

BOUNCING BACK: ENSURING THE WELLBEING OF CHILDREN IN CASES OF INTERNATIONAL CHILD ABDUCTION



Introduction

I am very happy to introduce this very welcome and timely piece of research. In my role as European Parliament Mediator for International Parental Child Abduction, I see first-hand the uniquely difficult situation parents find themselves in when an abduction or retention of a child takes place. This research will assist those of us who work to solve these disputes with valuable insight from the perspective of children directly impacted by parental abduction.

We know that the breakup of a relationship between two parents is difficult for every child but when these disputes have a cross-border dimension the situation becomes even more complicated and difficult. In such circumstances, the temptation for one of the spouses to return to his or her home country with the child or to move somewhere else to start afresh can be high. If both parents have joint custody for the child, one or other parent taking the child with them violates the rights of custody of the left-behind parent and puts the best interests of the child at risk.

We are aware that cross-border disputes in family matters have increased in the EU due to the rising number of international families, which is now estimated at 1.6 million. There are around 1,800 cases of parental child abduction within the EU every year. I am keen to promote and encourage the use of mediation in such cases, which can limit both the emotional and financial cost of judicial proceedings for the parents and children involved. Over the years, my office has observed the tragic outcome for families when the recognised procedures are not correctly implemented or have taken too long.

All those involved in the dispute, judges, lawyers, mediators, Central Authorities and other professionals must seek to ensure the effective settlement of cross-border family disputes under the existing EU and International Legal Instruments. This study reminds us all that children are at the heart of the conflict and therefore deserve judicial proceedings that ensure their best interest. The best interest of the child is more than a legal concept. The child's wellbeing is at stake and all possible measures should be taken to assure that it is guaranteed. The case law analysis examining the children's right to be heard in international legal proceedings from Belgium, Dutch and French judgments provides a very good basis for reflection.

This research measures the wellbeing of more than 350 formerly abducted children and links that wellbeing to the circumstances of the abduction. In particular, I welcome the valuable contribution of the children who participated in this study. Their input greatly deepens our understanding.

I am grateful to the authors and organisations involved and congratulate them on this valuable study that will assist us as legislators, policy makers, practitioners who seek to promote and protect children's rights in our daily work.

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I didn't know what was happening. It was only after a couple of months in Sweden, that I realized what was going on, that I wouldn't see anyone from here anymore.

James, 15 years old

Yes, a judge should also listen to the positive things that happened in the other country, because otherwise there is a sole focus on the bad things, but there could be some good things too. And then, well, no one knows. And then everybody thinks... that she is just a bad person or something.

Dylan, 16 years old

Research methodology

1. Quantitative research report: to measure the wellbeing of abducted children and to identify the factors that influence this wellbeing in cases of international child abduction. 354 questionnaires were completed by left behind and abducting parents which included cases from Belgium (via Child Focus), the Netherlands (via Centrum IKO) and France (via CFPE Enfants Disparus and the French Central Authority).

2. Qualitative research: to assess the views and opinions of children who were wrongfully removed or retained in another country. This consisted of semi-structured interviews with 19 youngsters, aged between 12 and 19 who had been removed to or retained in another country, at least 2 years ago. The children were interviewed in Belgium (via Child Focus), the Netherlands (via Centrum IKO) and France (via CFPE Enfants Disparus).

3. Case law analysis: to examine judgements about hearing children in international legal proceedings following a wrongful removal or retention of a child in another country. The cases researched were from the Netherlands, Belgium and France since the start of the Brussels IIa Regulation from 1st March 2005 until 1st February 2016.

Definitions

International child abduction

The moving by one of the parents with a child to another country without the consent of the other parent, assuming that this other parent has a right to determine the residence of the child, whether called "custody", "parental authority", or "parental responsibility".

The abduction can consist of taking the child to another country, or of retaining the child after a lawful visit in a country other than that of the habitual residence of the child. The Hague Convention uses the terms "wrongful removal" and "wrongful retention"

Wellbeing of the child

The wellbeing of the child is defined as the quality of children's lives including the physical domain, the psychological domain (emotions, mental health/illness), the cognitive domain (school, educational resources), the social domain (relationship with others) and the economic domain.

Quantitative research

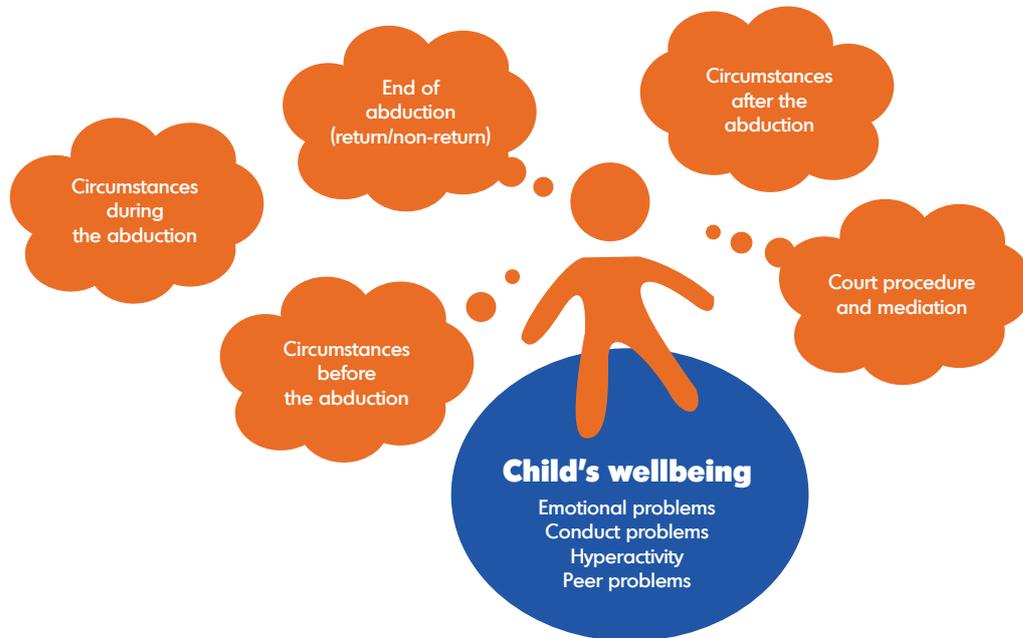
The wellbeing of abducted children was measured by the strengths and difficulties questionnaire (SDQ). The SDQ is a behavioral screening instrument for children aged 6-18 years, consisting of four subscales which allows the evaluation of four types of problematic behavior in youth:

1. **Conduct problems**, which reflect antisocial, aggressive, and oppositional behaviour;
2. **Hyperactivity or inattention**, which corresponds to impulsive behaviour reflected by agitation and distraction;
3. **Peer problems**, which reflect poor relationships with other children such as loneliness or victimisation;
4. **Emotional symptoms**, which reflect anxiety and sadness.



Quantitative research

This demonstrates the process for evaluating the impact of an international child abduction on a child's wellbeing. The vast majority (80.1%) of children showed 'normal' wellbeing behaviour, 7.1% were determined as 'borderline', and 12.8% were described as 'problematic'. The following elements have a significant influence on the wellbeing of a child who has been abducted:



Circumstances before the abduction

When seeking to understand the relevance of the child's circumstances before the abduction it is important to consider whether or not the child eventually returned to the country of former residence. Children who did not return are more likely to develop emotional behavioral problems when they were abducted by the parent who was not their primary caregiver and when they were not informed about the abduction prior to the abduction. For children who did return, these factors play a lesser role in their current wellbeing.

Circumstances during the abduction

Children who had more frequent contact with peers during the abduction, showed better wellbeing overall as measured on the total SDQ score. Having more frequent contact with other children related significantly with less emotional and conduct problems as well as less hyperactivity.

Court procedure and mediation

Whether or not mediation was used, whether or not the child was heard during the mediation, and whether or not the child was heard during the court procedure, could not be related to the child's current wellbeing. There was a difference, however, according to whether or not the parent perceived that the final solution on parental authority was fair. When the parent feels that the solution was unfair, the child showed a lower wellbeing overall.

End of abduction (return/non-return)

Children who returned to the left behind parent did not have an overall higher wellbeing than children who did not return (measured on the total SDQ score). However, children who did not return scored slightly higher on each subscale. Only on the scale of peer problems was the difference between both groups more pronounced and also statistically significant.

Among returning children it was found that the arrest of the abducting parent led to a lower overall wellbeing (measured by the total SDQ score). In terms of the specific SDQ subscales, the arrest of the abducting parent led to more emotional and peer problems.

Children who did not get the chance to say goodbye to their family and friends, showed more signs of hyperactivity.

Circumstances after the abduction

Children who receive psychological assistance during their return show a significantly better wellbeing as compared to children who did not receive such assistance. Having received psychological assistance after they had settled following a return, however, could not be related to wellbeing.

Changing school environment, language, friends or not even having the opportunity to go to school while being in the other country could lead to the abducted child repeating a year. Repeating a year in school is an important factor that is related to a lower level of wellbeing for children who end up repeating a grade more than once. These children show significantly more emotional problems, conduct problems, hyperactivity and peer problems as compared to children who do not repeat a year or do so only once.

It was just strange. It was so weird to be back, you know? To be back with my dad, with whom I had spent all of my life. I had to adapt here, get used to my father again. I hadn't seen him in such a long time, or at least not for real, maybe once on Skype or something.

Brian, 17 years old

Qualitative research

Before and at the moment of abduction

Prior to the abduction, children are not or hardly informed about the upcoming changes in their lives. They were not informed of the real intentions of the abducting parent. Children usually do not appreciate the way the abducting parent arranged the relocation to the other country. They reported feelings of powerlessness and incomprehension.

Several children reported feelings of discomfort related to distress perceived from the abducting parent – often through the latter's body language – which withheld children from asking questions about the situation.

During the abduction period

Not all children identify or describe the removal to or retention in another country as a child abduction.

Most children were taken to a place they were – more or less – familiar with. Despite this, they experienced the removal or retention as a stressful period in which they miss their left behind family and environment

However, they also mention positive experiences in the new country, even if they wanted to return to their home country.

When a child has no connection with the country of abduction, he/she is less positive about the period of abduction and mentioned more problems related to language, education and loneliness.

Most children describe their stay in the other country as a big lifestyle change with several difficulties related to adapting to the new situation.

Most children did not say that they preferred to be with one or the other parent. Most of them just did not understand what was happening and

missed the other parent, regardless of whether the abductor was the primary caregiver before the abduction.

Majority of children requested to remain in contact with the left behind parent. Although most abducting parents did allow some form of contact, children reported that they experienced little space to talk about the left behind parent with the former. Some children only spoke to the left behind parent secretly.

Although children testify siblings are very important to them, remarkably, most of them said that they never really talked about the abduction with their sisters/brothers. Older children reported a feeling of responsibility and the need to protect younger children from what was happening.

About a third of the children indicated their friends as the most important persons to help them with the situation.

The majority of children never received professional help or support during the abduction.

Children who received help from a professional say that they were not immediately willing to talk to a stranger and were convinced that talking to a family member or friend was sufficient. Nevertheless, they eventually thought that help from a professional did actually provide added value to their wellbeing.

Court procedure and mediation

When asked about their opinion on being heard in a court procedure, children's opinions and feelings were very mixed. Most of them however responded positively to the possibility of being heard.

Children who didn't have the opportunity to be heard, didn't understand why they were not asked for their opinion.

Respondents agreed on the lack of clear communication and a limited understanding of the situation. Even children who were heard complained about this lack of understanding.

Generally, children found it extremely important that no child should feel that no one is interested in his or her experience.

Children did not feel that their opinion was taken into account. An undesired outcome for the child led to feelings of desperation and anxiety.

End of abduction

Children were in most cases not or hardly informed about the upcoming return. The sudden aspect of the return is associated with negative feelings: ambivalence, anger, intrusiveness.

However, for some children it was also very scary to come back because returning meant reintegrating to another place again.

After the abduction

Most respondents were very happy to be back in their home country, although they had to re-adapt to a lot of changes when they returned.

In the majority of cases, tensions between parents remained present after the return.

Almost all respondents reported having a less positive or qualitative relationship with the abducting parent at present.

In a few cases, the respondents reconnected with the left behind parent, without their other siblings. Those who did reconnect with their siblings never talk about the abduction.

Several respondents received professional help upon return. Although all respondents were positive about this help, we see that their trust is vulnerable and they encounter difficulties to open up to these professionals.

I think this event shaped my character, it made me what I am today. Today I think I am a good person. (...) I have the feeling that for someone to become good, something terrible should happen to them. Everyone thinks I was mature early. Maybe it is because of what happened to me, I think.

Paulo, 19 years old

Case law analysis

The hearing of children was assessed in 3 countries: The Netherlands, Belgium and France.

The analysis involved:

- > Hearing the child in court or through intermediaries
- > Ordering non-return on the basis of the child's objections
- > The attainment of sufficient age and maturity

I feel it's difficult for me. Due to what happened, I feel so lonely now. When I compare myself with my fellow students I just feel different.

Karen, 15 years old

Hearing the child

			
	Netherlands	Belgium	France
Cases where hearing is mentioned	98	25	53
Cases where Art. 13(2) is applied as grounds for non-return	16	3	6

Differences in age limits

			
	Netherlands	Belgium	France
Express views from age 6		Express views from age 10	Express views from age 10 when they are the younger sibling
Presumption of immaturity below age 9			Express views from age 9
Expression of views varies for ages 9-10			
Presumption of maturity for ages 11 and above			

Elements of maturity*

A child's views can be decisive to determine the outcome of the case when the court finds the child has reached sufficient age and maturity. The more a child's manner of speech and behavior correspond to the court's maturity assessment, the higher the likelihood their views will have an impact on the outcome of the case. The court's assessment of the child's level of maturity is based on various degrees of ability. Examples include:

- > Oversee and understand current situation as well as future consequences of a decision;
- > Express oneself verbally, voice thoughts, feelings and emotions clearly and comprehensively;
- > Convey age-appropriate consistency, authenticity, self-reflexivity and independence;
- > Speak in age-appropriate language, in own words of which implications are understood;

- > Speak freely, spontaneously, openly;
- > Give reasoning for a preference or choice;
- > Speak in a way that is not purely emotional;
- > Give a mature impression that is genuine;
- > The experience of the child is more important than the actual facts.

The child's objections

An objection is usually interpreted strictly by the court.

There is a tendency to give more weight to a child's objection to return when:

- > it is explicit ('firm and consistent', 'conscious', 'sustained') – NL/BE/FR
- > the reasons for the objection are not limited to a preference for living in one country or the

personality of one parent, but take into account the circumstances and context (NL/BE/FR)

- > the objection is confirmed in other sources at the court's disposal (NL/BE/FR)
- > the objection relates to the child's healthy development (NL)
- > the objection goes beyond a mere preference to keep the status quo (NL)
- > the child takes initiatives to stay in contact with the other parent (NL)
- > the objection is not merely based on factual circumstances that make the country 'nicer' or 'safer' (like traffic, nicer school, etc) (NL)
- > the child does not suffer from a loyalty conflict (FR)

*Based only on case law analysis of the Netherlands, Belgian and French court decisions did not elaborate on the elements of maturity

Conclusions

The findings reveal that the vast majority (80.1%) of children showed 'normal' wellbeing behaviour, 7.1% were qualified as 'borderline', and 12.8% were qualified as 'problematic'.

In general, it can be said that an international child abduction has a negative impact on the wellbeing of children who are involved. When looking closely at the different stages and the circumstances of the abduction, certain specific elements that have a significant effect on the wellbeing of these children.

Before the abduction

No evidence was collected that showed that children who were younger when abducted were affected differently than children who were older at the time.

In general, being abducted by the primary caregiver does not influence the wellbeing of the children involved. It was a negative factor only in cases where the child did not return to their original residence. In the interviews, children confirmed that they had no preference of living with one or the other parent during the time of abduction. They just missed the left behind parent.

The results show that being informed about the upcoming removal or retention can affect the child's wellbeing positively, but again only in those cases where children did not return to the left behind parent. The children interviewed were not happy with the way they were informed about the upcoming removal and reported feelings of powerlessness and discomfort.

During the abduction

A relevant link between the duration of the abduction and the child's current wellbeing could not be determined.

Maintaining contact with the left behind parent was a significant factor for the child's wellbeing, but only in cases where the child did not return. In the interviews children confirmed that it was imperative for them to remain in contact with both parents. However, when contact with the left behind parent remained, it was often described as difficult and unnatural.

Given the fact that siblings may have lived together their whole lives and gone through a lot together, one would assume that being separated during an abduction would be intolerable. However, this was not the case in our study and did not factor into the child's current wellbeing. Children also said that they never talked with their siblings about the abduction although they did find the presence of their siblings important.

Children who had more frequent contact with children of the same age during the abduction, showed higher wellbeing overall. This was also seen in the interviews where children often described their friends as the most important persons who helped them with the situation, not only during but also after the abduction.

End of abduction

It was also found that when an abducting parent was arrested, the overall wellbeing of the child decreased and led to more emotional and peer problems in particular.

After the abduction

Children who returned experienced significantly less peer problems compared to children who did not return.

Children who received psychological assistance during their return demonstrated better wellbeing overall, and less emotional and peer problems, as compared to children who did not receive such assistance. Psychological assistance after the return could not be related to the child's current wellbeing. While children did not expect much from this support, they did see the benefit once they received it.

Court procedure and mediation

Children said that it was important for them to have the opportunity to be heard in court, although not all of them were convinced that they would use the opportunity. Children complained about the lack of communication and understanding related to the proceedings, the outcomes and the reasons for a certain court decision. Court decisions were usually not communicated to the children.

Case law analysis revealed that the courts' assessment of a child's maturity is based on either the age of the child or his/her ability to express their views.



**Missing
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Co-financed by the European Union. The contents of this publication are the sole responsibility of the project partners and can in no way be taken to reflect the views of the European Commission.