



EUROPEAN PARLIAMENT

THE
EUROPEAN PARLIAMENT MEDIATOR

FOR
**INTERNATIONAL PARENTAL
CHILD ABDUCTION**

HANDBOOK



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Contents

FOREWORD	... 7
1. Developments in legislation concerning applicable law, jurisdiction, recognition and enforcement of judgments in family law matters in the European Union.	... 8
2. The need to introduce EU measures concerning international parental child abduction.	... 10
2.1. The basis for jurisdiction set out in Regulation (EC) No 2201/2003 in matters relating to international child abduction.	... 11
3. From mediation in civil and commercial matters to mediation in family matters.	... 12
4. Mediation as an alternative dispute settlement tool in cases of international child abduction.	... 13
5. The role of the European Parliament Mediator for International Parental Child Abduction.	... 14
6. Applying to the European Parliament Mediator for International Parental Child Abduction.	... 15
7. The mediation process.	... 16
8. Cases referred to the Mediator.	... 17
8.1.1. Applications complaining of incorrect implementation of the Hague Convention.	... 21
8.1.2. Applications complaining of incorrect implementation of Regulation (EC) No 2201/2003 (Brussels II bis Regulation).	... 22
9. Other work performed by the European Parliament Mediator for International Parental Child Abduction.	... 25

OVERVIEW

- a) What is international parental child abduction? ... 26
- b) International and European law on international parental child abduction. ... 26
- c) How can parents guard against the abduction of a child? ... 26
- d) What can parents do if a child of theirs has been abducted? ... 27

ANNEXES:

- EUROPEAN PARLIAMENT MEDIATOR FOR INTERNATIONAL PARENTAL CHILD ABDUCTION GUIDELINES ... 28
- Article 10 of Regulation (EC) No 2201/2003 ... 30



Families are the bedrock of society in the EU Member States and must be defended by the institutions, through *ad hoc* measures, including when relationships begin to break down. In particular, protecting the best interests of children must be a top priority for the institutions.

According to the latest Eurostat data, some 2 million marriages are contracted each year in the EU, 300.000 of which involve binational couples. In addition, there are approximately one million divorces each year, 140.000 of them involving binational couples.

In response to the steady increase in these figures, in 1987 the European Parliament established the post of *European Parliament Mediator for International Parental Child Abduction*. The role of the Mediator is to help find mutually acceptable solutions in the exclusive interests of the child when, following the separation of spouses of different nationalities or who live in different countries, a child is taken away from one of the parents.

The first Mediator appointed by the European Parliament was Marie-Claude Vayssade (1987-1994). She was followed in the post by Mary Banotti (1995-2004) and Evelyne Gebhardt (2004-2009). In September 2009 I was appointed European Parliament Mediator for International Parental Child Abduction, and my duties have given me the opportunity to look carefully into the matter and to identify a number of critical legal and legislative issues, which are covered in this working document.

Over the years the Mediator's Office has played an important role in coordinating and investigating such matters and has put forward solutions in specific cases. Recently, the possibility of using family mediation in cases of international child abduction was raised in the conclusions of the Stockholm European Council (2009) and in the Commission's Action Plan Implementing the Stockholm Programme (2010).

The European Parliament plays an active role in this field, not only in its legislative capacity but also by offering the public the benefits of the experience gained by the Mediator's Office, acting at all times in the best and exclusive interests of the child.

Roberta Angelilli

Vice-President of the European Parliament

European Parliament Mediator for International Parental Child Abduction



1.

Developments in legislation concerning applicable law, jurisdiction, recognition and enforcement of judgments in family law matters in the European Union.

To begin with, European integration was essentially an economic process. The legal instruments initially established were therefore tailored to this type of process. However, the situation has changed fundamentally since the 1990s, mainly because of the increase in the number of people moving around the Union.

The increasing mobility of European citizens has led, among other things, to the proliferation of family ties between people of different nationalities or resident in different countries.

These new developments called for a legal response from the European Union, in order to regulate conflicts of law and of jurisdiction in family law matters (matrimonial regimes, parentage, marital property systems, succession arrangements, etc.).

In the past, EU Member States regulated conflicts of law and of jurisdiction primarily through international conventions, inter alia on the basis of the provisions of Article 220 of the EEC Treaty (which subsequently became Article 293 of the Treaty of Amsterdam and has now been repealed by the Treaty of Lisbon), which constituted the only Community instrument which could be used to open negotiations with a view to securing the simplification of formalities governing the mutual recognition and enforcement of judgments and arbitration awards¹ for the benefit of citizens of the Member States.

It was not until the 1992 Maastricht Treaty that this issue gradually started to be incorporated into the EU system. Initially it came under the third pillar (i.e. still in the intergovernmental sphere), but was subsequently included in the EC Treaty itself following the changes made under the Amsterdam Treaty (1997), and was thus 'communitised' on the basis of Article 65 of the EC Treaty².

In October 1999 the Tampere European Council gave priority to the adoption of family law provisions in response to the growing social pressure for the establishment of a system that provided legal certainty and met citizens' needs. On the basis of the precept that judgments and decisions had to be complied with and enforced throughout the European Union, while, at the same time, private citizens and economic operators needed to be given legal certainty, in the section of its conclusions that dealt with the establishment of an area of justice, the European Council approved the full application of the principle of mutual recognition, in both civil and criminal matters, which thus became a true cornerstone of judicial cooperation in the EU.

On the basis of the Tampere European Council's decisions, the EU, for the first time, adopted legislation laying down uniform rules for settling conflicts of jurisdiction in the area of family law, in the form of Regulation (EC) No 1347/2000 (known as the Brussels II Regulation), which deals with the annulment or dissolution of marriages and decisions relating to parental responsibility for children of both spouses. The regulation's scope was restricted to married couples and parental responsibility for children of both spouses.

Regulation No 2201/2003 (known as the Brussels II bis Regulation), which repealed Regulation No 1347/2000, remedied many of the limitations of the original text. The new regulation contains provisions on matrimonial matters and matters of parental responsibility which include measures to protect children independently of any link with a matrimonial proceeding (Recital 5 of the regulation³)

It is, therefore, a text that has a broader application and encompasses a wider range of situations relating to the specific circumstances of couples and children.

¹ It was on the basis of Article 220 of the EEC Treaty that, for example, the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters was adopted on 27 September 1968. However, although the convention was a significant first step forward, it excluded from its scope a whole range of issues, including family law.

² After the changes made by the Treaty of Lisbon to Article 65 of the EC Treaty, what has now become Article 81(2) of the Treaty on the Functioning of the European Union (hereinafter "TFEU") stipulates that *the European Union must develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases*. Under this provision, *the European Parliament and the Council shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases* (Art. 81(2)(a)) *and develop alternative methods of dispute settlement* (Article 81(2)(g)). With specific reference to family law, the third paragraph of Article 81 TFEU stipulates that 'measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure. The Council shall act unanimously after consulting the European Parliament. This is instead of the ordinary procedure, under which Parliament and Council are on an equal footing and a qualified majority is required for adopting acts. To temper this provision, the Treaty of Lisbon introduces the possibility of a bridging clause, under which the Council, on a proposal by Parliament, may adopt a decision to extend the applicability of the ordinary legislative procedure to the adoption of acts relating to specific aspects of family law. Member States are, however, given a power of veto, on the basis of which a national parliament may object (within six months of the date on which it is notified) to the application of such a bridging clause. These elements would appear to confirm that the Member States are reluctant to confer competences on the Union in the field of family law.

Therefore, notwithstanding the complementary role of the EU in relation to the Member States in such matters, Article 81 TFEU, albeit within established limits, requires that the EU institutions ensure the cross-border effectiveness of measures taken by national authorities or private individuals under the mediation and conciliation procedures provided for in individual Member States.

³ Unlike the previous regulation (Regulation (EC) 1347/2000), Recital 5 of Regulation (EC) 2201/2003 stipulates that the regulation covers measures for the protection of the child 'independently of any link with a matrimonial proceeding' and therefore applies also to civil partnerships, non-marital cohabitation, natural children and the children born to only one of the two parties during a previous relationship. See also the 1980 Hague Convention.

2.

The need to introduce EU measures concerning international parental child abduction.

In recent years there has been a dramatic increase in the number of cases of international parental child abduction by parents who have custody of the children concerned.

This is despite the 1980 Hague Convention on child abduction is ratified by most of the signatory States. This Convention is one of the most important multilateral agreements for the protection of children and is based on the premise that a judgment on the return of a child may be delivered by the court of the country to which the child has been taken. Should one parent wrongfully take a child to another State that is a party to the Hague Convention, the child must be returned to his or her former place of residence as soon as possible. This does not mean, however, that in particular cases the court might not order that the child be returned (Article 13 of the convention ⁴). The regulation in the European Union, then, enhanced the protection offered by the Hague Convention.

⁴ Article 13: "Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that: (a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

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. In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence".

The basis for jurisdiction set out in Regulation (EC) No 2201/2003 in matters relating to international child abduction.

2.1.

Regulation (EC) No 2201/2003 lays down uniform criteria for identifying the court which has jurisdiction to deliver a judgment on a matrimonial matter and in relation to matters of parental responsibility, including cases of international parental child abduction.

Generally speaking, the regulation gives priority to the personal criterion of habitual residence rather than to that of nationality (as traditionally used by civil-law countries) or to the objective criterion of *lex fori* (preferred in common-law countries).

More specifically, in connection with matters relating to “divorce, legal separation or marriage annulment”, the regulation lays down a set of criteria based on the residence of either spouse, or on their common nationality (Article 3).

As regards “parental responsibility” for a child, the regulation stipulates that the courts of the place where the child resides at the time the court is seised has general jurisdiction (Article 8).

Lastly, with specific reference to “child abduction”, it confers special jurisdiction on the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention (Article 10).

In particular, with reference to the decision concerning the return of the child, Article 11 stipulates that the court having jurisdiction under the regulation may deliver a judgment (subsequent to the judgment delivered by the court having jurisdiction under the 1980 Hague Convention), should the latter court have ruled against returning the child to its State of habitual residence (under Article 13 of Convention). The subsequent judgment, the aim of which is to secure the return of the child, is enforceable if it is accompanied by the certification referred to in Article 42 of the regulation.

The regulation therefore provides additional protection over and above that afforded by the convention. However, even this further safeguard might not always meet the need to fully protect the interests of the child. It may, for example, prove impossible under the regulation to appeal against the enforcement of a return judgment delivered pursuant to Article 11 of the regulation, once it has been certified under Article 42, even if the judgment is vitiated by a serious breach of fundamental rights. In a recent case referred to the Court of Justice⁵, for example, in the second set of proceedings, initiated under Article 11 of the regulation, the child’s views were not heard, as they had been in the first set of return proceedings under the Hague

Convention. In the first set of proceedings the child had expressed his intention to remain in his country of current residence. The Court of Justice specified, however, that under no circumstances could an appeal be made against the enforcement of a return judgment certified under Article 42, even when that judgment was vitiated by a serious infringement of fundamental rights.

Similar cases are submitted to the European Parliament Mediator for International Parental Child Abduction (the Mediator).

The European Commission is conducting a study aimed at gathering information on the practical implementation of Regulation No 2201/2003 and collecting statistics covering, among other things, the number of cases of international parental child abduction. On the basis of this study, in 2012 the Commission will publish a report on the implementation of the regulation and will decide whether to propose any changes.

⁵ Judgment of 22 December 2010, Case C-491/10 PPU, *Aguirre Zarraga*.

3.

From mediation in civil and commercial matters to mediation in family matters.

International family mediation should be given a specific framework under a law that takes proper account of the characteristics and requirements of such mediation.

At present the EU has Directive 2008/52/EC⁶ on certain aspects of mediation in civil and commercial matters. Recital 10 of the directive specifies that the directive should not apply to “rights and obligations on which the parties are not free to decide themselves under the relevant applicable law. Such rights and obligations are particularly frequent in family law and employment law”.

The role of the Mediator is particularly valuable in this regard. And it’s therefore desirable to develop and further strengthen its role.

In keeping with this approach, in its communication of February 2011 entitled “An EU Agenda for the Rights of the Child”, the Commission highlighted the need for cooperation with the Member States, in order to keep updated factsheets on national legislation concerning maintenance obligations, mediation and recognition and enforcement of decisions on parental responsibility. As regards parental child abduction, the Commission stated that it will pay particular attention to the information provided by the European Parliament Mediator for International Parental Child Abduction.

Parliament itself has also expressed similar views.

In its resolution of September 2011 on the *“Directive on mediation in the Member States, its impact on mediation and its take-up by the courts”*, it stressed that:

– *“parties who are willing to work toward resolving their case are more likely to work with one another than against one another; believes that therefore these parties are often more open to consideration of the other party’s position and work on the underlying issues of the dispute; considers that this often has the added benefit of preserving the relationship the parties had before the dispute, which is of particular importance in family matters involving children”*.

In its resolution of October 2011 on *“alternative dispute resolution in civil, commercial and family matters”*, Parliament drew attention to *‘the work of the European Parliament Mediator for International Parental Child Abduction’* and also emphasised *‘the crucial role of types of ADR (Alternative Dispute Resolution) in family disputes, where it may reduce psychological harm, can help the parties to start talking again and thereby, in particular, help ensure the protection of children’*.

⁶OJ L 136, 24.5.2008, p. 7.

Mediation as an alternative dispute settlement tool in cases of international child abduction.

4.

Mediation is an alternative means of resolving disputes that is geared to positive conflict management. Its aim is to provide the parties with support in finding a solution that is acceptable and satisfactory to both, through the assistance of a third party: the Mediator.

In cases of international parental child abduction, the aim of the mediation is to secure a negotiated agreement between the parents in the exclusive interests of the child(ren) involved. In such cases, the mediator’s main task is to ensure, by means of an out-of-court procedure, that the child’s best interests are served while sparing the children and their parents the emotional and psychological strain that would result from legal proceedings that are often both lengthy and costly.

5.

The role of the European Parliament Mediator for International Parental Child Abduction.

When a marriage or partnership between two people of different nationalities breaks down, one of them often decides to return to his or her country of origin or to take up residence in a different EU Member State or country outside the EU.

If the couple have children, it is up to the competent judicial authorities to establish their respective entitlements in terms of custody and access.

Unfortunately, it may happen that the parent not awarded custody abducts the child or refuses to return him or her after a normal visit, or that the parent awarded custody moves elsewhere with the child, which in practice deprives the other parent of his or her right of access.

Such cases constitute not just a violation of the principle of parental responsibility but also, and above all, a violation of the fundamental right of the child to have *regular contact with both parents*.

Article 24 of the Charter of Fundamental Rights of the European Union

Rights of the child:

Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

A parent may apply to the judicial authorities to resolve such disputes or may, in cases of international parental child abduction, launch a process of mediation through the European Parliament Mediator, whose role is to provide assistance to parents with a view to coming to an arrangement that best serves the interests of the child.

Such mediation consists in providing information on applicable law, giving advice and making proposals aimed at settling the dispute and concluding a mediation agreement.

The great advantage of this procedure is that parents who are willing to engage in mediation tend to adhere more closely to an agreement which they have reached jointly than to a decision imposed by a court of law.

Applying to the European Parliament Mediator for International Parental Child Abduction.

6.

EU citizens may apply to the Mediator by fax, post, e-mail or telephone.

The relevant contact details are given on the European Parliament's website, in a section describing the services provided by the Mediator's Office:

Link:

www.europarl.europa.eu/parliament/public/staticDisplay.do?language=EN&id=154

European Parliament Mediator for International Parental Child Abduction



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7.

The mediation process.

- a/** On receiving an application from a member of the public, the first thing that the Mediator's Office does is to assess that application;
- b/** if there are no legal grounds precluding mediation (e.g. such as the commission of a criminal offence), a mediation procedure is formally opened and the parties are asked to sign a statement agreeing to mediation;
- c/** a dialogue is opened between the parties which takes the form of conference call sessions and the exchange of correspondence by mail and e mail, the aim of which is to establish the fundamental issues to be addressed in the negotiations;
- d/** once the key points of an agreement have been established by mutual consent, a draft text is drawn up which is then discussed with a view to reaching agreement on a final text during the mediation sessions;
- e/** mediation takes place on the European Parliament's premises, in the presence of the parties (sometimes via video/telephone conferencing), of the staff of the Mediator's Office and, where applicable, of the parties' legal representatives;
- f/** in the case of video/telephone conferencing, the parties negotiate from an 'institution' such as an embassy, consulate or EU delegation office;
- g/** once the mediation agreement has been finalised, it is signed by the parties and the Mediator and acquires official status.

The mediation agreement is a private contract between the parties.

That contract derives its legal validity from the fact that the parties have reached mutual agreement on the issues discussed during the mediation process.

When helping the parties to reach their agreement, the European Parliament Mediator ensures it will be legally watertight by checking that everything agreed is lawful and fair.

At the behest of the parties, the final mediation agreement may be submitted for the approval of the competent courts in the countries of origin and/or residence of the parties and, where applicable, be used as the basis for a mutually agreed separation or divorce.

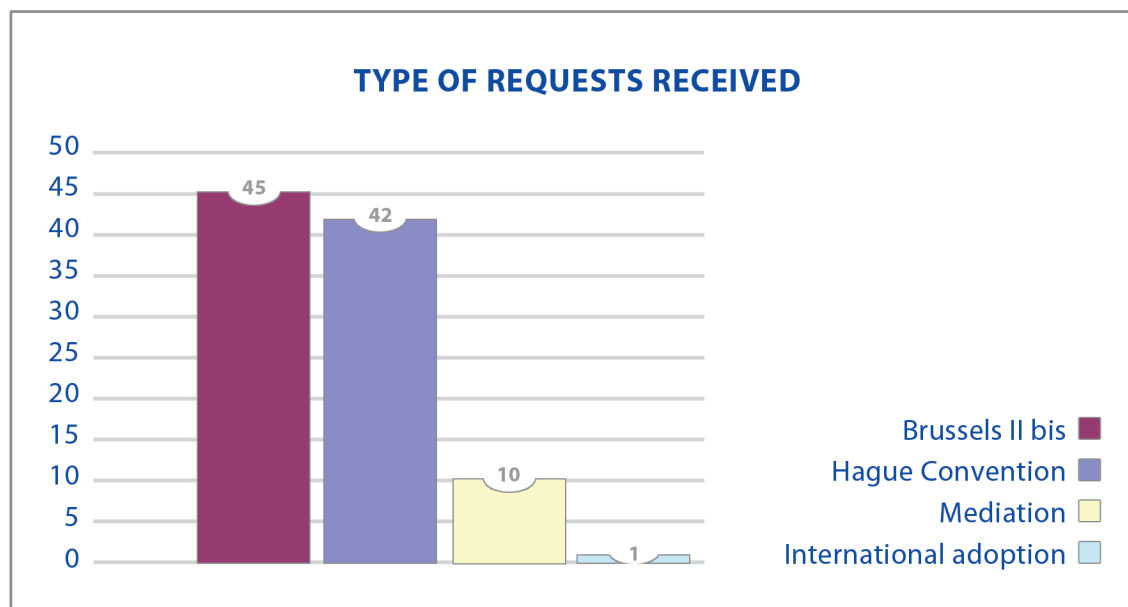
This mediation service is provided free of charge. The European Parliament has legal experts working in a dedicated office who can provide the parties with the assistance they need to conclude a properly structured and lawful agreement, underwritten by the Mediator's Office.

Cases referred to the Mediator.

8.

Between September 2009 and December 2011, the Mediator's Office received 98 applications:

- ten (10) applications for mediation: two of these were settled through negotiations on the European Parliament's premises in Strasbourg, in June 2010 and September 2011 respectively. In two other cases, relations were restored between fathers who had been denied access rights and their children. The remaining six cases are currently at the negotiation stage;
- forty two (42) complaints of irregularities or shortcomings in the implementation of the Hague Convention on Civil Aspects of International Child Abduction by a contracting State;
- forty five (45) complaints of non implementation or incorrect implementation, by a Member State, of Regulation No 2201/2003 (Brussels II bis) or of non recognition of a ruling delivered by a competent judicial authority in a Member State in respect of child custody and/or access rights;
- One case (1) relating to an international adoption procedure. In this instance, the diplomatic action taken by the Mediator resulted in the procedure being completed within a reasonable timeframe.



This case concerned a dispute between an Italian father and a Slovakian mother over custody and access rights in respect of their two children, aged 5 and 7, who were born in Italy and taken to Slovakia by their mother.

Background

The couple were living in Italy until the mother left for Slovakia with her children to visit her sick father. They remained there longer than expected, and it became impossible for the father, who was still in Italy, to have any form of contact with his children.

Their mother then clearly stated that she did not wish to return to Italy and wished to keep the children with her in Slovakia, where she had started to live with a new partner.

The father started divorce proceedings in Italy, along with criminal proceedings against the mother for having abducted the children. In the meantime, the mother also started divorce proceedings in Slovakia. This resulted in a conflict of jurisdiction which led the father's lawyer to contact the Mediator in order to reach a negotiated settlement with the other parent in the best interests of the two children.

Procedure

After the applications by the parties and the legal background to the case had been assessed, the Mediator organised discussions between the parents with a view to formally opening a mediation procedure, which was conducted on the European Parliament's premises in Strasbourg in June 2010. That procedure consisted of the following stages:

- a telephone conferencing session between the father, who was in Strasbourg with his lawyer, and the mother and her lawyer, who were at the Italian Embassy in Slovakia with the Consul and an interpreter;
- presentation of the parties and formal opening of the proceedings;
- discussion of the draft mediation agreement drawn



up in the preceding months and negotiation of key points of the mediation agreement;

- finalisation of the mediation agreement (after an eight hour session);
- signing of the mediation agreement and formal conclusion of the procedure;
- fundamental issues covered in the mediation agreement: right of custody, rights of access and maintenance.



Mediation between parents from Israel and France/ Germany

Examples of mediation

This case concerned a dispute between a woman of Israeli origin with French/
German nationality and an Israeli national resident in Tel Aviv.

Background

The woman, who was habitually resident in France, conceived a child with an Israeli man when living temporarily in Tel Aviv.

The couple never cohabited and the child spent the early years of his life with his mother, first in France and then in Canada. The father had, in fact, broken off the relationship with the child's mother just two weeks into her pregnancy, stating that he did not want a child and announcing, for the first time, that he was already married to another woman.

Two years later, the woman, then living and working in Canada, found herself embroiled in child custody proceedings brought by the father before a rabbinical court in Israel and aimed at securing custody of the child and having the child brought up in accordance with the tenets of the Jewish faith. At first, the woman agreed to move to Israel with the child, to enable the father to participate in the child's upbringing and religious education.

A few months after their arrival in Tel Aviv, the woman decided to take her son with her to Paris to visit her mother, whose health was deteriorating, and to stay on in France to help her.

The father immediately instituted international parental child abduction proceedings against her.

At this point the woman, represented by her lawyer, referred her case to the Mediator.

Procedure

After the applications by the parties and the legal background to the case had been assessed, the Mediator organised discussions between the parents with a view to formally opening a mediation procedure, which was conducted on the European Parliament's premises in Strasbourg in September 2011 and consisted of the following stages:



- a video conferencing session between the premises of the European Parliament in Strasbourg and those of the European Union Delegation in Israel, where both parties were present, along with the legal representative of one party;
- presentation of the parties and formal opening of the proceedings;
- discussion of the draft mediation agreement drawn up in the preceding months and negotiation of the key points of the mediation agreement; many fundamental aspects of the agreement points were amended during the direct negotiations between the parties;
- finalisation of the mediation agreement (after a nine hour session);
- signing of the mediation agreement, and formal conclusion of the procedure;
- fundamental issues covered in the mediation agreement. The issues covered in the 43 articles of the agreement included:
 1. establishment of Israel as the child's place of residence;
 2. joint parental custody and responsibility;
 3. education of the child in accordance with the tenets and precepts of the Jewish faith;
 4. maintenance;
 5. access rights;
 6. agreement to refer any disputes concerning implementation of the agreement to a referee appointed with the mutual agreement of both parties, with supervision by the Mediator.

Applications complaining of incorrect implementation of the Hague Convention.

8.1.1.

Most of the applications made to the Mediator's Office complain about incorrect implementation and/or enforcement of the Hague Convention. The Hague Convention seeks to ensure, by means of cooperation between the central authorities set up in each of the contracting States, the prompt return of children who have been wrongfully removed from their habitual residence.

Many of the parents who apply to the Mediator's Office complain of a lack of cooperation between the central authorities in the various States and of a tendency on the part of individual authorities to 'protect' their own nationals in abduction cases.

In other cases, children are 'returned' to the State in which they habitually reside despite there being a clear risk of them suffering physical or psychological harm on their return (despite the exception provided for in Article 13 of the Hague Convention).

In such cases, the Mediator:

- writes to the central authorities in the relevant contracting states, drawing their attention to the shortcomings detected in the enforcement of the convention's provisions and asking for them to be promptly remedied;
- tables parliamentary questions to the Council and Commission, referring the shortcomings detected to the other institutions and outlining the action that could be taken in the matter;
- conducts a broad-based mediation process with all of the relevant authorities, the parties and their legal representatives with a view to ensuring that international proceedings are carried out swiftly and correctly.



8.1.2.

Applications complaining of incorrect implementation of Regulation (EC) No 2201/2003 (Brussels II bis Regulation).

The Brussels II bis Regulation governs jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility.

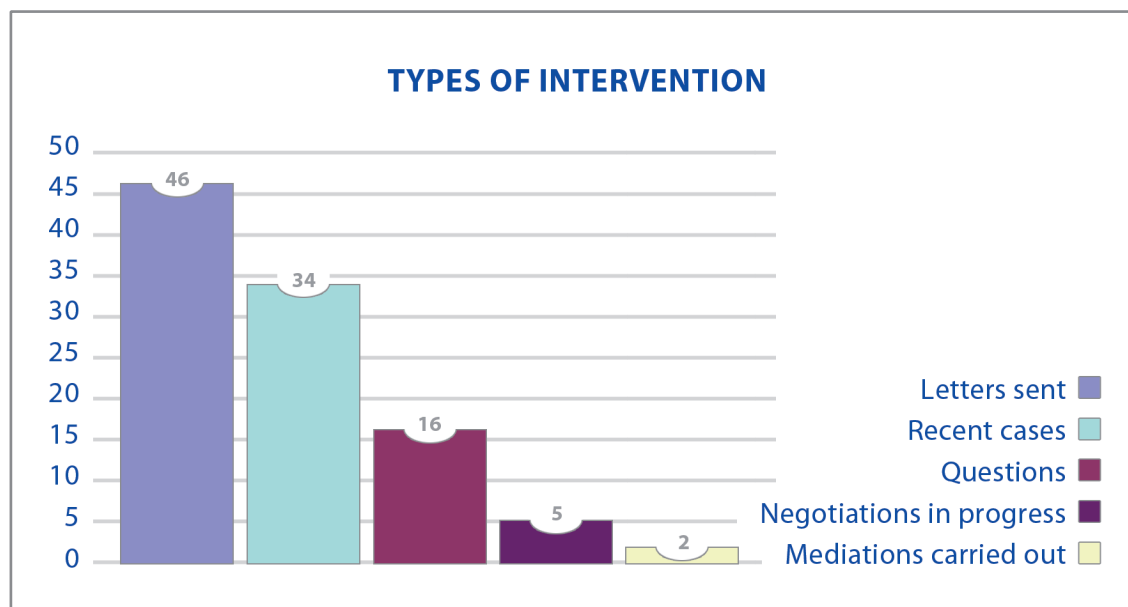
It lays down new child abduction provisions that supplement the provisions already laid down in the 1980 Hague Convention in cases involving contracting Member States.

A substantial number of the applications made to the Mediator complain of serious failings in judicial cooperation between Member States. These generally involve the refusal by a Member State to recognise and execute a final judgment handed down by a court in another Member State, despite there being no legal grounds under the regulation for such a refusal.

Such failings give rise to serious legal uncertainty which has adverse repercussions for the children involved.

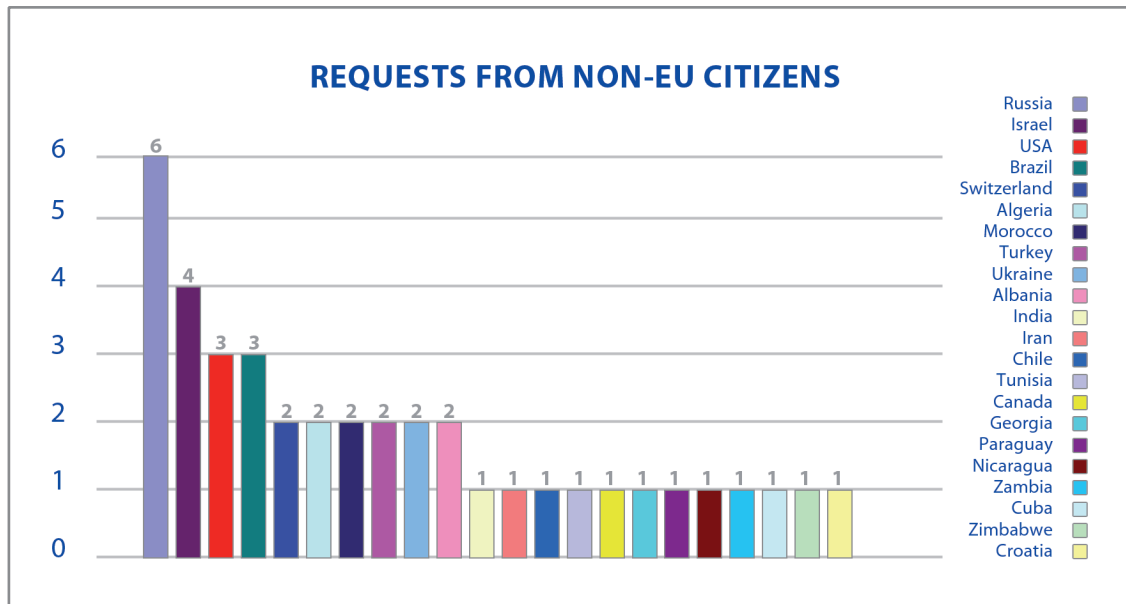
In such cases, the Mediator:

- tables parliamentary questions to the Commission, drawing its attention to the breaches of the Brussels II bis Regulation that have been identified and asking for infringement proceedings to be opened against the Member State that is failing to meet its obligations;
- offers the parties legal advice on the EU child protection provisions, as well as “mediation” with the relevant authorities, the parties and the parties’ legal representatives

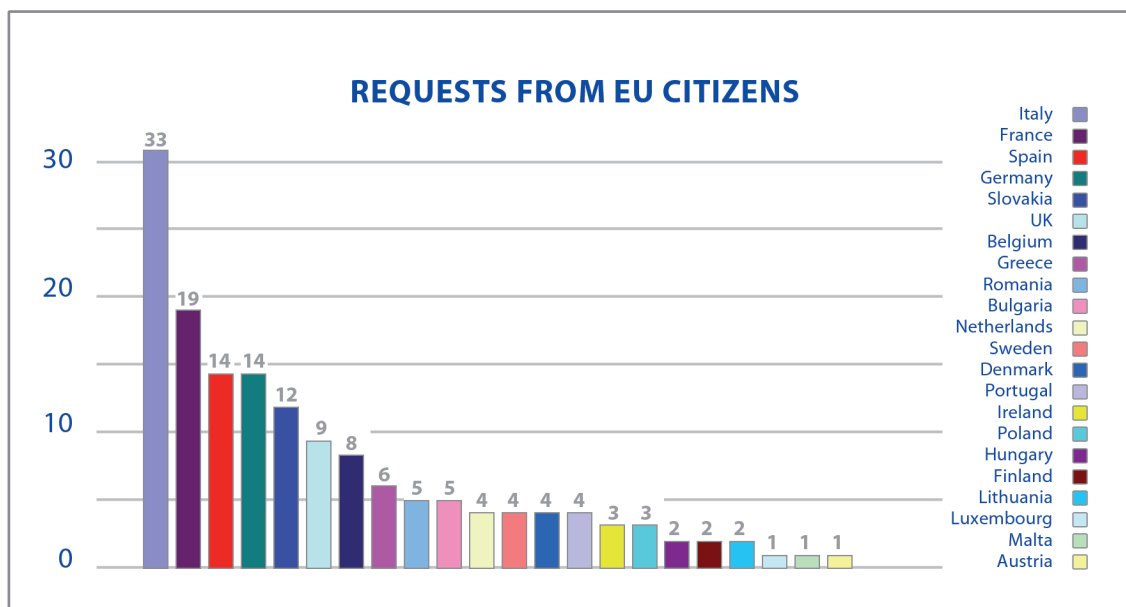


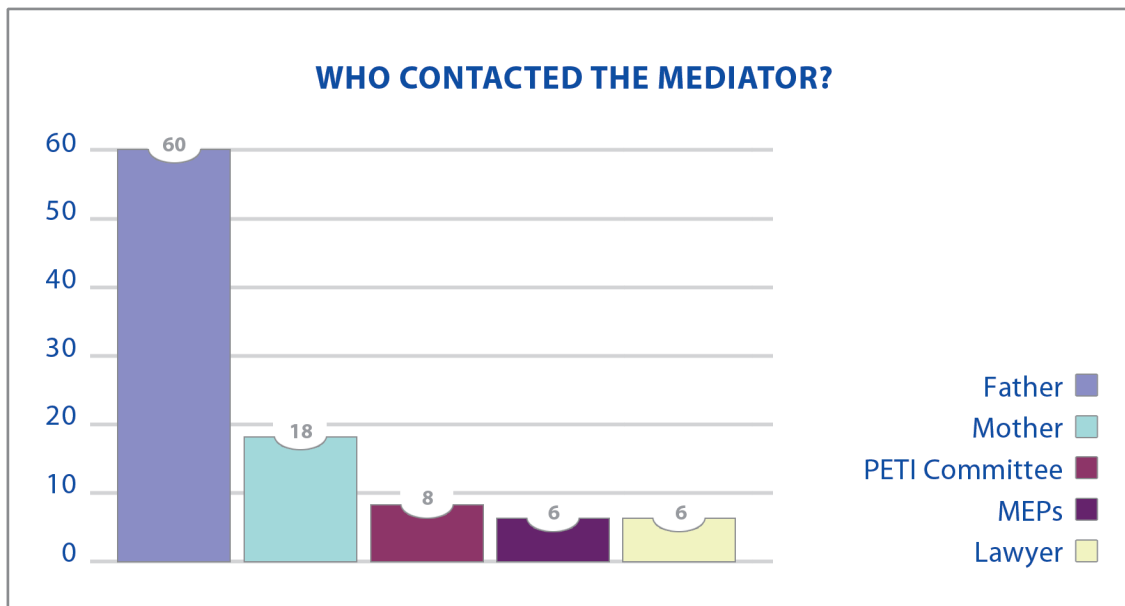
98 couples have applied to the Mediator's Office, i.e. a total of 196 parents, comprising:

- 40 non-EU citizens (partners of EU citizens, with whom they have had one or more children) from the following countries;



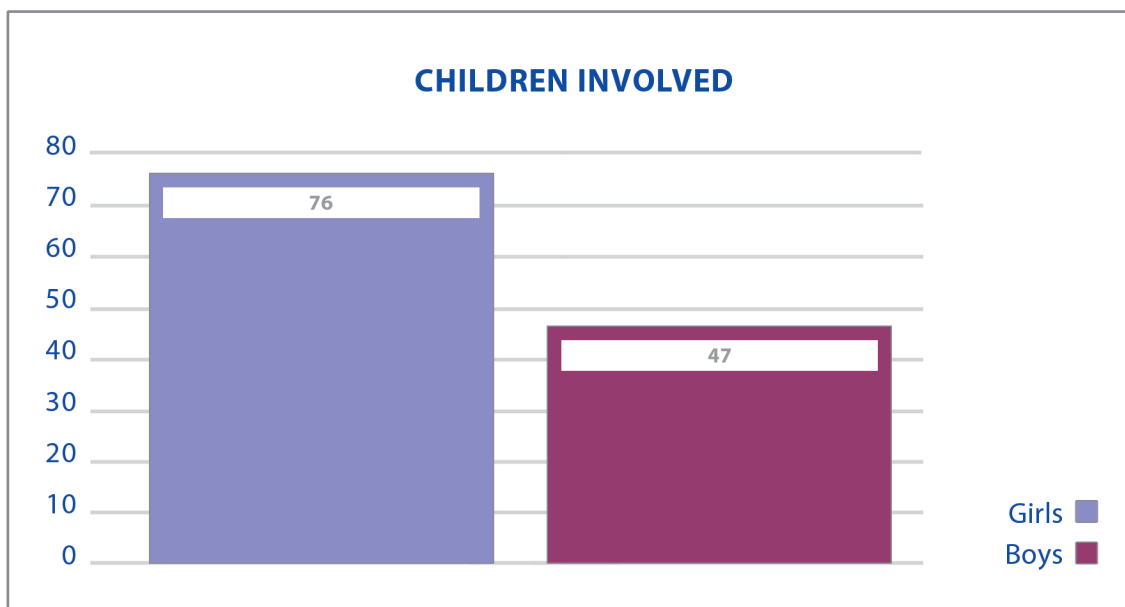
- 156 EU citizens from the following Member States:





The cases referred concern the international parental abduction of 123 children, comprising:

- 76 girls
- 47 boys
- between the ages of 3 and 11



Other work performed by the European Parliament Mediator for International Parental Child Abduction.

9.

The Mediator's Office works in synergy and cooperation with all of the relevant institutions, in particular the European Commission, the Council, the Council of Europe and the Court of Justice.

Another key strand of its work is cooperation with the national central authorities set up under the Hague Convention on the Civil Aspects of International Child Abduction.

Furthermore, special attention is drawn to regular exchanges and cooperation with NGOs working in the area and with mediation experts, psychologists, child psychologists, education specialists, social workers, legal experts and judges, as well as the cooperation with Interpol and national police forces.



OVERVIEW

a. What is international parental child abduction?

International parental child abduction involves:

- a child being wrongfully removed from his or her place of habitual residence and taken abroad by a parent who does not have sole responsibility;
- a child not being returned to his or her State of habitual residence by a parent who does not have sole responsibility, in breach of the rights of custody and access.

b. International and European law on international parental child abduction

The following international instruments were adopted in response to the growing number of international parental child abductions:

- *Convention on the Civil Aspects of International Child Abduction (The Hague, 25 October 1980)*: under this convention a parent whose child has been abducted may apply for the child's return (for example, when one of the two parents has abducted the child to another country or wrongfully retained it there) or for access rights to be restored. The aim of this is to protect the child against the traumatic effects of wrongful removal to or retention in a country other than its State of habitual residence.
- *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 (Brussels II bis Regulation)*: this regulation establishes the enforceability of judgments handed down by the courts of the child's State of habitual residence in cases of child abduction. The regulation does not require a declaration of enforceability for decisions by authorities of a Member State on rights of access to the child.
- *United Nations Convention on the Rights of the Child, adopted in New York on 20 November 1989*: this is the instrument that provides and promotes the most comprehensive protection for children's rights.

c. How can parents guard against the abduction of a child?

- By familiarising themselves with the laws on custody and access rights;
- by having the other parent sign an undertaking to return the child to its State of habitual residence by the stipulated date, should there be plans for the

- child to travel to another country;
- by applying to the competent court to issue an order specifically prohibiting the child's removal from the country;
- by checking that the border authorities are aware of that order;
- by withdrawing their parental consent to travel, thereby ensuring that the passport issued to the child is withdrawn;
- by ensuring that, when the parent who does not have custody exercises his or her access rights, he or she does not wrongfully keep the child beyond the prescribed time.

d. What can parents do if a child of theirs has been abducted?

- Notify the competent national authorities so that they may alert their diplomatic and consular representatives in the country to which the child is thought to have been taken;
- apply to the central authority in the State of the child's habitual residence within the meaning of the Hague Convention on the Civil Aspects of International Child Abduction and/or Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility;
- immediately report the matter to the police or judicial authorities with jurisdiction for the child's place of habitual residence;
- apply to the court with jurisdiction for the child's place of habitual residence, with a view to being granted sole custody under an urgent procedure;
- apply to the competent court for the parental responsibility of the parent guilty of the crime of abduction to be suspended;
- apply to the European Parliament Mediator for International Parental Child Abduction for a family mediation procedure to be opened.



EUROPEAN PARLIAMENT MEDIATOR FOR INTERNATIONAL PARENTAL CHILD ABDUCTION GUIDELINES

1. DEFINITIONS

1.1 For the purposes of the procedures conducted by the European Parliament Mediator for International Parental Child Abduction:

- a/ «Mediator» means the European Parliament Mediator for International Parental Child Abduction, whom the parties have asked to mediate;
- b/ «mediation process» means an out-of-court procedure conducted with a view to reaching agreement, with the assistance of the Mediator, in the best interests of the abducted child(ren).

2. MEDIATOR'S ROLE

The Mediator's role is to:

- help the parties to conclude a mediation agreement;
- provide information on the applicable law;
- draw the competent authorities' attention to the shortcomings in the implementation of international and European law on international parental child abduction that have been identified.

3. INDEPENDENCE AND IMPARTIALITY

The Mediator must be fully independent and impartial in his or her work, and must act with the express consent of the parties.

The Mediator must act impartially in all dealings with the parties, and seek to be perceived as impartial, and must endeavour to provide the same assistance to all the parties to the mediation process.

4. AGREEMENT, PROCEDURE AND SETTLEMENT OF THE DISPUTE

4.1. Procedure

The Mediator must ensure that the parties involved in the mediation process understand what the mediation procedure involves and what part the Mediator and the parties play in that procedure.

The Mediator must, in particular, ensure that, before the mediation process commences, the parties have understood and expressly agreed to the terms and conditions of the mediation agreement, including the confidentiality requirements applying to the Mediator and to the parties.

The Mediator must conduct the procedure in an appropriate manner, taking due account of the specific circumstances of the case, including any imbalance in power between the parties, any specific wishes voiced by the parties and all relevant legal requirements, and of the need to settle the dispute as swiftly as possible.

4.2. Proper conduct of proceedings

The prime consideration in the mediation process must be the interests of the child(ren) involved.

The Mediator must ensure that all parties are able to take an appropriate part in the procedure.

Notwithstanding the parties' duty to honour the undertakings entered into during the mediation process, in particular those set out in the agreement resolving the dispute, the Mediator may terminate a mediation procedure should:

- he or she have good reason to believe that further pursuit of the procedure would be unlikely to result in the settlement of the dispute;
- the parties wish unlawful provisions to be included in the agreement.

4.3. Conclusion of procedure

The Mediator must take all appropriate steps to ensure that any agreement reached by the parties is based on informed consent and that all of the parties understand the terms thereof. The parties may withdraw from the mediation process at any time without being obliged to give reasons for doing so.

5. CONFIDENTIALITY

The Mediator must ensure that all information that comes to light during the mediation process or relates thereto – including details of whether mediation is in progress or has taken place – remains confidential, except in cases where its disclosure is required by law or on grounds of public policy.

Confidential information disclosed to the Mediator by one of the parties must not be shared with the other party without the disclosing party's consent.

Article 10 of Regulation (EC) No 2201/2003

Jurisdiction in cases of child abduction

In case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another Member State and:

- a. each person, institution or other body having rights of custody has acquiesced in the removal or retention; or
- b. the child has resided in that other Member State for a period of at least one year after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child and the child is settled in his or her new environment and at least one of the following conditions is met:

I/ within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, no request for return has been lodged before the competent authorities of the Member State where the child has been removed or is being retained;

II/ a request for return lodged by the holder of rights of custody has been withdrawn and no new request has been lodged within the time limit set in paragraph (I);

III/ a case before the court in the Member State where the child was habitually resident immediately before the wrongful removal or retention has been closed pursuant to Article 11(7);

IV/ a judgment on custody that does not entail the return of the child has been issued by the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention.



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