

Mediation in child abduction cases: the child's voice

Romanian civil-law perspective



HCCH



Judge Voiculescu Anca Magda

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Malta

Mediation in international child abductions. Romania



→ Central Authority (Ministry of Justice): administrative phase

- Art. 7 1980 HC + Art. 25 Regulation 2019/1111 + Art. 22 Law no. 369/2004 on the application of the 1980 HC
- letter of conciliation to the abductor (recommends mediation/amicable resolution attempt)

→ Courts (Bucharest Tribunal + Court of Appeal): judicial phase

- Art. 25 Regulation 2019/1111 + Art. 21 and Art. 227 (3) Romanian Procedural Civil Code
- judges recommend mediation (engage mediation/info session)
- ✓ mediation is *not mandatory* (Law no. 192/2006 on mediation)
- ✓ *judges themselves may try to reconcile the parties*

- mediation is an **independent and parallel procedure**

- **authorised mediators**
 - Table of mediators, including mediators specialized in family law (Mediation Council)

- **mediation agreement**
 - validated in court (Art. 64 Law no. 192/2006)
 - executory after validation (Art. 440, 441, 633 Romanian Civil Procedural Code)

Voice of the child in mediation of international child abduction. Romanian legal framework



Romanian law

■ General law: Civil Code, Art. 264

(1) In the administrative or judicial proceedings concerning him/her, the hearing of the child who has reached the age of 10 years old is mandatory. However, a child who has not reached the age of 10 years old may also be heard if the competent authority considers necessary for the resolution of the case.

(2) The right to be heard implies the possibility for the child to request and receive any information, according to his/her age, to express his/her opinion and to be informed about the consequences that this may have, if respected, and also about the consequences of any decision that concerns him/her.

(3) Any child may request to be listened to, according to the provisions of para. (1) and (2). Rejection of the request must be reasoned by the competent authority.

(4) Opinion of the child will be taken into account according to his/ her age and degree of maturity.

■ Special legislation

✓ **Law no. 369/2004 on the application of the Hague Convention 1980, Art. 10 (1)**

Hearing of the child who has reached the age of 10 years old is mandatory. A child under the age of 10 years old may be heard if the court finds it necessary.

✓ **Law no. 192/2006 on mediation**

No provisions related to hearing of the child: Art. 65 (2) Law 192/1006 – only social welfare report

Hearing the child in international abduction mediation.

Legal aspects



Who hears the child

- mediator?
- judge: validation of mediation agreement in court + direct hearing

Hearing by letter rogatory

- generally not used in civil matters (personal perception of the judge)
- videoconference in criminal matters

Hearing minutes/records

- no legal provision: in practice, hearing minutes (with or without the hearing recording); it is recommended to be attached to the case file only at the end of the proceedings, when the enforceable decision is ruled

Repeated hearings

- no legal provisions: possible, but not recommended

Hearing the child in international abduction mediation.

Practical aspects



Hearing location

(public session or in chambers)

- no legal provision: in practice, the hearing is held in council chambers
- some courts have specific arrangements in chambers for hearing children (Bucharest Tribunal chambers)

Time of the hearing

- court session day or another day: varying practices, taking into account the timetable of the child and the workload of the court
- proceedings stage (at the beginning of the proceedings/after all other evidence has been taken): no legal provision → in practice, at the end of the proceedings, so as to be able to verify the claims of the parties and the information provided by the evidence

Participants in the hearing

- judge, clerk, maybe psychologist: NO family members or audience allowed
- secure and friendly environment for the child

BUCHAREST TRIBUNAL



CHILD HEARING ROOM



VIDEOCONFERENCE ROOM



Weight of the child's opinion



- **THE JUDGE = THE TRUE INTERPRETER OF THE CHILD'S BEST INTEREST**
 - interpretation of child's opinion (in the context of all evidences: mandatory social welfare report in mediation/the judge may order any other evidence, including psychological reports)
 - appreciation according to the child's age and degree of maturity
 - explaining reasons for disregarding his/her opinion
- **IT IS NOT THE CHILD** who decides (ponder of child's opinion increases with age)
- **POSSIBILITY TO DENY MEDIATION AGREEMENT** (Art. 8 Law no. 272/2004 regarding the protection and promotion of children's rights)



- specialized forms of training judges in family law (including child hearing) organized by Romanian Institute of Magistracy
- interaction among judges and psychologists → interdisciplinary perspective
→ guidelines for hearing the child
(Child's hearing guide: INM, 2009)

Cooperation



→ **Administrative and judicial cooperation in reaching mediation agreements**

Central Authority
(Ministry of Justice)

+

Courts
(Bucharest Tribunal and Bucharest Court of Appeal)

+

Mediators
(Mediation Council)

→ **mediation agreements:** concluded by mediators and validated in courts

→ **hearing the child:** direct hearing (conducted and appreciated by the judge)



Thank you!

Judge Voiculescu Anca Magda
ancamagda.voiculescu@gmail.com