because the parties were not aware of such option. Another major issue in the international child abduction cases is the fact that the procedure is strongly prolonged in time due to its tight timeframe and the geographical obstacles, which cover the cultural diversity of those involved in the case (including lawyers and judges), as well as the very practical difficulty in terms of the geographical distance between the parents involved and any existing language barriers.

The respondents from Bulgaria shared the opinion that there is still a pressing need to nationally increase the expertise of judges, lawyers and mediators on the topic and that there must be specialized courts that deal only with children, including in cases of international child abduction. In addition, the issues and problems that they have identified during their work are: the existence of multiple factors that may prolong the pending case; limited knowledge of the access to the so-called "second chance decision" under Art. 11, par. 8 Regulation 2201/2003 which is related with the so called trumping order, which envisages that the court in the country from were the child has been abducted can make a subsequent judgment requiring the return of the child and this shall be enforceable notwithstanding the court decision in the other member state. Other issues are related with the resistance of the parties to refer the case to mediation, which often results in deepening the animosity between the parties, lack of effectiveness and success in reaching an amicable solution. It is interesting to note that the responses also included as an issue that there are no special procedural rules helping the judges to concentrate on the return and exclude the referral to the parental responsibility issues, even though this is provided by the Hague Convention 1980 and the Brussels IIa Regulation, which leads to the conclusion that the procedural rules in practice are lacking and are in need of revision. Therefore, the respondents outlined that there is a clear need for increasing the information on mediation in the country in order to ensure accessibility to the process.[21]

In Italy, a competent authority (such as social services, child protection services) gets involved in cases of international child abduction to have special regard to the rights and needs of the child upon a referral by the court. The mediator is a recognized profession in Italy, however, some of the mediators have other professional backgrounds such as psychologists, social workers, lawyers. According to the participants, mediation in cases of abduction can play a crucial role. However, neither the 1980 Hague

[21] D2.1 Report on stakeholder needs.

Convention nor Regulation 2201/2003 give it sufficient prominence. The initiative is therefore left to practitioners (judges in the first place and then individual professionals). In this respect, they find it necessary to increase public awareness of the possibility of resorting to mediation and also of the tools that can actually be used. It is also very important to enhance the awareness-raising on the best interests of the child, as the children involved have no legal assistance of their own. They also suggest a rapid acquisition of information from the country of origin, i.e. habitual residence (socio-family survey, interventions carried out by the competent authorities, court orders) as well as information on the existence of available mediators to be provided. Another vital factor are the types of possible interventions and the direct communication channel between the CA and mediators. The answers also show that in some countries (Italy, among others), criminal proceedings can be initiated following child abduction which is a difficult obstacle to overcome in order to initiate mediation. They also outline that the cross-border nature of abduction cases is not sufficiently taken into account by the competent authorities. The tight timeframe within which abduction proceedings must be concluded does not facilitate the use of mediation. The cultural diversity of those involved in the case, including lawyers, could also be an obstacle as well as the geographical distance between the parents involved and any language barriers. There is a general lack of knowledge on mediation, both on the part of legal practitioners and citizens (and, consequently, the lack of specific professional training in this regard). Some of the respondents share the opinion that mediation should remain a consensual and non-mandatory instrument, however that the judge should make the parties aware of the possibility of mediation and the benefits it holds if they opt to undergo it. Other outlined problems in the questionnaire are the possibility of bitter conflict between litigants, the costs of mediation, and the shortage of mediators experienced in international family law disputes. In the answers, a view was also provided that once the abduction has been carried out, the personal relationship has deteriorated too much to ensure that the meetings will always be successful, however, not in all cases. In addition, in many cases the abducting parent claims to be a victim of violence by the other parent. In these cases, Article 48 of the Istanbul Convention[22], which prohibits mediation in cases of domestic or gender-based violence, prevents the use of mediation. The participants in the questionnaire agree that the most evident good practice is to take the child's best interests into account and to have the awareness that ICA cases are very delicate situations. However, there is a lack of real common guidelines that take into account the

[22] Council of Europe, Convention on Preventing and Combating Violence against Women and Domestic Violence (entered into force 1 August 2014).

specificities of the proceedings and the particular situation of the child. In addition, the child should not be heard in conflictual environments (courtrooms, etc.). There should be some time between the moment the child meets the parent he/she was last in contact with and the time he/she is heard. The physical presence of one of the parents during the hearing should be avoided. It is essential to implement cooperation and trust between judges and services of the countries. In Italy, abduction is considered a "*restitutio rei*" and therefore hearing the minor and his/her interests are of secondary importance. In addition, the respondents outline that mediation should be encouraged as that with an invitation from the judge mediation has a greater chance to succeed. There is no direct access for parents to the mediation institute which is delegated to the ministerial social services both in the preliminary and in the executive phase. There is also no direct contact between the prosecutor and the mediator, who is not officially and individually present in the case.[23]

Some of the respondents from Greece think that mediation should be mandatory for both parties before court procedure. In addition, some of them also support the thesis that judges in EU should have further training on the implementation of 1980 Hague Convention- Regulation 2201/2003 child abduction cases in order to be aware of the national procedure in each Member State. Furthermore, they add that Member States should adopt common guidelines on the mediation procedure, so as to have cooperation among them improve, when both sides (applicant - respondent parent) choose mediation but reside in different countries.[24]

Some participants from Germany outline that a recommendation by the judge to the parents to try mediation is of great benefit for the parents. The CA can finance the mediation cost of a parent when legal aid has been granted by the court. They also agree that specialised jurisdiction is crucial, plus normally only one more instance court that hears ICA cases. In addition, it is important the enforcement to be executed by the same court that has rendered the decision. It was suggested in the answers that prevention can be enhanced by making the information in regard to the option for mediation readily available to all parties. Furthermore, there should be clear and specific training or affiliation with a reliable Institute for persons providing mediation. The respondents outline that in some instances the process can take too long, and the six-week period could be neglected. They agree that the sharing of experience and knowledge cross-border and within state is very important. Specialization of mediators and

[23] D2.1 Report on stakeholder needs.
[24] Ibid.

coordination between courts, CA and specialized body (e.g. the NGO MiKK e.V. mentioned by a number of responders) is essential due to the urgency of judicial cases and logistical hurdles (selection of mediators, rooms, dates, etc.). The participants support that all parents should be encouraged to try mediation, because even if there is no final agreement – mediation is sometimes the first step to start a communication between the parents. In addition, what has been initiated within mediation may be continued by the judge within the court hearing. Furthermore, if a lawyer has not enough knowledge in this special field of family law, the proceedings become more difficult. Enforcement is always very difficult. Therefore, it is crucial that both parties are committed to the process. Some participants stated that it is key that both parties pay some fee that cements the commitment. Naturally, there are parties that are committed to the process regardless of fees involved, however, in their experience, when there is an unbalance than the success rate is around 50%. Nevertheless, many parents cannot afford to pay such fees and mediation aid is not usually available for free. Repeated information on mediation and support by courts is essential for convincing parties about the benefits of mediation. Financial support is beneficial. Specialization and high level of information to/by courts and mediators as well as establishment and maintenance of effective and prompt coordination between courts, CAs and NGOs/other institutions is vital. This is due to the fact that the existence of these requirements will help achieve mediation without delaying court proceedings and eventually bring about the resolution of the case. In describing any issues and problems that are identified during work on international child abduction cases and when implementing international family mediation cases, one respondent has emphasized on the lack of sufficient amount of time.[25]

The respondents have outlined that the Belgian Authority gives the cases in the hands
of the prosecutor. For the prosecutor, in many cases, it is very difficult to represent the parent in the foreign country because: she/he might not tell the whole truth or give all information; there might be a story of violence in the family or a divorce in the past; the applicant parent has psychologic problems, and a plethora of other reasons. The relation between the prosecutor and applicant parent is not confidential. All these factors lead to the conclusion that it is better that the CA handles the cases to a Belgian lawyer and not to the prosecutor. In addition, the cost of mediation is often a practical challenge. Furthermore, the majority of cases concern mothers with very young children that return to the country of her family for support and safety, because of a story of violence in the family of her

[25] Ibid.

husband/partner. An attempt for mediation could be done, but in many cases, there are a lot of family troubles in the past, so a good solution is very difficult. In most cases, the child is very young (0 – 6 years old), and has a great attachment with the mother, which makes the returning to the other parent complicated.[26]

According to the respondents, in The Netherlands there is an established system to make a child abduction procedure as short as possible. However, for it to be effective a good cooperation between the CA, the court, the high court, and the Mediation Bureau is needed. In general, the aim is to handle an abduction procedure in 3 to 4 months, including the process at the CA, the court, high court and mediation. The shorter the procedure, the less impact it has on the people involved, especially the child.[27]

The respondents from Poland outline that there is a lack of effective execution has been identified as a key problem. The respondent also adds that mediators are usually not aware of specific abduction cases. In the description of any issues and problems that they have identified during their work on international child abduction cases and when implementing international family mediation in those cases, the respondent states that there is no way to find an abducting parent if she/he disappears and police authorities do not provide assistance unless a parent has parental responsibility, moreover that child abduction is also not a crime in Poland.[28]

4. Brussels IIa-recast

Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) or "Brussels IIa-recast", was introduced on the EU legislative arena on 30 June 2016 in order to improve on certain aspects of the already existing Regulation (EC) No 2201/2003 and is due to apply – with the exception of Denmark – as from 1st August 2022. Its Recital 2 reads that the Regulation establishes uniform rules on jurisdiction which include disputes about parental responsibility with an international element.[29] The new Regulation provides for a better circulation of decisions and authentic instruments within the EU, together with extra-judicial agreements[30], it

[26] Ibid.
[27] Ibid.
[28] Ibid.
[29] Recital 2, Brussels IIa (recast).
[30] H. Blackburn, "The Advent of Brussels II bis Recast" (2019), The International Family Law Group LLP, available at: https://www.iflg.uk.com/printpdf/1215 (accessed 7th December 2021).

introduces clearer rules on the opportunity for the child to express his/her own views, it also clarifies the rules in intra-EU cases of child abduction as well as on the placement of the child in another EU Member State. Recital 2 thus underlines the strengthening of legal certainty and an increasing flexibility, as well as improved access to and better efficiency of court proceedings.
The current section will examine how the new Regulation can address the gaps and challenges identified by the respondents of the country questionnaires as specified in D2.1 Report on Stakeholder Needs.

Article 21 of the Regulation is a novel introduction to the Regulation in comparison with Brussels IIa, which grants children the "genuine and effective opportunity" to express his or her views. It must be taken into account, however, that this does not explicitly mean that the child's views will always be taken into account but that he or she is only given the opportunity to be heard, which does not bind the court in practice. The right set forth article 21 is also related with the right of the child to information, as protected under article 13 of the UNCRC as it allows for the child's informed views. Such article would allow for better addressing the shortcoming identified in the received questionnaire answers that the child is not informed of the consequences of international child abduction, who is conducting the hearing and whether it is done in a child-friendly manner. Article 21 also stipulates that the hearing of the child is carried out "in accordance with national law and procedure", which leaves the matter of carrying out the hearing of the child to the national courts and unfortunately does not clear up the inconsistencies throughout all of the countries regarding the person who is talking to the child in case of such hearings (which may be a judge, social worker, psychologist or a Guardian ad Litem). These are issues that the EU legislator could not clarify in the recast Regulation (as they refer to procedural matters), but certain clarification could have been achieved if the EU legislator had provided guidelines in the preamble of the Regulation. This is also stated in Recital 39, which underlines that it is up to national lawto determines whether the child is to be heard by a judge or a specially trained expert, and also decide on the exact place of the hearing.

Another identified hurdle has been the non-compliance of the 6-week period set by both art.11 of the Hague Convention and is also provided for in art.11, para 3 of the Brussels IIa Regulation and that the enforcement of return decisions may take a longer time, with this time period often having been deemed as too short or unrealistic in practice. Thus, while article 24 of Brussels IIa-recast emphasises further on the necessity for expeditious

court proceedings, establishing that the court must utilise "the most expeditious procedures available under national law", it also provides the Central Authorities with 6 weeks to process the return application, as well as 6 weeks for the first instance court to issue a decision and 6 more weeks for the decision of the appellate court – a total of 18 weeks.

In terms of removing barriers and making the proceedings most cost-efficient and speedy, the abolition of exequatur for all matters related to parental responsibility under Article 38. This process already started by the current Brussels IIa Regulation with removing it in the realm of access rights and return of a child - will also be beneficial for making the return proceedings in ICA cases more expeditious and less burdensome, as it was previously identified as a hurdle that caused delays.[31]

Furthermore, article 25 puts more emphasis on the option for alternative dispute resolution for the parties involved in cases of international child abduction which includes "mediation or other means of alternative dispute resolution". The Article also provides for this to take place "as early as possible and at any stage of the proceedings" with the parties being invited either by the court or through the Central Authorities. Alternative dispute resolution options are not made mandatory by the Regulation as it is deemed that they can be truly effective where both parties attend on their own volition. This provision may help in addressing the lack of practice in referring parents to mediation identified as an issue through the country questionnaires by stressing its existence in the new Regulation. The option for mediation was already touched upon in Article 55 (e) of Brussels IIa, however not enough focus on its importance in ICA cases has proved to be the reason for the lack of awareness regarding the option of mediation, as well as the lack of information in terms of whether mediation aid is available to parents. Judges have also not widely referred parents to mediation as it has often been deemed quite difficult for it to fit within the short time limit of 6 weeks set by the Hague Convention and the Brussels IIa Regulation (also found in the new Regulation) although it has multiple benefits.[32] Through the provision of a maximum period of 18 weeks (6 weeks for proceesing the aplication by the Central Authority, plus 6 weeks for handling the case at first and any higher instance) in the recast Regulation, we might, however, witness a positive change in this respect.

---

[31] G. Lacerda Assunção, R. Neves, G. Rocha Ribeiro, Dra. Chandra Gracias, *Brussels II-A recast: the suppression of the exequatur and the hearing of the child* (2019), EUROPEAN JUDICIAL TRAINING NETWORK THEMIS COMPETITION, available at: https://www.ejtn.eu/PageFiles/17914/TH-2019-02%20TEAM%20PORTUGAL%20I.pdf (accessed 7th December 2021).

[32] Best Practice Model: Mediation in Expeditious Child Abduction Proceedings https://www.amicable-eu.org/amicable-eng/mediation.

However, it should be mentioned that the above-mentioned time limits should not apply in “exceptional circumstances” were the application could not be processed or the judge could not come with a decision on the return case. There is no mentioning in the recast what could be considered as “exceptional circumstances” as they are determined by the national legislations.

Nevertheless, it must be noted that Article 25 still falls quite short of what was expected of it in terms of enhancing the option of mediation and it would not seem to be sufficiently answering a variety of the issues, reported in the country questionnaires. For example, it does not refer to the need for specialised bi-lingual cross-border mediators.

Another issue is that the Recast Regulation, neither other EU legislation acts provide answers to the enforceability of mediated agreements. The agreed solution that was achieved as the outcome of the mediation procedure should meet the requirements for obtaining legal effect in the concerned country and should be rendered legally binding and enforceable in that country before commencing with its practical implementation.[33] Private international Law does not provide measures and security to parents in that matter which is left to the national legislators to be decided.

Looking further into what the recast Regulation introduces, its Chapter V proposes to improve the cooperation in matters of parental responsibility between Central Authorities, but it does not specifically introduce new provisions for enhanced such cooperation and exchange of information between the CAs, courts and mediators which was also pointed out as a problem in the country questionnaires. While the elaboration of guidelines and their European adoption was also suggested as desired in the country responses- an instrument that will also potentially answer the need for improved competences on the topic of mediation for professionals, such as judges, lawyers and mediators - the new Regulation does not unfortunately seem to throw that wide of a net.

Recital 61 of the new Regulation mentions the need for compliance with legal requirements under the relevant national enforcement law which may include the participation of a child protection authority or a psychologist at the enforcement stage and Recital 69 states that before enforcement proceedings are refused, national law and procedure need to be taken into

[33] Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (Mediation), chapter 12, available at https://assets.hcch.net/docs/d09b5e94-64b4-4afe-8ee1-ab97c98daa33.pdf.

account, including other relevant professionals, such as social workers or child psychologists. However, the need for further emphasis in terms of such an expert assessment need to be clearly delineated and clarified.

The new Regulation goes on to introduce a new chapter (Chapter III) on the matter of international child abduction. For example, Article 27 on the procedure for the return of a child provides that:
"*When a court considers refusing to return a child solely on the basis of point (b) of Article 13(1) of the 1980 Hague Convention, it shall not refuse to return the child if the party seeking the return of the child satisfies the court by providing sufficient evidence, or the court is otherwise satisfied, that adequate arrangements have been made to secure the protection of the child after his or her return*" (Article 27(3)).

This is an adjustment from the current Regulation which states that a return must not be refused if "adequate arrangements have been made to secure the protection of the child after his or her return" (Article 11(4)). The modified provision tips the scale towards the crucial need for better judicial cooperation and enhanced trust-building between courts/Central Authorities as the reliance on the authorities concerned in the state of origin will be amplified in terms of whether the adequate arrangements for the safe return of the child are indeed satisfied.

Also under Article 27, the new Regulation puts a greater emphasis on the best interests of the child by making a return decision provisionally enforceable if it is in compliance with these rights (Article 27(6)) which was not included in the current relevant provision of the Brussels IIa Regulation, namely Article 11(8). The present Article also enhances the harmonisation of the enforcement procedure among EU Member States (save for Denmark). However, it does not provide sufficient clarification on the issue identified in the country questionnaires of whether a return order will usually suffice for a return decision to be executed or a further order for enforcement would be required.

A gap that has been identified by the answers to the country questionnaires, however, remains unanswered by the new Regulation- namely, the lack of ensured measures in order to prevent the relocation of the child pending a return application.

In regard to the hearing of the child in a child-friendly manner and also concerning one of the issues identified from the country questionnaires which is a lack of video conferencing suite for international child abduction

cases, Recital 53 of the new Regulation stipulates that the hearing of the child may take place via videoconference or another communication technology if in-person hearing of the party/the child is impossible and the technical means area available. While videoconferencing as an option is not mentioned in the current Regulation, it seems that Brussels IIa-recast still leaves its application to the discretion of each Member State.
Recital 53 should be reviewed in relation to article 21 of the recast Regulation, envisaging that the courts of Member States, shall provide the child who is capable to of forming his/hers views an opportunity to express them either directly or through a representative. This should be done in relation to national law. Moreover, the court shall give due weight to the views of the child in accordance with his/her age and maturity. This is applicable for cases on parental responsibility and matrimonial matters, but Article 26 of the Regulation envisages that this is applicable to return proceedings under the 1980 Hague Convention.

Concerning the suspension of enforcement proceedings and refusal of enforcement, Article 56 of the recast Regulation stipulates that the authority competent for enforcement or the court in the Member State of enforcement can suspend the enforcement proceedings if they have been suspended in the Member State of origin.
While the present Brussels IIa Regulation covers some of the provisions for suspension such as the stay in proceedings, provided under Article 27 and Article 35, Article 56(2) goes further in elaborating the applicable reasons for suspension, in whole or in part – these cover the instance where an ordinary appeal against the decision has been lodged in the Member State of origin; where the time for such an appeal hasn't yet expired; where an application for refusal of enforcement based on Article 41, 50 or 57 has been submitted; or where the person against whom enforcement is sought has applied in accordance with Article 48 for the withdrawal of a certificate issued pursuant to Article 47.[34]
Article 56 (4) allows for suspension of the proceedings for enforcement if this will expose the child to a grave risk of physical or psychological harm which has arisen after the decision was given or due to other significant change of circumstances. The Article allows for enforcement once the risk is eliminated, which echoes the requirement for "adequate arrangements" in Article 11(4) of the present Regulation. However Article 56 of the recast specifies that enforcement may be refused if the risk is considered to be of a lasting nature (Article 56 (6)), which -while introducing an additional safeguard in terms of the child- may also be viewed as yet another opportunity for the abducting parent to delay the proceedings.

[34] Article 56, Brussels IIa (recast).

Article 56(5) stresses the importance of taking all appropriate steps in cases of enforcement and in the best interests of the child.

Article 79 of the recast Regulation delineates the specific tasks of requested Central Authorities. While this provision corresponds to Article 55 of the current Regulation, concerning the cooperation between Central Authorities onspecific cases of parental responsibility, it also further supplements it in that it widens the scope of cooperation. For example, Article 79(a) requires Central Authorities to provide assistance in discovering the whereabouts of the child, Article 79(d) demands the CAs to facilitate the communication between courts, competent authorities and other bodies involved particularly in the implementation of decisions on parental responsibility (Article 81). Article 79(e) calls for CAs to facilitate communication between courts on matters of transferring jurisdiction to a court in another Member State (Article 12), as well as to a court in another Member State not having jurisdiction (Article 13). Furthermore, the same Article requires CAs to facilitate cooperation in the context of providing provisional, including protective, measures in urgent cases (Article 15) and in regard to lis pendens and dependent actions (Article 20). Also, Article 79(f) requires CAs to provide the needed information by courts and competent authorities when placing the child in another Member State (Article 82).

The country questionnaires Identified issues falling outside the material scope of the Brussels IIa and the Brussels IIa-recast Regulations: they include the high costs of specialised trainings for family lawyers which can serve as a dissuading factor to go trough with such training; the difficulty of citizens in identifying lawyers specialised in the field of child abduction; the need for awareness-raising of judges and lawyers in terms of the identities of the International Hague Liaison Judges and the European Network of Judges, as well as the nature of their role; the lack of specialised courts in international child abduction; and whether a Guardian ad Litem is appointed or not.

5. Conclusion

According to the replies to the questionnaire, it appears that none of the CAs in the covered countries keeps a register/list of specialized lawyers they can address parents in cases of international child abduction. In addition, only 4 out of 7 countries inform the parents in these cases about the option of mediation. This is partially due to the lack of qualified

mediators. Also, in four out of seven surveyed states there are specialised lawyers in the field. However, in Italy they are difficult for identification especially by the citizens. In most of the surveyed countries, there are training institutions for lawyers for they can specialise in the fields. However, some of the respondents outlined that they do not participate in them due to the high costs.

Only in Poland there is lack of measures that prevent relocation of the child while pending a return application, while in Bulgaria there is some inconsistency in their implementation. Only in Bulgaria and Greece, there is a lack of specialised courts dealing with child abduction cases as well as a lack of video conferencing suites in the courts. In addition, the results show that there is a general need for raising the awareness of the International Hague Liaison Judges and European Judicial Network (EJN).

There are differences throughout all of the countries regarding the person who is talking to the child in cases where the child is heard during the proceedings in international child abduction cases as well as in the practice of appointing a *Guardian ad litem*. Only in Poland from all seven surveyed countries, the child is not informed of the consequences of the procedure. However, in Greece and Belgium this practice is inconsistent and unclear. Furthermore, the results from all seven countries show that it is not clearly defined who is doing the hearing and if it is done in a child friendly manner.

There is significant differences about what authorities are responsible for the carrying out of a return decision in cases of international child abduction as well as if a return order suffices for the carrying it out. It seems that in some of the countries, it is valid only in theory. In addition, the fact that the execution usually takes time, and the police are present to supervise the event in case of offences put additional stress on the parties, especially the children. In particular the respondent in Poland stated that the procedure does not function properly and was not aware of any successful execution in Poland in child abduction cases.

Only in Greece the judges in cases of international child abduction do not refer parents to mediation, in cases of international child abduction. In addition, only the courts in The Netherlands maintain a list of mediators for referrals and some of the courts in Germany. In general, the majority of respondents in surveyed jurisdictions support the claim that there is a need for such specialisation of mediators in the field of international child abduction. Only in three out of the seven countries there are specialised trainings for mediators for child abduction cases. In addition, there is

general lack of information whether mediation aid is available for parents in the surveyed countries.

One of the major findings of the questionnaires is the fact that there is general lack of awareness regarding the option of mediation and its advantages. There is also a significant need for professionals such as judges, lawyers, and mediators in the field should enhance their competences on the topic. Some respondents propose that the elaboration of guidelines and their European adoption will be profoundly helpful for enhancing the success rates of mediation. Furthermore, the need for cooperation and exchange of information between the relevant authorities has also been outlined as a problematic topic in many of the answers. It was pointed out by some participants that there are cases where the option of mediation is not possible due to the nature of the circumstances such as domestic violence or presence of other type of crime. However, most of the answers show that mediation is not chosen as a dispute resolution mainly because the parties were not aware of such option. Another major issue in the international child abduction cases is the fact that the procedure is strongly prolonged in time due to the lack of coordination between the authorities and the geographical obstacles. The models from Netherlands and Germany however show that mediation can be incorporated into child abduction proceedings without delay.

Based on the above-mentioned insufficiencies in the international child abduction procedure there are additional measures that could be taken in order to improve the overall procedure on administrative and court level. Most of the measures do not need any legislative amendments and could be done on the organisational level, but further legislative changes on EU level could further ensure their implementation. The information collected from the questionnaries under T2.1 Elaboration and Distribution of Questionnaires and complied in this report and D2.1 Report on stakeholders needs will be presented in the events under WP 4 iCare Capacity Building in order to gather direct feedback from the stakeholders and additional information for D2.3 Recommendation list report, and D2.4 iCare Methodology.

Bibliography

1. Best Practice Model: Mediation in Expeditious Child Abduction Proceedings https://www.amicable-eu.org/amicable-eng/mediation.
2. Bias in Statistics: Definition, Selection Bias & Survivorship Bias available at https://www.statisticshowto.com/what-is-bias/.
3. Council of Europe, Guidelines on videoconferencing in judicial proceedings, available at https://rm.coe.int/cepej-2021-4-guidelines-videoconference-en/1680a2c2f4.
4. Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, *OJ L 338, 23.12.2003*, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32003R2201.
5. Council of Europe, Convention on Preventing and Combating Violence against Women and Domestic Violence (entered into force 1 August 2014).
6. Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, ST/8214/2019/INIT, OJ L 178, 2.7.2019, p. 1–115, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/ uri=CELLAR%3A524570fa-9c9a-11e9-9d01-01aa75ed71a1.
7. European Parliament, 40 years of the Hague Convention on child abduction: legal and societal changes in the rights of a child, p, 14, available at https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/660559/IPOL_IDA(2020)660559_EN.pdf.
8. G. Lacerda Assunção, R. Neves, G. Rocha Ribeiro, Dra. Chandra Gracias, *Brussels II-A recast: the suppression of the exequatur and the hearing of the child* (2019), EUROPEAN JUDICIAL TRAINING NETWORK THEMIS COMPETITION, available at: https://www.ejtn.eu/PageFiles/17914/TH-2019-02%20TEAM%20PORTUGAL%20I.pdf.
9. Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (Mediation), chapter 12, available at https://assets.hcch.net/docs/d09b5e94-64b4-4afe-8ee1-ab97c98daa33.pdf.
10. Hague Convention on the Civil Aspects of International Child Abduction, 25 October 1980.
11. Helen Blackburn, "The Advent of Brussels II bis Recast" (2019), The International Family Law Group LLP, available at: https://www.iflg.uk.com/printpdf/1215.

12. iCare Deliverable 2.1 Report on stakeholders needs, available at https://project-icare.eu/icare-report-on-stakeholder-needs/.
13. Practice Guide for the application of the Brussels IIa Regulation, European Commission, DG Justice, EJN.
14. Jeff Beedell and Shawn Duguay, "Habitual Residence": SCC Revamps Hague Convention Analysis with Hybrid Approach (01 May 2018), available at:https://gowlingwlg.com/en/insights-resources/articles/2018/scc-adopts-new-approach-to-habitual-residence/.
15. The EU Child Return Procedure in search of efficiency, International Judicial Cooperation in Civil Matters – European Family Law.

6. Annex 1 iCare Questionnaire

Description of the project

Taking the child's best interests as a priority, the iCare project will develop and implement novel tools and activities to improve the situation of children in International Child Abduction (ICA) cases through strengthening judicial cooperation and incorporating International Family Mediation (IFM) as complementary to judicial proceedings. This will result in a child-friendly, cost-effective and time-efficient judicial process in ICA cases.

The iCare project aims to enhance judicial cooperation and information exchange among Central Authorities, legal experts (judges, lawyers etc.) and family mediators and to improve the position of children in cases of international child abduction. The project will produce a detailed Methodology, inclusive of a Recommendations list, and an E-Platform for Central Authorities, legal practitioners and family mediators, and-both respecting the right of the child to information and increasing the knowledge of parents. An AI Chatbot will be created, serving as a first point of inquiry for children and parents. The project will also provide outputs for awareness-raising, facilitation of mutual learning and effective dissemination (E-Platform, national Workshops, Webinars, Videos, Newsletter and a Final Conference).

This project is conducted by Law and Internet Foundation - LIF (Bulgaria), Centre for Research & Technology Hellas - CERTH (Greece), Defence for Children International - DCI (Italy), International Mediation Centre for Family Conflict and Child Abduction - MIKK E.V. (Germany), and European Federation for Missing and Sexually Exploited Children AISBL - MCE (Belgium).

The project is implemented with the support of Justice Programme of the European Commission under Grant Agreement №101007436.

What is the purpose of the questionnaire and Why we are doing it?

With the help of the Questionnaire the project Consortium will determine what the needs and problems of the Central Authorities, legal practitioners (lawyers, judges, prosecutors etc.) and family mediators are when dealing with cases of international child abduction. In addition to this, the questionnaire will help finding out what the problems and necessities required to enhance judicial cooperation and to improve the position of children in those cases are. The results from the questionnaire will be presented in the following national workshops and will serve for the preparation of a report that will determine the current situation in the partner countries. The report will be public, and it will be uploaded into the project website: https://project-icare.eu/

Participant information sheet:

You have been invited to take part as an expert in International child abduction matters in the EU project iCare. Before making a decision on whether you want to participate or not, please read this document carefully. Please ask all the questions you may have so you can be completely sure that you understand all the proceedings of the iCare Questionnaire, including risks and benefits. At all times, we assure compliance with the current national and European legislation.

What will I be required to do?

You will need to answer all questions, expressing your opinion based on your professional expertise on the needs and problems of the experts involved in International child abduction cases as well as necessities and problems required to enhance judicial cooperation in them.

What will be my participation in the project?

Your participation in the iCare project will only consist in the completion of the questionnaire.

When will I have the opportunity to discuss my participation?

You have the opportunity to discuss your participation upon the first contact made in relation to iCare Questionnaire with the respective project partner who has reached out to you in your expert capacity.

Who is the data controller?

As this questionnaire is carried out by all iCare partners, they are acting as joint controllers. You can contact them at icare@netlaw.bg

Are you going to share my personal data and opinions?

Any information that might identify you will be removed from the document analysing and reporting the results of the iCare questionnaire. This information will be accessible only to the iCare partners directly involved in this activity and will be treated as confidential. When the information you have provided is used for the writing of a report, iCare team will remove all personal information so that your identity and experiences remain confidential (unless attribution is required, and you have consented to it).

How long will my data be stored?

Your personal data might be stored up until 5 years after the completion of the project. The received personal information will be stored in electronic form, kept as separate files in a secure manner (including password protection).

What are my rights?

Answering the questionnaire is completely voluntary and you can withdraw from it without repercussions, at any time, before it starts or while participating. You are entitled to:

- the right to withdraw your consent at any time.
- the right to information – whether personal data about yourself is being processed.
- the right to access to your personal data processed.
- the right to correct and update your personal data processed, i.e. to notify us if you change your email.

- the right to request deletion – this right could be exercised in cases where the personal data is no longer necessary, the personal data processing in unlawful, if it is collected and processed on the basis of a parental consent.
- the right to request restriction of the processing of your personal data – this right could be exercised where you have contested the accuracy of the personal data, where the processing is unlawful, the data is no longer necessary for the purposes of processing by the user requires its storage for the establishment, exercise or defense of legal claims.

In order to exercise any of the rights listed above, you can send a message to icare@netlaw.bg.

You have also the right to submit a complaint to the national data protection authority, if you deem that your data is processed unlawfully.

Informed consent form

☐By participating in this survey, I consent to voluntarily participate in the iCare project (Improving the Situation of Children in International Child Abduction cases through Judicial CoopeRation and Family MEdiation) funded by the European Commission (Grand Agreement № 101007436) and coordinated by the Law and Internet Foundation (LIF).

☐I understand that I am free to withdraw from the study at any time without giving a reason for my withdrawal or to decline to answer any particular questions in the questionnaire without any consequences.

☐I consent to the processing of my personal data relating to my participation in this questionnaire.

Please state your professional background:

☐Family Judge
☐Family Lawyer
☐ Prosecutor
☐ Mediator
☐Other, please indicate: ___________________

Please state how long your professional experience is:

☐0-5 years
☐5-10 years
☐10 – 20 years
☐more than 20 years

ICare Questionnaire on existing needs

- *Most of the closed questions have only one answer.*

- *The questions that have more than one answer are marked.*
- *If you don't have an answer to a question you can skip it and proceed to the next one.*

Administrative Proceedings (Central Authorities)

1. How many 1980 Hague/Regulation 2201/2003 child abduction cases were handled by your EU Member State in 2019 and 2020 concerning:

   Child abduction cases:
   Number of incoming cases:__________
   Number of outgoing cases:___________

   Access applications:
   Number of incoming cases:___________
   Number of outgoing cases:___________

   ☐No information

2. Concerning the above number of child abduction cases, does this number include cases that were not processed by the Central Authority but went to the courts directly? (to the best of your knowledge)?
   ☐Yes
   ☐No
   ☐No information
3. How many employees/case officers work at the Central Authority of your EU Member State that handle Child Abduction Cases?
   ☐1-5
   ☐5-10
   ☐More than 10
4. Does the Central Authority in your EU Member State refer parents to lawyers?
   ☐Yes
      (a) Are these lawyers specialized in child abduction cases?
         ☐Yes
         ☐No
      (b) Does the Central Authority keep a register/list of lawyers that they refer parents to?

☐Yes
☐No
☐No
☐No information

5. Does the Central authority of your EU Member State regularly inform the parents in a child abduction case about the option of mediation?
☐Yes

If yes, please answer below:
☐Both parents are informed
☐Only the Applicant is informed
☐Only the Respondent Parent
(a) How is this information communicated?:
☐By letter
☐By telephone
☐Indirectly through the lawyer
☐By other means
(b) What information does the Central Authority pass on about mediation?

☐No
Why, to the best of your knowledge, is information about mediation not given?
☐Central Authority is not aware of mediation
☐Central Authority believes mediation is not suitable for child abduction proceedings
☐Mediation is not an established in my EU Member State
☐There are no qualified mediators for child abduction cases in my EU Member State

Judicial Proceedings

I. Legal Aid

6. Is Legal Aid available for legal representation for parents in child abduction cases in your EU Member State?

   ☐Yes (only for the applicant)

   ☐Yes (for both sides)

   ☐No

   ☐No information

7. Is Legal Aid means-tested (i.e. available only for parents on low income)?

   ☐Yes

   ☐No

   ☐No information

8. Are there specialized lawyers in your EU Member State for parental child abduction cases?

   ☐Yes (Please name relevant organization or institution that list these specialized lawyers..................)

   ☐No

   ☐No information

9. Are there training institutions or organizations in your EU Member State that provide specialized training for family lawyers in the field of parental child abduction cases?

   ☐Yes (Please name the organisation/institution that is responsible for the trainings ....)

   ☐No

   ☐No information

II. Court Proceedings

10. Does your jurisdiction comply with the 6-week period provided by the Hague Convention/Regulation 2201/2003 (Art. 11 of the Hague Convention/Art. 11, para 3 of the Regulation)?

    ☐Yes

    ☐No

    ☐No information

11. Are there measures in place to prevent relocation of the child pending a return application?

    ☐Yes

    ☐No

☐No information

12. When deciding if the return application should be approved, does the court require an expert assessment from a psychologist or the social services?

    ☐Yes
    ☐No
    ☐No information

13. Are there specialized courts in your country that handles only international child abduction cases?

    ☐Yes (How many specialized courts exist in total? ....)
    ☐No
    ☐No information

14. If you answer No to the previous question. Is there a specialization between judges in courts that are handling international child abduction cases?

    ☐Yes
    ☐No
    ☐No information

15. Do judges undergo special training for handling international child abduction cases?

    ☐Yes (Which organisation/institution provides this training ....)
    ☐No
    ☐No information

16. Do Video conferencing suites exist in the courts of your country that hear international child abduction cases allowing parties to appear remotely?☐Yes, all courts have video conferencing facilities

    ☐Only some courts have video conferencing facilities
    ☐No
    ☐No information

17. As far as you are aware, do most judges and lawyers in your EU Member State know the identity of your International Hague Liaison Judges and what their role is?

    ☐Yes
    ☐Some
    ☐No
    ☐Not sure

18. As far as you are aware, do most judges and lawyers in your EU Member State know the identity of your European Network Judges and what their role is?

☐Yes

☐Some

☐No

☐Not sure

19. Are children always heard in international child abduction proceedings?

☐Yes

If you have answered yes, please specify by whom the child is heard?

☐The Judge

☐Social services

☐Child specialist/psychologist

☐Guardian ad Litem

☐None of the above

☐Other (Please specify ....)

☐Sometimes

☐No

☐Not sure

20. Are children heard in a child-friendly environment?

☐Yes (Please specify your answer............................)

☐Sometimes

☐No

☐Not sure

21. If the child is not heard by the judge directly, how is the information from the child interview fed back to the Judge and to the parents?

☐Written report to the Judge only

☐Oral report to the Judge only

☐Witten report to both the Judge and the parents

☐Oral report to both the Judge and the parents

☐Other (Please specify ....)

22. Does the court appoint a Guardian ad Litem for the child or some with similar kind of function?

☐Yes

☐No

☐It depends on the age of the child

☐Not sure

23. Is the child informed about the consequences of the international child abduction procedure?

☐Yes

If you have answered yes, please specify by whom the child is informed?
☐The Judge
☐Social services
☐Child specialist/psychologist
☐Guardian ad Litem
☐None of the above
☐Other (Please specify ....)

☐No
☐No information

24. In child abduction cases where a return decision by the court in your country has to be enforced what authority is responsible for carrying out the enforcement? (multiple choices)

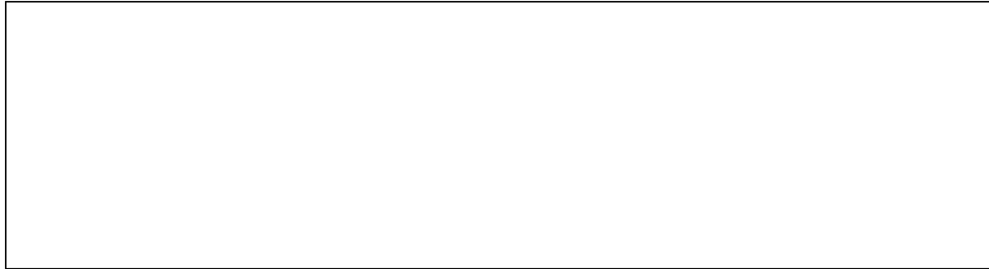
☐Judge
☐Bailiff
☐Police Authorities
☐Social Services
☐Other, please indicate: _____________

Is the enforcement authority by law permitted to use (reasonable) force when enforcing the return of the child?
☐Yes
☐No

25. In a child abduction case requiring enforcement of the return order, will the return order usually suffice or is the applicant parent required to return back to court to seek further order for enforcement?

☐Return order suffices
☐Applicant will need to seek a further order
☐No information
☐Other (Please specify ....)

26. Could you describe in short, the procedure for the enforcement of the return decisions?



Mediation

27. Do Judges in your EU Member State refer parents to mediation in International child abduction cases?

☐Yes, always

☐Yes, some judges do

☐No

☐No information

28. Does the court maintains a specialized list with child abduction family mediators or organisations for such refers?

☐Yes

☐Yes, some judges

☐No

☐No information

29. Are there specialized, bi-lingual cross-border mediators in your EU Member State who also undertake mediations in child abduction cases?

☐Yes (How or where did they obtain specialization? ....)

☐No

☐No information

Do you think a need exist for such specialization?

☐Yes

☐No

☐No opinion

30. At what stage of the procedure of international child abduction could the parties switch to a mediation procedure? (multiple choice)

☐During the procedure at the Central Authority

☐During the court procedure

☐During the procedure of the implementation of the return order

☐Mediation is possible during the whole procedure

31. Is there an information exchange between the mediators during the mediation procedure and the Central Authorities and the Court on

how the mediation procedure is going (if it has stopped, terminated etc.)?

☐Yes

☐No

☐No information

32. Are there specialized trainings for mediators on the aspects of international family mediation and its implementation in cases of international child abduction?

☐Yes

☐No

☐No information

33. Is legal Aid/Mediation Aid available for parents in child abduction cases wishing to mediate?

☐Yes, for both parties,

☐Yes, only for the applicant

☐No

☐No information

34. Do mediators in your EU Member State also see children in mediations in international child abduction cases?

☐Yes

How is the information from seeing the child fed-back to the parents?

☐In a written report by the mediator

☐In an oral report by the mediator

☐Letter drawing by the child to the parents

☐Other (Please specify ....)

☐Sometimes

☐Never

35. What other information do you think is important to share concerning your EU Member State on the topic of 1980 Hague/Regulation 2201/2003 child abduction proceedings and/or mediation in this field?

36. Finally, could you please describe any issues and problems that you have identified during your work on cases of international child abduction and when implementing international family mediation in those cases?