OPERATION OF THE HAGUE 1980 CHILD ABDUCTION CONVENTION IN CROATIA

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I. General issues, Central Authority and court system

The Republic of Croatia became a party to the Child Abduction Convention[1] via notification of succession after the Socialist Federal Republic of Yugoslavia ceased to exist. Therefore, Croatia has been a party to the Convention since 8 October 1991.[2] No further implementing legislation was necessary for the entry into force of the Convention. According to the Croatian Constitution,[3] "[i]nternational treaties which have been concluded and ratified in accordance with the Constitution, published and which have entered into force shall be a part of the domestic legal order of the Republic of Croatia and shall have primacy over domestic law."

Besides the Child Abduction Convention, Croatia is a party to the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children,[4] which has entered into force on 1 January 2010

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1 Hague Conference on Private International Law, Convention on the Civil Aspects of International Child Abduction (concluded on 25 October 1980, entered into force on 1 December 1983), at: www.hcch.net/index_en.php?act=conventions.text&cid=24 (13 August 2014).

2 Official Gazette (hereinafter: OG) Int'l Agreements No. 4/94, at: http://narodne-novine.nn.hr/clanci/medunarodni/1994_04_4_22.html (13 August 2014).

3 OG Nos 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14, Article 141.

4 Hague Conference on Private International Law, Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (concluded on 19 October 1996, entered into force on 1 January 2002), at http://www.hcch.net/index_en.php?act=conventions.text&cid=70 (13 August 2014).

in Croatia[5]. Also, since 1 July 2013, when Croatia acceded to the European Union, the Brussels II *bis* Regulation[6] has been applicable in Croatia as well.

The Central Authority is the same for all three instruments and it is the Ministry of Social Policy and Youth of the Republic of Croatia.[7] The national authority designated as the Central Authority is seated within the Ministry of Social Policy and Youth, Zagreb, Croatia (hereinafter referred to as: Ministry). Within a particular internal structure, there is a Service for International Cooperation in the Field of Protection of Children and Coordination of Social Security that actually performs the function of the central authority. According to the official letter of the Croatian Central Authority,[8] its staff is sufficient with regard to the number of applications and, in terms of their legal qualifications, the employees are graduate lawyers possessing appropriate language skills. The staff is involved in meetings of the European Judicial Network and in the work of the Hague Conference. At least once a year, the Central Authority organizes education of other actors in return procedures: be it social welfare staff, judges or police officials.

If one is searching for information on the web, regrettably the Ministry's website is not very informative on the instruments and has no English version of the pages. It does not clearly state that it acts as the Central Authority for any of the instruments. The only relevant document that can be found on the Ministry's web pages is the standard application form for the Child Abduction Convention.[9] However, the Hague Conference website provides relevant contact details for the Croatian Central Authority.[10] Regrettably, the Croatia Country Profile for the website of the Hague Conference on Private International Law is not fully completed.

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5 For decision on ratification, see OG Int'l Agreements 5/2009, at: http://narodne-novine.nn.hr/clanci/medunarodni/2009_07_5_50.html (13 August 2014). For decision on entry into force, see OG Int'l Agreements 8/2009, at: http://narodne-novine.nn.hr/clanci/medunarodni/2009_10_8_105.html (13 August 2014).

6 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 II *bis* Regulation, OJ [2003] L338/1.

7 For the Brussels II *bis* Regulation, see Act on Implementation of the 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, OG 127/2013, at http://narodnenovine.nn.hr/clanci/sluzbeni/2013_10_127_2754.html (13 August 2014).

8 Official letter by Deputy Minister: KLASA: 910-08/14-01/35; URBROJ: 519-03-3-3/1-15-6.

9 http://www.mspm.hr/djelokrug_aktivnosti/socijalna_skrb/konvencije (13 August 2014).

10 http://www.hcch.net/index_en.php?act=authorities.details&aid=837 (13 August 2014).

The relationship of the HC 1980 and the HC 1996 to the Brussels II bis regulation has been a subject of interest of Croatian doctrine.[11] The relationship of HC 1980 and the HC 1996 to other relevant instruments in this field, for example, the European Convention on Human Rights or UN Convention on the Rights of the Child, has been elaborated in some doctrinal findings.[12] However, the available case law does not deal with it.

II. Procedures in relation to the Hague Child Abduction Convention

1. Relevant statistics on operation of the Hague Child Abduction Convention

There is no available statistical record on the number of child abduction cases, neither before Central Authority nor before the courts. However, the Municipal Court in Zagreb has established a separate registry number for child abduction cases, so there is a possibility to do a statistical survey. This practice should be further enhanced and introduced to all courts.

11 I. Medić-Musa, *Komentar Uredbe Bruxelles II bis* [Commentary of the Brussels II bis regulation in relation to parental responsibility] (Pravni fakultet Osijek, Osijek 2012).

12 M. Župan, I. Medić, P. Poretti, *Najbolji interes djeteta u prekograničnim stvarima* [Best interest of a child in cross-border situations] (Pravni fakultet Osijek, Osijek 2015).

Table 1. Zagreb Municipal Court statistics on HCA

Year	Number of cases	State of abduction	Parent-kidnapper
2002	1	Austria	mother
2005	1	Austria	father
2006	1	Bosnia and Herzegovina	father
2007	2	France	father
2009	1	New Zealand	mother
2010	2	Bosnia and Herzegovina	mother
		Netherlands	mother
2011	1	France	mother
	1	USA	mother
2012	1	Switzerland	father
2013	2	Poland	father
		Canada	mother
2014	1	Bosnia and Herzegovina	mother
Total	14 cases		

Source: Judge Marina Parać Garma, "Praksa općinskih sudova u prekograničnim stvarima koje se tiču djece" [The practice of municipal courts in cross-border child-related matters], presentation given at the round table: Best interest of a child in cross-border situations, Osijek, 4 April 2014. (updated data)

According to a study conducted by Župan concerning the case law originated from each municipal and county court in Croatia over a period of one year, (June 2013 – June 2014), there were only four child abduction cases dealt with by Croatian courts in that period. None of these cases related to EU member states, but to Bosnia and Herzegovina (two of them), and to Serbia and the USA.[13]

2. Protection measures

Courts seldom issue the protection measure that the passport has to be handed over and deposited with the authorities of the relevant Ministry. The legal basis for protective measures is given by the Family Act, whereas there is currently a constitutional issue regarding the Family Act 2003 and Family Act 2014, as the application of the former was suspended. However, the difference between the 2003 Family Act and 2014 Family Act is that the 2014 Act

13 M. Župan, *Study on the Application of Brussels II bis in Croatia*, not available publicly.

established a regular information service, and at the moment the judge issues a protective measure stipulating that the relocation of the child is not permitted, such order is electronically sent to all border crossings. This measure of the Family Act of 2014 is the most useful protection measure as the parent is truly not able to leave the country. Due to the suspension of the 2014 Act, the courts can still issue the same protective measure based on the 2003 Act, but there is no useful control of movement. Namely, as the 2003 Act has no provision for an IT system that registers protection measures, if the parent is given 14 days to deposit the passport, in that period he/she has sufficient time to leave the country and abduct the child.

3. Grave risk of harm, domestic violence and safe return

Despite the lack of statistics for the entire country, the statistics run by the Municipal Court in Zagreb is rather indicative to the Croatian practice of interpretation of conventional standards. A study conducted by Parać Garma reveals that in a total of 13 cases of the Municipal Court of Zagreb (from 2002 until mid-2014), one case was withdrawn, in one case the child was voluntarily returned, in three cases the return was ordered, whereas in seven cases the return was rejected (grounds for refusal were in six cases of Article 13(1)b and in one case of Article 13(1)a.[14]

A study conducted by Župan and Ledić presents the most detailed analysis of the Croatian HCA case law, relevant parts being copied here. It proves that Article 13(1)b was often used to reject the return of a child.[15]

When it comes to non-return decisions, the grave risk of harm exception contained in Article 13(1)b of the Convention is mostly used. That exception has been interpreted quite broadly in some decisions of the Municipal Court in Zagreb, and such interpretation was confirmed by the appellate court – the Zagreb County Court. Examples are the following: in one case the court rejected the return of a child since she was well adapted to the new environment and was very closely connected to the abducting father. Also, her medical records showed that her teeth had not been adequately cared for and that she had had neurodermatitis while residing with her mother.[16] In another case the court

14 M. Parać Garma, "Praksa općinskih sudova u prekograničnim stvarima koje se tiču djece" [Practice of municipal courts in cross-border child-related matters], presentation given at the round table: Best interest of a child in cross-border situations, Osijek, 4 April 2014.

15 M. Župan, S. Ledić, 'Cross-border family matters - Croatian experience prior to EU accession and future expectations' 3-4 *Pravni vjesnik* (2014) p. 49-77.

16 Judgment V-R1-1969/06-9 of the Municipal Court in Zagreb of 17 November 2006.

decided that there was a grave risk of harm for the children since the separation from the abducting mother would be stressful as they did not know their father well.[17] Further case law is similar – the court rejected the return of the child since the child would have to be separated from the mother, which would cause it harm. Also, the child had no citizenship of the place of habitual residence prior to the removal, and at the place of habitual residence, where the left behind father lives, the child would have to be in kindergarten until 5:45 p.m. due to father's working hours.[18]

In one of the cases,[19] the plaintiff (father) was a citizen of Canada currently residing in France. The respondent (mother) was a citizen of Croatia residing in Croatia. The parties with a common minor child often changed residence because of their business; the last common residence was in Lyon, France. After the termination of an employment contract by the mother's employer, the mother brought the minor child to Croatia, where they resided. The request to return the minor child back to Lyon was rejected. The court argued that the return did not represent the child's return to its homeland, nor guaranteed its permanent stay in that environment. The minor child had stability with his mother, and the return to Lyon could have led to an unfavourable position and cause psychological trauma.

In the next case,[20] the facts are as follows: the marriage of the plaintiff and the respondent ended by a divorce with a final 2008 decision of a court in Bosnia and Herzegovina. The court ruled that the minor children (born in 2006 and 2008) would live with their mother. The spouses ceased to live together prior to the birth of their younger child. In 2009, the mother moved with the children from their Bosnian permanent residence to Croatia. The children have Croatian citizenship. The court made use of the excuse of Article 13 of the Child Abduction Convention as to the request to return the minor children since it was found out that the separation of the minor children from their mother and the environment in which they felt safe and well cared for would have had adverse effects on their development, especially because the mother did not dispute the father's right to meetings and get-togethers with his children.

In the next child abduction case,[21] the facts of the case indicate that the marriage of the plaintiff and the respondent was divorced by a final court decision

17 Judgment 97-R10-143/10 of the Municipal Court in Zagreb of 14 October 2010 confirmed by judgment 11 Gz2-21/11-2 of the County Court in Zagreb of 31 May 2011.

18 Judgment R10-27/11-12 of the Municipal Court in Zagreb of 6 April 2011 confirmed by judgment Gz2-234/11-3 of the County Court in Zagreb of 9 September 2011.

19 Municipal Civil Court in Zagreb, No R1o-27/11 of 6 April 2011.

20 Municipal Civil Court in Zagreb, No R1o-143/10 of 14 October 2010.

21 Municipal Civil Court in Zagreb, No R1-1744/04 of 27 October 2004.

in Austria in 1995. The court made a final decision to entrust the two minors, born in 1991 and in 1994, to their mother, and allowed visitation rights to the father. In 1997, the mother took her minor children, both Croatian citizens, to Croatia and looked after them so the children were taken care of (both financially and socially), while the father actually and legally did not execute the right to care and custody of the two minor children at the time of their removal. The court refused the request to return the minor children because it was determined that the father actually and legally did not execute the right to care and custody of the two minor children at the time of their removal, and that there was an obstacle for their return justified by Article 13 of the Convention.

In the following case,[22] a minor child lived with his mother in Bosnia and Herzegovina. The father, a Croatian national and of Croatian residence, felt the mother was not providing the child with sufficient health care and hence refused to return the child to the mother on one of the visitation occasions. The court refused the request to return the minor child. The court undertook an overall assessment of the merits, found out that the father was taking good care of the child and that the child was emotionally satisfied and successfully adapted to the new environment. The court emphasised that the return to the mother would not be in the child's best interest, as it would bring him in an unfavourable position. The court's decision does not explain the particular circumstances of the removal of the minor child.

There are examples of proper application of the "grave risk of harm" excuse. In one of the cases,[23] the minor child born in 2009 was a dual citizen of Croatia and Italy and also had residence in Italy at the address of his parents – the father being a citizen of Italy and the mother a Croatian citizen. By its decision of 2011, the Court in Torino entrusted the care of the child to both parents. The mother illegally moved the child to Croatia, where she declared his residence. Upon a return claim, the Croatian court accepted the request for the return of the minor child to Italy. The mother objected and asked the court to refuse the return on the grounds of Article 13. The court undertook an assessment of the fact and concluded that the mother wrongfully took and kept the minor, that the return of the child to Italy would not pose any serious threat to the child, nor would it expose the child to abuse, neglect, or extraordinary emotional dependence, in the sense of Article 13 of the HCA.

These examples suggest that in the vast majority of cases the courts conduct a thorough analysis of the child's situation in order to evaluate the child's best interest and the notion "grave risk of harm" is given quite a wide scope.

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22 Municipal Civil Court in Zagreb, No R1-1696/06 of 17 November 2006.

23 Municipal Civil Court in Split, No Rob-72/11 of 27 July 2012.

It is held by Beaumont & McElevey that the fact of separation from the abducting parent should not by itself constitute a grave risk of harm.[24] It is disturbing to see that in most cases there was actually no consideration of risk in the country of origin, but rather of the fact that a parent (in all cases the abducting parents were Croatian citizens) would be better suited to a child, in the court's view. It seems that judges mainly base their decisions on the opinions and proposals of social welfare centres. Such an opinion is obtained during the procedure according to Articles 335 and 295 of the Family Act,[25] and the same procedure is maintained in the new Family Act (hereinafter: Family Act 2014) that came into force on 1 September 2014.[26] If the opinion issued by the centre states that the grave risk of harm exists, the judge will most often reject the return of the child. Therefore, the first step is to educate social welfare workers that the exception should be interpreted very strictly. Therefore, we may conclude that the Croatian practice is not fully aware of the function of HCA and the prompt return rationale, but it seldom gives a conclusion on the merits of the parental responsibility issue. There are cases where the rationale of HCA is fully supported by the court. For example, a case relating to the USA ended with a return order.[27] The mother (a Croatian citizen) and the minor born in 1996 (a Croatian citizen), lived with the child's father in Florida until 2002. The mother illegally moved the minor to Croatia. Upon the father's request, the court found no justified ground to refuse the return, as the mother acted contrary to the orders of the court in the United States and violated the father's right to care that he had at the time of removal of the minor child. The court also ordered the return of the child wrongfully taken by its mother in the case that related to the Netherlands.[28]

In addition, judges generally do not evaluate whether the applicant has sought protection from abuse in the country of habitual residence of the child, even when they base their decision on the grave risk of harm exception. Such practice runs against the established foreign case law on the same question,[29] and the Brussels II *bis* regime in particular emphasises the need to seek protection from abuse in the country of habitual residence.[30]

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24 P. R. Beaumont, P. E. McEleavy, *The Hague Convention on International Child Abduction* (Oxford, OUP 1999) p. 145.

25 OG Nos 116/03, 17/04, 136/04, 107/07, 57/11, 61/11, 25/13.

26 OG Nos 75/14 and 84/14, Articles 357 and 416.

27 Municipal Civil Court in Zadar, No R1-159/03 of 27 October 2004.

28 Municipal Civil Court in Zagreb, No R1o-225/10 of 3 January 2011.

29 Beaumont, McEleavy, op. cit. n. 24, pp. 156 *et seq*.

30 Article 11(4) of the Brussels II *bis* Regulation.

In the available case law, domestic violence was actually directed towards the mother, not the child. The court was, however, keen to use that argument to refuse the return of the child.[31] Some other case law proves that judges are reluctant to send the child back to the country of habitual residence when there is a risk of abuse or neglect.[32]

4. Hearing, participation and objections of the child

Due to the implementation of Article 12 of the United Nations Convention on the Rights of the Child,[33] the obligation to hear the child is observed in all proceedings in Croatia regarding the child's rights and interests.[34] The discretion given to the judge is mainly as to whether the child is mature enough and capable of expressing its thoughts, and the case law shows that children above 7 years of age are generally heard during the proceedings.[35] The Family Act 2014 compels judges to hear children above fourteen years of age. Younger children will be heard "according to his/her age and maturity"[36] and if there is a need to assess his/her affection to a person, conditions in which the child lives and for other very important reasons.[37] The children may be heard by the judge, or by assistance of a special representative or another qualified person (usually by persons at the social welfare centre – a social worker and/or psychologist).[38]

Regarding the child's objections to return, the case law shows that judges take account of it. In one case, the objections of siblings aged two and four years were enumerated as a supporting reason for the existence of a grave risk of harm, so the return was rejected based on Article 13(1)b of the Convention.[39]

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31 Case 148-R1O-519/11-37, of 15 March 2012.

32 Case 145-R1o-598/13-22 of 22 December 2014.

33 Convention on the Rights of the Child (concluded 20 November 1989, entered into force 2 September 1990) UNTS 1577, 3.

34 Articles 89 and 269 of the Family Act and Articles 86 and 360 of the Family Act 2014.

35 Z. Bulka, 'Primjena Konvencije o građanskopravnim aspektima međunarodne otmice djece na prava roditelja' [Application of the Convention on civil aspects of child abduction to parental rights] 5947 *Informator* (2011) 5, 6.

36 Article 86(2) of the Family Act 2014.

37 Article 360(2) of the Family Act 2014.

38 Article 360(1) and 2 of the Family Act 2014.

39 Judgment 97-R10-143/10 of the Municipal Court in Zagreb of 14 October 2010 confirmed by judgment 11 Gz2-21/11-2 of the County Court in Zagreb of 31 May 2011.

In another case, the Court explicitly referred to the wish of children to live with their father (abductor) and rejected the return of the children. [40]

5. Enforcement of return orders

The enforcement procedure is regulated by the Family Act 2014 in more detail than by previous legislation, but the same postulates remain.[41] The parties to the enforcement procedure are the person seeking and the person against whom enforcement is sought, the child and the social welfare centre. The means that the enforcement court may employ are monetary penalties up to 30,000 HRK (approx. 3,900 EUR), imprisonment up to six months and coercive measures for taking the child. The measures may be directed towards the person against whom the enforcement decision has been issued, the person upon whose will it depends whether the child will be taken, and against every person with whom the child is at the moment. When it comes to the coercive measures towards the child, the court, police and the social welfare centre need to co-operate to protect the child's interests. Also, during the enforcement the court may hear the party opposing the enforcement and may direct the child to a conversation with a professional. Although an appeal against the enforcement decision does not postpone the enforcement, the court has discretion to stay the proceedings if the appeal against the first instance judgment is pending, if the child has been directed to professional conversation and if the proceedings to change the decision (due to changed circumstances) are pending.

The length and ineffectiveness of return orders enforcement has been marked as truly problematic in the Croatian legal system, as confirmed by the judgment of the European Court of Human Rights in *Karadžić v Croatia*.[42] An example of problematic enforcement was evidenced in a recent abduction case

40 The divorce proceeding of parents was conducted in Switzerland, where a court decision assigned the mother with custody over the minor children and decided they should live in Switzerland. The court also determined that the father, who lives in Croatia, would have adequate contacts with the children. After summer holidays, the father did not return the children to Switzerland but retained them in Croatia and enrolled them in school in Croatia. The court had to decide on a return request; it held a hearing of both children who expressed their wish to live with their father, and complained about an inappropriate lifestyle with their mother. The court refused the request to return these minor children to Switzerland because it determined that it was not in the interest of the children. Municipal Civil Court in Zagreb, No R1o-599/12 of 11 October 2012.

41 Articles 106, 336 to 342 and 344 to 348 of the Family Act and Articles 510-520 of the Family Act 2014.

42 The case of *Karadžić* v *Croatia*, Application No. 35030/04, 15 December 2005 (final 15 March 2006).

relating to Poland. Mere enforcement was delayed as the left behind parent was not keen to coercive measures towards a child, so the enforcement claim was withdrawn several times, the court ordered the father to pay a monetary penalty, but none of the means were effective. The enforcement was finally accomplished in the few months of application of the Family Act of 2014, which contains a special protocol on mere enforcement.

6. Judicial system

Until 2015, the judicial system of the Republic of Croatia consisted of 67 municipal courts that had the jurisdiction to hear child abduction cases in the first instance and 15 county courts to which the case might have been appealed to.[43] A reform of court system entered into force on 1st July 2015. Now there are only 24 municipal courts and 15 county courts, but in relation to county courts only three courts would serve as the appellate courts for family matters.

When it comes to internal organization within a municipal court, only in Zagreb, Split and Rijeka there is a specialised group of family law judges who can hear cases of family law, including child abduction. Concentrated jurisdiction may be very purposeful for Croatian circumstances. For instance, having only four courts (in the four biggest cities – Zagreb, Split, Rijeka, Osijek – as endorsed by Hoško) or even only one (as endorsed by Župan), that would have jurisdiction in child abduction cases would make the case law more unified and education of the judges easier. On the other hand, concentration of jurisdiction would not impair access to courts, having in mind that Croatia is a relatively small country and approaching those four courts would not be considered too burdensome. Concentration of jurisdiction is obviously a useful tool towards efficiency in child abduction cases and is not problematic in the context of the EU judicial system either.[44]

7. Procedures

The Family Act 2014 in its Article 347 lays down the procedural rules governing all procedures in family law disputes involving child's rights and interests, including child abduction. It emphasises that cases involving children's rights and interest are urgent. If there is a need for a hearing, it should be held within

43 Act on the Territory and Jurisdiction of the Courts, OG 144/10, 84/11.

44 M. Župan, P. Poretti, 'Concentration of jurisdiction in crossborder family matters', in: M. Vinković (ed.), *New developments in EU Labour, Equality and Human Rights Law* (to be published).

fifteen days from the commencement of the proceedings. If there is no need to hold a hearing, the decision needs to be reached within fifteen days. If those deadlines are overstepped, the court's president needs to be informed about the reasons causing the delay. The appellate decision is to be reached within thirty days from the date of lodging the appeal. The old Act had similar restrictions regarding time limits.[45] This did not always yield most favourable results.

The applicant is invited to take part in the proceedings. Not giving the applicant an opportunity to be heard may lead to the decision being quashed at a higher instance,[46] and violations of the right to be heard and the principle of equality of arms are often invoked as reasons for the appeal. The applicant usually takes part either personally or through a legal representative. Having in mind the Evidence Regulation, evidence taking and hearing of the applicant may be enhanced in intra-EU child abduction cases.[47]

Having in mind a very recent ECHR judgement Adžić v. Croatia, a prompt reaction of competent authorities is needed.[48] The length of the judicial procedure before reaching a final judgement lasted 151 weeks longer than the envisaged 6 weeks! In the available case law, the period is obviously longer than 12 weeks.

8. Mediation

During child abduction proceedings, voluntary return is usually attempted by the Central Authority and/or a social welfare centre. The Central Authority usually communicates with the competent social welfare centre to contact the abducting parent and consider voluntary return. Sometimes, court proceedings are commenced even before there has been a try of such consideration. Mediation and conciliation have not been extensively used otherwise so far. However, the Family Act 2014 provides in Article 322 for obligatory consulting in cases relating to parental responsibility and personal relationships with the child. At the same time, the Act provides for voluntary mediation that

45 See Articles 263-266 of the Family Act.

46 E.g. Judgment Gž2-238/12-2 of the County Court in Zagreb of 2 July 2012 quashing the judgment 148 R1O-519)11-37 of the Municipal Court in Zagreb of 15 March 2012.

47 Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters [2001] OJ L 174/1.

48 After the ECHR judgement in the Karadžić case, an initiative to enact implementing legislation occurred. However, it was never actually adopted.

may result, if confirmed by the judge, in an enforceable decision.[49] The court is allowed to stay the proceedings if mediation is taking place.[50] It is worth mentioning that mediation taking place before a social welfare centre is free of charge for the parties.[51] Hopefully, this new system will lead to mediation being used in the context of international child abduction.

9. Consideration of basic human rights in relation to HC 1980

The case law shows that evaluation of the child's interest is at focus when deciding the issue of the child's return. This often leads to an implied comparison of the safeguards of the child's interest in the place of habitual residence and the place where the child has been living after the abduction (e.g. living conditions, adaptation of the child, child's attachment to either parent, etc.). Consequently, judges take a more general approach to the question of the best interest of the child. The approach is similar to taking an "in-depth examination of the entire family situation",[52] as underlined by the European Court of Human Rights. At the same time, it seems that due regard is not given to the left behind parent's right to family life, especially the right of access and contact with the child. Also, one of the main factors cited in favour of non-return in the case law is the possible trauma that could affect the child if separated from the abducting parent. Giving such an important role to the effects of separation only benefits the abducting parent (and encourages future possible abductors as well). Such case law is not in line with the main goal of the 1980 Convention, which only seeks to restore the *status quo* without going into a detailed analysis of the question where should the child live, i.e. which place is in the best interest of the child.

10. Designation of a judge to the International Hague Network of Judges (IHNJ) and direct judicial communications

The Republic of Croatia has not designated a judge to the International Hague Network of Judges (hereinafter: IHNJ). Regarding other possibilities of direct

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49 Article 336(3) of the Family Act 2014.

50 Article 338 of the Family Act 2014.

51 Article 343of the Family Act 2014.

52 Case of *Neulinger and Shuruk* v *Switzerland,* Application no. 41615/07, 6.7.2010 (final 8 January 2009), at para 139; case of *Raban* v *Romania,* Application no. 25437/08 (final 26 September 2010), at para. 28; case of *Šneersone and Kampanella* v *Italy,* Application no. 14737/09 (final 12 July 2011), para. 85; case of *M.R. and L.R.* v *Estonia,* Application no. 13429/12 (final 15 May 2012) para. 37.

communications, the relevant legislation, specifically the Law on Courts,[53] expressly mentions international judicial co-operation as a responsibility of the court's administration, namely the court's president. There is thus no provision allowing direct communications, but at the same time, nothing prohibits it. A possible problem regarding direct communications within the Croatian judiciary lies in the fact that judges are bound by the information written in the case file, so in case of such direct communications, a judge would have to leave a paper evidence of the communication in the case file.[54]

Most municipal courts do not have a specialised family law group of judges, i.e. most judges deal with, more or less, all civil law cases. There might be a subdivision to informal groups in larger courts, but such a subdivision is often not strict and still does not mean that judges will be able to specialise in a certain branch of law. Judges do have the needed infrastructure, but they frequently do not have necessary language and IT skills. Due to the lack of knowledge of foreign languages, training would be very purposeful because judges should get acquainted with foreign case law in order to reach international uniformity envisaged by the Convention. Learning how to use the INCADAT database would also be purposeful for those judges who speak English.

Regarding private international law cases in general, the main problem in that field is Croatia's recent accession to the EU that resulted in many private international law regulations coming into force. It is questionable to what extent are judges familiar with these regulations, which are directly applicable and have not been transposed into national legislation. Therefore, there must be a degree of confusion regarding legal sources in this field at the moment. This is even more so if one has in mind that judges usually do not have much experience in applying the conflict of laws rules since such cases come before Croatian courts much more seldom than "regular" domestic cases.

11. Other considerations

It may be inferred from the case law that habitual residence is not given enough consideration and that it is equated with the child's residence, the current address at the place from where it was abducted. A case law example shows that even where the facts are unclear, the court does not go into a detailed analysis as long as the child was living for a while in the state from which it was abducted. In that particular case, the family moved from Australia to Nether-

53 OG No 28/13, Article 29.

54 Article 57 of the Judicial Rules of Procedure, OG Nos 37/14 and 49/14.

lands where they lived for a few months before coming to Croatia where the child was retained. There was even a disagreement over the issue of the child's habitual residence, and the court's standpoint was that it is obvious that they were last resident in the Netherlands.[55]

III. A way forward

Conclusively, several points of concern regarding the application of the Child Abduction Convention in Croatia may be pinpointed. First, nothing suggests that judges take account of foreign case law on the 1980 Convention. This could be improved in order to reach the goal of uniform interpretation. Second, more emphasis should be placed on mediation and voluntary return of the child, since such arrangement is usually the most favourable for the child. Third, social welfare centres should differentiate between giving an opinion regarding the child's best interest in child abduction cases and custody cases. Judges rely on those opinions, and it seems that centres apply the same standards in both cases. Such practice should be diminished, since the aim of prompt return to the country of origin exists, inter alia, to ensure that custody disputes are settled in that country. Fourth, some of the main categories of the Convention are not considered with due regard or are sometimes wrongly interpreted (e.g. habitual residence, grave risk of harm). Fifth, child abduction procedures are dealt with as any other regular family matter, occurring not as problem of judiciary but legislative deficiencies. There is no concentration of jurisdiction, there are no shorter periods for appeal, there are no any legislative foundations that would enable a court's prompt reaction, although such cases are marked as "urgent". In the 2014 Family Act, more ex parte prompt procedures were enacted, though there is no special procedure only for child abduction cases. Sixth, organization of courts and judges' tasks is not proper, as there is no specialization. As suggested also by Judge Parać Garma, there is no sufficient informal communication between the Central Authority, social welfare centres and the police. As far as organization of court registry is concerned, there is a need to run separate case file numbers for child abduction cases. Seventh, the official translation to the Croatian language is poor, and it deprives of a proper application of the instrument. The concept of habitual residence can be taken as an example, being widely introduced to the Croatian legal system through the Hague Conventions and European PIL Acts. Even in previous translations of the Hague Convention, the term "habitual residence" was translated into Croatian in different (false) ways; the most significant departure has been

55 Judgment 34 R1O-225/10-9 of the Municipal Court in Zagreb of 3 January 2011 confirmed by the judgment 10. Gž2-75/11-4 of the County Court in Zagreb of 11 November 2011.

made with the translation of the Hague Child Abduction Convention, as it says "the place where child regularly stays".[56] Eight, there is no publicly available case law regarding this matter. Ensuring the uniformity of law application could be problematic as case law is not being published on a regular basis.

In order to resolve those problems, there are several steps that may be taken. Legislative action should be taken in order to enact proper implementing rules on Hague child abduction cases. Special procedures to enable true promptness in handling the case, concentration of jurisdiction (it should be considered whether the jurisdiction should be concentrated to the four biggest cities or even only to the capital city Zagreb's municipal court), reducing the number of appeals and time limits for such appeals, or even prescribing that appeal would not affect execution. In the enforcement stage, the entry into force of the 2014 Family Act brought improvements, as the handing over of the child was regulated adequately. At the moment, due to the suspension of the 2014 FA, enforcement of a return order is carried out as enforcement of any other movable property, which is considered contrary to the wellbeing of the child and to basic human rights. Training on the general aim and the main notions of the Convention should be provided to judges and Central Authority's personnel. Providing some technical knowledge on using the HCCH website and the information there available could also constitute a part of the training. Workshops and colloquia could be organised on the regional level or even beyond. It should be ensured that the lessons learned are communicated to all relevant judges. Having in mind the general lack of knowledge of foreign languages amongst persons applying the Convention, publications in the languages of the SEE region would be quite useful. Only the Guide to Good Practice – Part II – Implementing Measures has been translated into the Croatian and Bosnian languages.[57] Perhaps more detailed implementing rules based on the Guides to Good Practice would be useful, if the same goal cannot be reached by translating the Guides. In order to ease the communication between judges from different states involved in cases, a Croatian judge should be appointed to IHNJ.

56 Župan, Ledić, *op. cit.* n. 15.

57 http://www.hcch.net/index_en.php?act=publications.details&pid=2781> (13 August 2014).