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Title:

**THE ROLE OF THE
MINISTRY OF FOREIGN
AND EUROPEAN AFFAIRS
IN INTERNATIONAL CASES
OF CHILD ABDUCTION**

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ABSTRACT

This paper examines how the Ministry of Foreign and European Affairs (hereinafter: MFEA) has clarified its competence in cases involving a wrongful removal or retention of a child. The Directorate for Consular Affairs of the MFEA and a network of diplomatic missions and consular offices overseas deal with nine new cases of child abduction for the period between 2013-2017. The MFEA works in accordance with the Vienna Convention on Consular Relations and with the Foreign Service Act. However, such regulations which would define the MFEA's handling in child abduction cases have not been issued in Croatia yet. On the basis of research and a comparison of child abduction cases in Croatia and in some EU Member States, the authors suggest that Croatian legislature *de lege ferenda* takes into account provisions of a legal system of some EU countries when amending the Foreign Service Act or enacting the Consular Service Act.

Keywords: Brussels IIbis Regulation, child abduction, Child Abduction Convention, Foreign Service Act, Ministry of Foreign and European Affairs, Vienna Convention on Consular Relations

INTRODUCTION

Intensive migration, especially the one driven by economic motives and family reunification, interrelates with the situations where the divorce or dissolution of cohabitation often results in a situation of international child abduction. International child abduction is defined as the unlawful removal or retention of a child to a jurisdiction different than its habitual residence. It is unilaterally decided by one parent, without the other parent's consent or subsequent approval.¹ International child abduction appears to be a complex problem;² it is regulated on the international and European level, together with national laws. Foundations for the proceedings are grounded by the Hague Convention on the Civil Aspects of International Child Abduction (hereinafter: the Child Abduction Convention)³ and by 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 (hereinafter: the Brussels IIbis Regulation).⁴

The Child Abduction Convention applies within ninety-nine signatory states.⁵ The Convention led to the significant changes within the rules on the private international law of the contracting states. There is a value in the fact that the child abduction cases can be resolved much efficiently between two states which are signatories to the Convention. Though, the Conventions does not address the problem of dealing the child abduction cases with non-contracting states.⁶ Between the contacting states the Convention had established the international mechanism for the prompt return of the child to its state of habitual residence prior to the move, thus restoring the status quo ante unilaterally altered by the abductor.⁷ The provisions of the Brussels IIbis Regulation supplement the provisions of the Child Abduction Convention.⁸ In relations between the EU Member States⁹, the Brussels I Ibis Regulation takes precedence over the Child Abduction Convention to the extent to which it relates to the cases governed by the Brussels I Ibis Regulation.¹⁰

Situations of international child abduction imply the involvement of numerous authorities in both the state of former habitual residence and the state of refuge.¹¹ Those bodies are primarily judicial and administrative, but also from the civil sector. The ministries of foreign affairs are often included in child abduction cases, which was also confirmed in the Republic of Croatia.¹² The network of diplomatic missions and consular offices are often first addressed by the Croatian citizens in terms of offering support abroad, when international child abduction occurs.¹³

1 González Beilfuss, Cristina. "Chapter C.8: Child abduction" In *Encyclopaedia of Private International Law*, edited by Jürgen Basedow, Giesela Rühl, Franco Ferrari and Pedro de Miguel Asensio, 298-300. Cheltenham: Edward Elgar Publishing, 2017.

2 See: Kruger, Thalia. *International Child Abduction: The Inadequacies of the Law*, London: Hart Publishing, 2011, 1-15.

3 HCCH, Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Accessed September 25, 2018. <https://www.hcch.net/en/instruments/conventions/full-text/?cid=24>. Haška konvencija o građanskopravnim aspektima međunarodne otmice djece od 25.10.1980, Official Gazette of SFRJ, International Treaties, No. 7/91. The Republic of Croatia became a contracting party of the Hague Child Abduction Convention pursuant to the Notification of Succession of 8 October 1991 – Official Gazette, International Treaties, No. 4/94.

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 (Brussels IIbis Regulation) [2003] OJ L 338.

5 See: "HCCH Status Table", last modified September 12, 2018, <https://www.hcch.net/en/instruments/conventions/status-table/?cid=24>.

6 Aiyar, Smita. „International Child Abductions Involving Non-Hague Convention States: The Need for a Uniform Approach." *Emory International Law Review* 21(2007), 281.

7 Pérez-Vera, Elisa. *Explanatory Report on the 1980 Hague Child Abduction Convention*, HCCH Publications, 1982. Accessed September 30, 2018, p. 429. <https://assets.hcch.net/upload/expl28.pdf>.

8 Pataut, Etienne. "Article 11 Return of the child." In: *Brussels IIbis – Commentary*, edited by Ulrich Magnus and Peter Mankowski, 246-256, München: Sellier European Law Publishers, 2012, p. 128. See also: Župan, Mirela. "Chapter 10. Cooperation of Central Authorities." In *Jurisdiction in matrimonial matters, parental responsibility and abduction proceedings. A Handbook on the Application of Brussels IIa Regulation in National Courts*, edited by Constanza Honorati, 247-273. Torino: Giappichelli, 2017.

9 Its scope is limited to the European Union, except for Denmark, which is not participating in the adoption of this Regulation and is therefore not bound by it nor subject to its application. See Preamble 31 Brussels IIbis Regulation.

10 Brussels II bis Regulation, *op. cit.* (note 4), Article 60(1)(e).

11 See: Schuz, Rona. *The Hague Child Abduction Convention. A Critical Analysis*. London: Hart Publishing, 2013, 38-42.

12 For more information about international private rights, see: Mills, Alex. *The Confluence of Public and Private International Law*, Cambridge University Press, 2009, 264-269.

13 According to cases analysed, foreigners have also asked for information from and inquired about procedures at diplomatic missions and consular offices.

The role of ministries of foreign affairs differs with regard to whether the countries involved in the matter are contracting states to the Child Abduction Convention, and whether the countries or one of these countries involved in the matter are not contracting states to the Child Abduction Convention. As a general rule, the Central Authorities will assist parents left behind if the child has been taken to a contracting state; and the ministries of foreign affairs if the child has been taken to a non-signatory state. Hence, this division cannot be considered strict since the ministries of foreign affairs have their role in the Hague cases as well.

This paper provides for a brief analysis of a legal framework for the actions of ministries of foreign affairs in child abduction cases. Two researches were conducted within this paper, the first included a short questionnaire sent to the ministries of foreign affairs of all EU Member States, while the second included analyses of facts referring to the cases conducted in the Croatian MFEA in a four-year period from 2013 to 2017.

The primary goal of the latter research was to inspect the benefits and shortcomings, as well as the overall adequacy of the current legal framework. A sample of cases handled in the relevant research period would be used as a testing ground. Consequently, a possible amendment to the Foreign Service Act¹⁴ or the enactment of a new Consular Service Act,¹⁵ which would meet practical needs, may be proposed. If a hypothesis that the current legal framework is not sufficient for handling specific international child abduction cases is confirmed, the added value of this research comes to a forefront. Accordingly, the final goal of this research would be a proposal for improving legal tools providing a framework for actions and measures taken by the MFEA, Croatian diplomatic missions, and consular offices abroad in cases of international child abduction.

1. LEGAL FRAMEWORK FOR THE TREATMENT OF THE MINISTRY OF FOREIGN AND EUROPEAN AFFAIRS

1.1. The Hague Framework

Private international law—child abduction are principally the rules of cooperation between authorities; hence they are contained in international instruments.¹⁶ The rules of cooperation aim to ensure the application of private international law and their effect abroad.¹⁷

The Child Abduction Convention does not regulate the treatment of the ministries of foreign affairs in child abduction cases; still their role can be derived right through the rules of cooperation regulating the functions of Central Authorities.

Every contracting state to the Child Abduction Convention is obliged to designate a Central Authority¹⁸ to discharge the duties imposed by the Convention.¹⁹ This cooperation has to develop on two levels: the Central Authorities must firstly cooperate with each other. In addition, they must promote cooperation among the authorities competent for the matters dealt with within their respective States.²⁰ Whether this cooperation is promoted effectively will depend to a large extent on the freedom of action which each national law confers upon the Central Authorities.²¹

The documents accompanying the Convention, issued by the Hague Conference on Private International Law (hereinafter: the HCCH) included the specific role of ministries

14 Foreign Service Act, Official Gazette Nos. 48/1996, 72/2013, 127/2013, 39/2018.

15 Consular Service Act (the EU) was already foreseen by the Annual Plan of Normative Activities for 2014 with a deadline set for the 4th quarter. However, the idea has been abandoned.

16 González Beilfuss, C., *op. cit.* (note 1).

17 For more information, see: Župan, Mirela. "Cooperation of Central Authorities." In Jurisdiction in matrimonial matters, parental responsibility and abduction proceedings. A Handbook on the Application of Brussels IIa Regulation in National Courts, edited by Constanza Honorati, 247-273. Torino: Giappichelli, 2017.

18 The Central Authority in Croatia is the Ministry for Demography, Family, Youth and Social Policy.

19 Hague Child Abduction Convention, *op. cit.* (note 3), Art. 6.

20 Pérez-Vera, E., *op. cit.* (note 7), p. 453.

21 See: Trimmings, Katarina. Child Abduction within the European Union. London: Hart Publishing, 2013, p. 140.

of foreign affairs in child abduction cases, with a view to (i) removing the obstacles for the application of the Convention, (ii) providing assistance when addressing the return request, and (iii) preventing abduction.

Thematically linked only to Central Authorities, the Guide to Good Practice elaborates the tasks of ministries of foreign affairs in more detail. The first task refers to the obligation of Central Authorities to take all appropriate measures to eliminate any obstacles to the application of the Convention.²² One of the measures recommended by the Guide is a direct discussion between two Central Authorities of the two affected countries on the obstacles that have occurred, saying that, if necessary, this discussion may be carried out through the diplomatic channel.²³

The second task refers to the assistance provided for the Central Authorities. The Convention contains a list of functions of Central Authorities, which is not exhaustive.²⁴ By performing them, the Central Authorities are encouraged to cooperate with other authorities, including ministries of foreign affairs. In the instructions for the requesting Central Authority, the Guide recommends that, if there are communication problems with the requested Central Authority, it may be possible to send applications via diplomatic channel, or by diplomatic bag with the agreement of the relevant embassies.²⁵

The Guide to Good Practice on Preventive Measures stresses the role of consular offices in the part on proactive measures. The Guide provides that every state should promote a legal environment which reduces the risk of abduction. This includes the measures considering travel documents, travel consent, border control and open borders as well as commercial and sea carriers.²⁶ The role of consular offices is also included in the part on reactive measures in relation to a response to a credible risk of abduction. The Guide promotes that national legal provisions and administrative practices should enable state authorities to respond rapidly and effectively when there is a credible risk of abduction. This considers the issues of travel documents and border control. For the category of the children with more than one nationality the Guide promotes cooperation between consular offices in relation to issuing, withdrawing and/or revoking passports and visas for children with more than one nationality is a useful preventive measure.²⁷

1.2. Vienna Conventions on Diplomatic and Consular Relations

The role of diplomatic and consular representation becomes even more significant when a child abduction situation includes the country which is not a contracting state to the Child Abduction Convention. When a child is abducted and taken to a non-contracting state, the parent attempting to secure the return of the child is faced with the harsh reality that his or her government has very few options to secure the child's safe return. These options include only protection by the diplomatic or consular authorities.²⁸ In international law, there are two types of protection a state can use on behalf of their nationals abroad, i.e. diplomatic protection and consular assistance.²⁹ They are regulated by different treaties. The rules of diplomatic protection are codified in the Vienna Convention on Diplomatic Relations.³⁰ The main treaty under international law on consular assistance is the Vienna Convention on Consular Relations, which defines a framework for consular relations between states.³¹

22 Hague Child Abduction Convention, *op. cit.* (note 3), Art. 7(i).

23 Pérez-Vera, E., *op. cit.* (note 7), 14.

24 See: Hague Child Abduction Convention, *op. cit.* (note 3), Art. 7(2) and Župan, M., *op. cit.* (note 16), 274-278.

25 Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part I – Central Authority Practice Part I, HCCH Publications, 2003. Accessed September 27, 2018. https://assets.hcch.net/upload/abdguide_e.pdf, 52.

26 Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part III – Preventive Measures, HCCH Publications, 2005. Accessed September 27, 2018. https://assets.hcch.net/upload/abdguideiii_e.pdf, 8-13.

27 *Ibid.*, 16.

28 See: Melissen, Jan. "The Consular Dimension Of Diplomacy." In *Consular Affairs and Diplomacy*, edited by Jan Melissen and Ana Mar Fernández, 1-17, Brill | Nijhoff, 2011.

29 See: Okano-Heijmans, Maaiko. "Changes in Consular Assistance and the Emergence of Consular Diplomacy." In *Consular Affairs and Diplomacy*, edited by Jan Melissen and Ana Mar Fernández, 19-41, Brill | Nijhoff, 2011.

30 Vienna Convention on Diplomatic Relations, United Nations, Treaty Series, vol. 500, 95.

31 Vienna Convention on Consular Relations, United Nations, Treaty Series, vol. 596, 261. It was adopted on 22 April 1963 by the United Nations Conference on Consular Relations held in Vienna, Austria, from 4 March to 22 April 1963. It entered into force on 19 March 1967, in accordance with Article 77. The former Yugoslavia signed and ratified the Convention on 24 April 1963 and 8 February 1965, respectively. The text of the Convention published in the Official Gazette SFRY, International Contracts and Other Agreements, No. 5/1966. The Republic of Croatia has been a party to the Convention since 8 October 1991 based on the notification of Succession, Official Gazette: International Treaties No. 12/1993.

The Vienna Convention on Consular Relations **states that** consular functions are exercised by consular posts. They are also exercised by diplomatic missions in accordance with the provisions of same Convention.³² It provides as well that the provisions of the Convention also apply, so far as the context permits, to the exercise of consular functions by a diplomatic mission.³³ For the purpose of this article, it can be stated that consular officers are persons of a country who exercise certain functions for their country in another country and protect interests of their citizens within their jurisdiction.³⁴

Article 5 of the Vienna Convention on Consular Relations specifies consular functions. Consular functions related to the consular officials duties when citizens of their country face difficulties in a foreign State are as follows: (i) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and corporate bodies,³⁵ and (ii) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State.³⁶ For the purpose of this article, the paragraph which constrains the lists of representation or the arrangement of representation for nationals before tribunals and other authorities of the receiving State as a consular function is equally relevant.³⁷

1.3. The National Framework

The provisions of the Vienna Convention on Consular Relations are incorporated in the Foreign Service Act. The Act specifies that a consular office shall exercise functions specified in the Vienna Convention on Consular Relations. Actions of a consular office in child abduction cases is are not specifically regulated by the Act yet still can be derived from the functions to: (i) safeguard the interests of the Republic of Croatia, its nationals and establishments resident in the receiving State within its consular district; and (ii) perform administrative duties, notary public jobs, duties in the area of home affairs, defence, registrar's office and social welfare as defined by law, and provide legal assistance to Croatian nationals in exercising their employment, social security and other rights and interests in the receiving State within its consular district, perform other duties for which it is authorised by law and other regulations and which are not prohibited under the laws and other regulations of the receiving State, to which the receiving State is not opposed or which have been defined in international treaties.³⁸

Regarding international child abduction and the procedure of diplomatic missions and consular offices, the Act on Travel Documents of Croatian Citizens³⁹ is of significance. The Act determines more precisely who can apply for a travel document.⁴⁰ Diplomatic missions and consular offices are authorised to issue a passport or laissez-passer to citizens who live or found themselves in their area of jurisdiction abroad.⁴¹

The same Act contains a provision on the issuance of a travel document for a child. These provisions prescribe in more detail conditions under which application forms for child travel documents can be submitted. As such, they prevent abuse by only one parent. The role of the consular office is evident in some aspect of this rule. The application for the issuance of a travel document for a child must be submitted by the child's legal representative to the competent body of public administration. An application for a child travel document can be submitted by one of the parents with a declaration that the document will be collected by another parent in person. If another parent is prevented from collecting the document in person, the document could be collected by the parent who submitted the application with the other parent's permission in writing with the signature validated by a notary or a

32 *Ibid.*, Art. 3.

33 See: Denza, Eileen. *Commentary on the Vienna Convention on Diplomatic Relations*. London: Oxford, 2016.

34 Kristin Haugevik. "Parental Child Abduction and the State: Identity, Diplomacy and the Duty of Care." *The Hague Journal of Diplomacy* 13 (2018): 1-21.

35 Vienna Convention on Consular Relations, *op. cit.* (note 32), Art. 5(a).

36 *Ibid.*, Art. 5(d).

37 *Ibid.*, Art. 5(j).

38 Foreign Service Act, *op. cit.* (note 14), Art. 14.

39 Act on Travel Documents of Croatian Citizens, Official Gazette Nos. 77/1999, 133/2002, 48/2005, 74/09, 154/2014, 82/2015.

40 Travel documents are as follows: a passport, a diplomatic passport, a service passport, a *laissez-passer* as well as travel documents issued based on an international agreement. Art. 4 of the Act on Travel Documents of Croatian Citizens, *ibid.*

41 *Ibid.*, Art. 24.

competent authority or in a Croatian consular office if they are not on the territory of the Republic of Croatia. An application form for the issue of a travel document can be submitted by one of the parents independently if another parent has died or is declared dead, if he or she is deprived of legal capacity in relation to obtaining a travel document, if he or she by a judicial decision independently exercises parental custody in full or if parental custody of another parent stagnates based on a judicial decision. In urgent cases, when there is a danger for the child or when the issue of a travel document is in the best interest of the child, the application for the issue of a child travel document can be submitted and the issued document can be collected by the same parent with written permission of the Centre for Social Care which is in charge according to the place of residence.⁴²

2. COMPARATIVE ANALYSES OF THE ACTING OF MINISTRIES OF FOREIGN AFFAIRS IN CHILD ABDUCTION CASES

The scope of this research was extended beyond the functioning of Croatian diplomacy. Namely, the appropriateness and quality of diplomatic service provided by Croatian authorities should be elaborated by comparison with the treatment provided by other EU Members State diplomatic channels in similar cases. There is no available statistical record on the number of child abduction cases, except for Italy that has published the Statistical Yearbook and the UK that has available information on their web page. To accomplish the obtaining the data on procedures conducted, a questionnaire was sent to the ministries of foreign affairs of EU Member States.⁴³ The questionnaire contained questions relevant for this research, or more precisely, the questions on how many international child abduction cases the respective ministry of foreign affairs handled in the period 2013-2017, and if the ministry assisted in the clarification of abduction in accordance with special law (e.g., the Consular Service Act) or just with the Vienna Convention on Consular Relations. Out of 27 questionnaires that were sent out, responses of eight Ministries of Foreign Affairs of Member States were received.

State	Cases in period 2013-2017
United Kingdom	1,299
Sweden	384
Italy	375
Finland	18
Malta	1
Austria	No data
Germany	No data
Hungary	No data

2.1. General Consular Assistance

The research showed that most of the countries provide only general consular assistance in child abduction cases and the treatment in child abduction situations is not particularly regulated by law.

2.1.1. Ministry for Foreign Affairs of Sweden. The Ministry for Foreign Affairs of Sweden provides general consular assistance. The substance of assistance varies from country to

⁴² *Ibid.*, Art. 34.

⁴³ The Ministries of Foreign Affairs of 13 Member States have not returned the questionnaire, while the Czech Republic, Denmark, Latvia, the Netherlands, Slovakia and Slovenia forwarded the questionnaire to their Central Authorities.

country, depending on the conditions in the country concerned. In some countries, where Sweden does not have any diplomatic representation and/or where it advises against travel, the possibility of giving assistance is very limited. In other countries, Sweden can sometimes assist in the attempts to locate the child and contact the abductor to see if voluntary return is possible. Swedish embassies can assist, in accordance with the legislation, by issuing temporary passports and give advice regarding the return of a child, and can also help the applicant to find a lawyer.⁴⁴

2.1.2. Ministry of Foreign Affairs and International Cooperation of Italy. The Italian Ministry of Foreign Affairs and International Cooperation provides consular assistance in accordance with the Vienna Convention on Consular Relations and the Italian Legislative Decree No. 71/2011 on Consular Functions.⁴⁵ The Ministry dealt with 67 new cases in 2013,⁴⁶ 71 new cases in 2014,⁴⁷ 77 new cases in 2015,⁴⁸ 84 new cases in 2016⁴⁹ and 76 new cases in 2017.⁵⁰

2.1.3. Ministerial Department for Foreign & Commonwealth Office of the United Kingdom. The Consular Directorate of Foreign & Commonwealth Office (FCO) provides consular assistance to British nationals affected by international child abduction. The FCO can provide a list of overseas lawyers, in certain circumstances arrange to meet the child, contact the relevant authorities overseas to check what progress has been made in finding the child, offer travel information and help with finding accommodation locally, help to contact the relevant local authorities and organisations, where appropriate contact the courts overseas to express the interest in a case and ask about progress, go to court hearings overseas, provide information about translation services and where is appropriate, issue travel documents.⁵¹ The FCO does not offer legal advice, “rescue” a child or get involved in any illegal attempts to bring a child back to the UK, guarantee the return of a child, even if the UK orders this, find a child, pay the bills (including legal fees, translation services, travel or accommodation costs) and remove a child from a country without UK travel documents.⁵² The FCO dealt with 553 international parental abduction and child custody cases in 2013/14,⁵³ in 2015/2016 with 445 new cases⁵⁴ and in 2017 the FCO provided assistance in 301 new child custody and international parental child abduction cases (data covers period to November 2017).⁵⁵

2.1.4. Ministry for Foreign Affairs and Trade Promotion of Malta. The Consular Directorate of this Ministry had one case of child abduction in the period 2013-2017. The Ministry abides by the Vienna Convention on Consular Relations, and works closely with the Ministry for Home Affairs and National Security to determine what course of action would be required in such particular stance. Hence, the role of the Ministry in any abduction of (a) Maltese national/s is dictated by the Vienna Convention, and the nature of the case, which could vary in both nature and degree.⁵⁶

2.1.5. Federal Ministry for Europe, Integration and Foreign Affairs of Austria. The Austrian Foreign Ministry does not compile statistics specifically on cases of international child abduction. The cases mainly handled by the Ministry are those that concern states that are not parties to the Hague Convention. The cases concerning member countries are handled directly by the Ministry of

44 Email from the Ministry for Foreign Affairs of Sweden, Department for Consular Affairs and Civil Law, Central Authority for the Civil Aspects of International Child Abduction, 10 August 2017.

45 Email from the Ministry of Foreign Affairs and International Cooperation of Italy, 11 September 2017.

46 „L' Annuario Statistico 2013”, https://www.esteri.it/mae/publicazioni/annuariostatistico/2013_annuario_statistico.pdf.

47 „L' Annuario Statistico 2013”,

https://www.esteri.it/mae/resource/doc/2015/06/annuario_statistico_2014_-_rev5_4_giugno_2015_web.pdf.

48 „L' Annuario Statistico 2014”, https://www.esteri.it/mae/resource/doc/2016/04/annuario_statistico_2015_interattivo_aprile2016.pdf.

49 „L' Annuario Statistico 2015”, https://www.esteri.it/mae/resource/doc/2016/07/annuario_statistico2016_r_070716.pdf.

50 „L' Annuario Statistico 2016”, https://www.esteri.it/mae/resource/publicazioni/2017/07/annuario_statistico_2017_web3.pdf

51 Email from the Consular Directorate of Foreign & Commonwealth/Child Protection Unit of 11 August 2017.

52 „Guidance International Parental Child Abduction”, <https://www.gov.uk/government/publications/international-parental-child-abduction/international-parental-child-abduction>

53 „Statistics of child abduction cases 2013/2014”,

<https://www.gov.uk/government/news/parents-urged-to-consider-devastating-consequences-of-child-abduction>

54 „Statistics of child abduction cases 2015/2016”, h

<https://www.gov.uk/government/news/foreign-office-and-reunite-highlight-impact-of-child-abduction>

55 „Statistic of child abduction cases 2017”,

<https://www.gov.uk/government/news/international-child-abduction-free-sources-of-advice-and-support>

56 Email from the Ministry for Foreign Affairs and Trade Promotion of Malta, 13 October 2017.

Justice. With regard to cases concerning non-member states, the Ministry acts in accordance with the Vienna Convention on Consular Relations and international conventions applicable to child abduction. So far, there has been no specific law on consular services.⁵⁷

2.1.6. Federal Foreign Office of Germany. The Federal Foreign Office and the German missions abroad (embassies and consulates-general) are often asked for assistance when children are abducted across borders. However, in cases of international child abduction, the Federal Foreign Office and the German missions abroad have no legal means and practically only very limited real means of helping secure the abducted child's return to Germany. The Federal Foreign Office does not keep statistics on child abduction cases.⁵⁸

2.1.7. Ministry of Foreign Affairs and Trade of Hungary. Regarding the period between 2013 and 2017, the Hungarian Consular Service faced a couple of cases connected to international child abduction. However, the Act on Consular Protection (Act XLVI of 2001) does not refer to child abduction, except for a short remark on the special treatment of minors when performing consular assistance. Consequently, only a very small percentage of abduction cases emerge in the scope of the Consular Service.⁵⁹

2.2. Assistance based on the Specific Law

Finland has a specific law, i.e. the Consular Services Act,⁶⁰ which regulates the measures of the Ministry of Foreign Affairs and the Finnish missions abroad in cases of child abduction. Crucial for the intervention of the Ministry of Foreign Affairs and the missions is that the removal and retention of a child is unlawful according to the Child Custody and Right of Access Act and that the matter does not fall under the competence of some other authority. When a child has been removed to a contracting state to the Child Abduction Convention, the matter is dealt with by the Ministry of Justice.⁶¹ In cases where the child is abducted from one non-contracting state to another non-contracting state the Ministry of Foreign Affairs will provide assistance in accordance with the Consular Services Act, provided that the child is under 16 years of age, residing permanently in the consular district of the mission, has been removed to the consular district of another mission or has not been returned from such a consular district. The mission shall assist in the return of the child:

- 1) if the child or his or her custodian, requesting the return of the child, is a Finnish citizen;
- 2) if the removal or non-return of the child is considered unauthorised under the legal order of the State from which the child has been removed or to which the child has not been returned; and
- 3) if the measures concerning the return of the child do not fall within the competence of another authority.⁶²

The missions can assist in the voluntary return of the child and in the achievement of an amicable agreement for the return of the child. At the request of the custodian of the child or other person having the right of custody, the mission shall in the first place provide help by submitting a request for assistance to the competent authority of its consular district, for the purpose of:

- 1) investigating the whereabouts and conditions of the child, and for the purpose of returning the child;

⁵⁷ Email from the Federal Ministry for Europe, Integration and Foreign Affairs, 3 November 2017.

⁵⁸ Email from the Federal Foreign Office, 11 August 2017.

⁵⁹ Email from the Ministry of Foreign Affairs and Trade of Hungary, 15 August 2017.

⁶⁰ Consular Services Act (498/1999; amendments up to 896/2015 included). Translation to English available at: <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990498.pdf>.

⁶¹ „International child abduction” <https://oikeus.fi/en/index/esitteet/kansainvalinenlapsikaappaus/lapsionkaapattuei-sopimusvaltioon.html>.

⁶² Consular Services Act, *op. cit.* (note 61) Art. 31.

2) obtaining counsel or other legal assistance based on the local law, for the person who has requested the return of the child; and

3) seeking general information on the necessary parts of the laws of the state in question.

The mission shall assist in contacts between the parties, transmit information and documents concerning the return of the child to authorities and to the person who has requested the return of the child and assist in the arrangements for the repatriation of the child.

The missions cannot assist in re-abducting the child, act as a lawyer, influence the trial and the final decision of the court and violate the laws and regulations of the country in question. The number of international child abduction cases from data operating system of the Ministry for Foreign Affairs are as follows: 13 new cases in 2013, 7 new cases in 2014, 12 new cases in 2015, 16 new cases in 2016, and 10 new cases in 2017.⁶³

3. DIPLOMATIC PROCEDURES FOR INTERNATIONAL CHILD ABDUCTION CASES IN THE REPUBLIC OF CROATIA

3.1. Statistical Records

The MFEA of the Republic of Croatia has registered nine child abduction cases which were conducted in the period of four years, i.e. from 1 July 2013 to 1 July 2017, regardless of their commencement date. Two cases originated from 2011, one case was received in 2013, three cases in 2015 and three cases in 2016. The two cases from 2011 are still ongoing.⁶⁴

Most cases are simultaneously conducted in the Croatian Central Authority, i.e. the Ministry for Demography, Family, Youth and Social Policy, while others have been registered only in the MFEA. Two of them were incoming cases and five were outgoing cases. The remaining two cases were connected only to Croatian citizenship.

Cases in the period from 1 July 2013 to 1 July 2017	
Year of addressing the MFEA	Number of cases
2011	2
2013	1
2015	3
2016	3
Total cases	9

⁶³ Email from the Ministry for Foreign Affairs of Finland, Unit for Consular Assistance, 11 August 2017.

⁶⁴ The general research of the Croatian judicial practice were conducted for the same period by the prof Mirela Župan within the project „Cross-border removal and retention of a child – Croatian practice and European expectations“. The scientific analysis of the practice of four Croatian municipal courts (Municipal Civil Court of Zagreb, Municipal Court of Split, Municipal Court of Rijeka, Municipal Court of Osijek) in the period from 1 July 2013 to 1 July 2017, had determined that 16 cases were conducted before those four courts on the basis of the Child Abduction Convention. The research is in the publishing procedure. For the Croatian judicial practise analyses see: Župan, Mirela and Ledić, Senija. „Cross-border family matters - Croatian experience prior to EU accession and future expectations.“ *Pравни vjesnik* 49 (2014): 49-77; Župan, Mirela and Hoško, Tena. „Application of the Hague Child Abduction Convention in SEE region: Croatian national report“ in Private International Law in the Jurisprudence of European Courts – family at focus, edited by Mirela Župan, 227-243. Osijek: Faculty of Law Osijek, 2015, Župan, Mirela and Drventić, Martina. Kindesentführung vor kroatischen Gerichten mit besonderer Rücksicht auf die aus Deutschland kommenden Anträge. *Revija za evropsko pravo* 1 (2018): 63-83.

Type of request	Number of cases
Incoming	2
Outgoing	5
Only connected to Croatian citizenship	2
Total cases	9

3.2. Case Analysis

The analysis of case facts and case resolution pointed toward four categories of child abduction cases which included the acting of the MFEA. In terms of those four groups, the facts of the nine cases will be presented according to the information available.

3.2.1. In most of the cases, the request made to the MFEA considered only consular assistance: (1) The father, a citizen of Germany, has reported child abduction by the mother, from Germany to the United Kingdom. Both the mother and the child have only Croatian citizenship. The child was born in the United Kingdom. The mother moved to Germany (first to Heidelberg, then to Ulm) for work, then again to the UK (after she had previously announced her departure to the court in Ulm and declared her new residence). After she had asked for higher alimony, she was reported for child abduction. In 2013, the mother turned to the Croatian Embassy in London with a request for protection because the police had entered her flat and taken her driving licence, passport and her child's passport (born in 2009) as ordered by the High Court of Justice, Family Division.

(2) The child who was a Croatian citizen was taken to Russia in 2015 by the mother, a solely Russian citizen. Previously they were living together with the child's father, a Croatian citizen, in Croatia. The child's documents were issued in Russia. Since the mother died in the meantime, the child lived with the grandmother in Russia. The Croatian Embassy in Moscow requested a death certificate from Russian authorities and sent a diplomatic note with a request to enable the father to be in contact with the child.

(3) In 2016, the Croatian Embassy in Moscow received notification from the Federal Migration Service that a father, a Croatian citizen, applied for political asylum in Russia, for him and for his four minor children. By subsequent verification it was confirmed that a protective measure was imposed on both the mother and the father in Croatia. The measure implied professional help and support for parents in exercising their parental authority in respect of four minors. In the meantime, the mother was hospitalised in a psychiatric hospital in Croatia. After her return from the hospital, the Croatian Ministry of the Interior submitted a proposal for an offence committed pursuant to Article 4 of the Croatian Act on Protection against Domestic Violence. A special obligation to outpatient psychiatric treatment and observation was imposed to the parents. As the children did not attend kindergarten and school, during field investigation (after the report of the Centre for Social Care) only the mother was found and she did not know where her children were. Through efforts of Croatian diplomats in Moscow the father and children returned to Croatia.

3.2.2. In some of the cases, assistance of the MFEA only referred to the instruction to the party to address the other, i.e. competent authority:

(4) Case facts speak of a father, an Australian citizen, who turned to the Directorate for Consular Affairs in Zagreb in 2015. His wife is a Croatian national who lived in Australia for 15 years, with Australian residency throughout the entire period. She abducted their two children, solely Australian citizens, who were both under 10 years of age. Children originally

travelled to Vienna for a short family visit, using the Australian passport. The father claimed that she had applied for dual Croatian citizenship for children since he had found her emails on requesting the original birth certificates for the children as well as emails she had sent to attorneys in Vienna requesting information regarding Croatian citizenship. The Directorate for Consular Affairs referred the father to the competent authority in Australia or to the Australian Embassy in Croatia.

(5) The Consulate General of the Republic of Croatia in Los Angeles received an E-mail from the father claiming that the mother had abducted their child (born in 2009) from France to Croatia. Both the mother and the child are citizens of Croatia. The father is a citizen of Israel currently living in the USA, with previous France residence for seven years. The Sector for Consular Affairs referred the father to the competent authority in the USA or to the Diplomatic Mission of Israel in the USA.

(6) The mother who is a Croatian citizen took her eight-year-old son to Ireland in 2016. Social Welfare Centre wrote directly to the Croatian Embassy in Dublin to take all necessary measures and actions within the limits of competence of Diplomatic Mission to return the child back to Croatia. The Social Welfare Centre was referred to a competent authority in Croatia.

3.2.3. In one case the MFEA was only informed by the applicant that the request through the Central Authority was made.

(7) The facts of the case indicate that the mother took a three-year-old child from Croatia to Serbia in 2016. All three parties are citizens of Croatia. The father asked for help the Ministry for Demography, Family, Youth and Social Policy and notified the MFEA.

3.2.4. Two following cases consider the role of MFEA in the stage of enforcement of a return order, in one incoming and one outgoing case.

(8) The father was a citizen of Italy and the mother was a citizen of Croatia. The minor child was a dual citizen, also having a residence in Italy. By the decision of 2011, the Court in Turin entrusted the care of the child to both parents. The mother collected a *laissez-passer* in the Consulate General of the Republic of Croatia in Milan and had arrived in Croatia. Upon a father's return claim, the Croatian Court accepted the request for the return of the minor child to Italy. The mother and the son were not found by the police at her parents' address during a police check.

The activity of the Italian diplomacy was at a very high level in this case. The Italian Foreign Minister tackled the issue in a bilateral meeting with the Croatian Foreign Minister in 2013. A month later Croatian Ambassador in Rome was invited to a meeting with Directorate General for Italian Citizens Abroad and Migration Policies. Italian Embassy in Zagreb sent several verbal notes to the Croatian MFEA with requests: to identify the child's status and to check if the child is registered in the Croatian Institute for Health Insurance, to identify a possible enrolment of the child into Croatian education system in the school year 2016/2017. The issue was afterward once again discussed between the Croatia Foreign Minister and Italian minister.

In addition, the role of Italian diplomacy in this case is evident in a way that Italian Consulate presented the content of Italian law to the Municipal Court. Namely, the Municipal Court in Split has by the first instance judgement ascertained the law of the Republic of Italy on the basis of insight into a public document on the content of foreign law. The public document was contained in written Statement of the Italian Consulate in Split, which was translated and sealed by court interpreter for the Italian language. The Municipal Court supposes that the Italian Consulate being a diplomatic representative body of Italian Republic in Croatia has power to present the content of the law of the Republic of Italy to the Municipal Court on behalf of the Republic of Italy.

(9) The mother of the child issued divorce proceedings to the Municipal Court in Zagreb. In the process of provisional measure, the Court entrusted a minor (six months old) to the mother until the final judgement in divorce proceedings. The mother was settled to the Women's

shelter by the responsible Social Welfare Centre. In 2011 the mother left Croatia without the knowledge and agreement of the father, taking the child to Serbia. Before leaving Croatia, the mother managed to get the passport in the Embassy of the Republic of Serbia. Among other authorities the father turned to the Croatian MFEA to review the conditions under which the Serbian passport had been issued. The MFEA sent a note to the Serbian Embassy to inquire circumstances and conditions under which the Serbian passport had been issued.

In the meantime, competent judicial authorities of the Republic of Serbia issued a decision to return the child to Croatia. Directorate for Consular Affairs of the Republic of Croatia forwarded a father's request to the Embassy of the Republic of Serbia by which the enforcement of the decision of the Serbian Court was urged. The Embassy of the Republic of Serbia has not replied to the request. In addition, by diplomatic means the Croatian Embassy in Belgrade requested from the competent Serbian authorities to submit observations on the case. Also, a series of diplomatic notes in which the other side was informed about the course of procedures and conclusions connected with the case were delivered.

As regards the issue of passport to the child, the suspected official person in the Ministry of Foreign Affairs of the Republic of Serbia was summoned for committing an offence of abuse of authority (Art. 359(1) of the Criminal Code of the Republic of Serbia). The employees of the Croatian Embassy attended court hearings. It should be noted that the mother was found guilty of abduction a minor (Art. 191(2) of the Criminal Code of the Republic of Serbia) and was given a suspended sentence. The litigation continues and the child was still in Serbia in December 2017.

CONCLUSION

The role of the foreign affairs ministries in child abduction cases differs considering whether or not the countries involved in the matter are contracting states to the Child Abduction Convention. When the states involved in the matter are contracting states, the role of the ministries of foreign affairs is auxiliary. It derives from the provisions on the general aim of the Convention and also from the rules of cooperation, which determine the functions of the Central Authority. The document accompanying the Convention devoted attention to a certain extent to the tasks of the ministries of foreign affairs. This role can be additionally specified, or in most cases derived from general rules, in other international conventions determining the diplomatic and consular relations, bilateral agreements and national law. In cases where both or one of the countries involved in the matter are not contracting states to the Child Abduction Convention, assistance to the parties involved in a child abduction case can be provided only in accordance with the latter, and it varies from state to state.

Research into the established practice of acting of ministries of foreign affairs in child abduction cases in EU Member States showed that most of the countries provide only for consular assistance regulated by the Vienna Convention on Consular Assistance and general rules on consular assistance contained in the national law. The example of Finland stands out from the research by its specific law, i.e. Consular Services Act, which regulates the measures of the Ministry of Foreign Affairs and the Finnish missions abroad in child abduction cases where the child is abducted from one non-contracting state to another non-contracting state. The second research into the existing practice of the Croatian MFEA in child abduction cases showed that nine cases were conducted within the period of four years, i.e. from 2013 to 2017. All cases considered the relations between the contracting states to the Child Abduction Convention. In three cases, the request made to the MFEA considered only consular assistance; in three cases, the role of the MFEA considered only the instruction to the party to address the competent authority; in one case, the MFEA only informed the applicant that the request through the Central Authority was made, and in two cases, the role of the MFEA was considered in the stage of enforcement of a return order.

In none of the cases was the MFEA asked for assistance by the Central Authority, when sending the return request, pursuant to the recommendations contained in the HCCH Guides. The reason for this can be found in the fact that there is a developed judicial cooperation system within the contracting states, whose operation is facilitated by today's modern means of communication between Central Authorities. Also, the research did not point towards cases in which the MFEA prevented child abduction, still it can be stated that the Croatian Act on Travel Documents of Croatian Citizens goes in accordance with the proactive and reactive measures recommended by the HCCH by placing the specific rules on the issue of travel documents for the child.

The existing legal framework in the Republic of Croatia does not define and reflect the various aspects of inclusion of the MFEA, including diplomatic missions and consular offices, in international child abduction cases. Despite the lack of non-Hague cases in the observed research period, in order to overcome legal uncertainty, it is necessary for the legislator to identify the need of special regulation of the acting of the MFEA in a situation where abduction occurs with the non-contracting state involved. The recommendations can go even further by suggesting the regulation of the MFEA acting in Hague cases as well. This would strengthen the implementation of the Child Abduction Convention and be of great benefit to the exercise of the prescribed expeditious six-week deadline for issuing an order upon the return request. Due to the complexity of the problem of international child abduction, there is a need for greater interaction between various government authorities as well as better education of officials involved in international child abduction cases.

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