International Child Abduction and Human Rights
A Critical Assessment of the Status Quo

Thursday 16 October 2014

Children’s Rights and Children’s Interests
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What children’s rights and interests are we talking about?

- **Children’s right to maintain regular contact with both parents**
  - CRC 1989 (Arts 9, 10, 11)
  - ECHR 1950 (Art 8)
  - EU Charter (Arts 7 and 24)

- **Children’s right to have their welfare protected**
  - CRC 1989 (Art 3)
  - EU Charter (Art 24)

- **Children’s right to be heard**
  - CRC 1989 (Art 9(2); 12, 13)
  - ECHR 1950 (Art 6)
  - EU Charter (Arts 11, 24, 47)
• **Right to identity**
  – CRC 1989 (Art 8)
  – ECHR (Art 8)
  – EU Charter (Art 3(2))

• **Right to access justice**
  – CRC 1989 (Art 9(2), 12(2) and 13)
  – ECHR (Art 6)
  – EU Charter (Art 47)
Children’s Interests and Child Abduction

• ‘...firmly convinced that the interests of children are of paramount importance in matters relating to their custody’ and ‘Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access..’ (Hague Convention preamble)

• Preference for the language of children’s ‘interests’ rather than children’s ‘rights’
EU Children’s Rights Protection

• Article 3(3) TEU: Protection of the Rights of the Child is a core objective of the European Union;

• Article 24 Charter of Fundamental Rights of the EU

• EU Agenda on the Rights of the Child 2011
Giving effect to children’s right to be heard

Article 12 CRC:

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

- For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.
Hearing children’s voices in child abduction proceedings

• Art 13: The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

• BIIbis (Art 11(2)): ‘When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity’
Barriers to child participation

• Restrictive and diverging national provision for child consultation

• Arbitrary and diverse age and capacity tests applied at national level

• Lack of transparency re ‘due weight’

• Pressures imposed by 6 week deadline
Reluctance to attach due weight

• “Only in exceptional cases will the child’s views outweigh the so-called policy of the abduction Convention” (Schuz, 2012).

• Loyalty to the principle of mutual recognition over and above rights of the individual child - reinforced by the Court of Justice of the EU:

  – Case C-491/10 PPU Aguirre Zarraga v Pelz ECR [2010] I-14247
  – Raw and Others v. France (App 10131/11, ECtHR, 7 March 2013