Special Focus

Concentration of jurisdiction under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*

1. Overview

By Philippe LORTIE, First Secretary, Permanent Bureau, Hague Conference on Private International Law

According to an analysis of the Country Profiles under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (the "1980 Child Abduction Convention"), more than 40 States Parties to this Convention have concentrated jurisdiction for child abduction matters.[1] Despite the high numbers of States that have concentrated jurisdiction, no comparative research has been undertaken in this area and few detailed accounts exist as to the "who, what, where, when, why and how" concentration of jurisdiction took place in these States. In order to know more, the Permanent Bureau of the Hague Conference on Private International Law sought articles for a special issue of the Judges' Newsletter from Members of the International Hague Network of Judges, from States where concentration of jurisdiction has taken place in one form or another. The Permanent Bureau was delighted to receive 20 very interesting contributions on this subject, covering all continents.[2] It is hoped that this collection of articles will provide helpful information to States Parties to the 1980 Child Abduction Convention which have not yet concentrated jurisdiction.

The articles that follow highlight many of the advantages that result from the concentration of jurisdiction, such as:

- an accumulation of experience among the judges concerned;
- the development of mutual confidence between judges and authorities in different legal systems;
- the creation of a high level of interdisciplinary understanding of the 1980 Child Abduction Convention;
- mitigation of delay in the processing of cases;
- greater consistency in practice by judges and lawyers.

The articles included in this volume show that concentration of jurisdiction in family law matters was already in place in a number of States (Cyprus, Israel, Panama and Paraguay) before the implementation of the 1980 Child Abduction Convention. Thus, when the Convention was implemented in these Sates, competence was attributed to these already concentrated jurisdictions. In some other States (China (Hong Kong SAR), Finland, South Africa and the United Kingdom (England & Wales and Northern Ireland)), concentration of jurisdiction regarding child abduction matters was established at the time of the implementation of the 1980 Child Abduction Convention. Finally, jurisdiction was concentrated in a number of States (Belgium, Bulgaria, Dominican Republic, France, Germany, Netherlands, Sweden and Switzerland) after some years of operation of the 1980 Child Abduction Convention. Finally, it is interesting to note that in some States, when concentration was attributed to a given court, another level of concentration took place by designating one or more specialised judges responsible for child abduction cases in these courts (Bulgaria, Germany, Israel, South Africa and the United Kingdom (England & Wales and Northern Ireland)). Concentration has taken place in States with a federal structure (Australia, Canada, Germany and Switzerland) and in pluri-legislative States (Cyprus and Israel).

In most States (Belgium, Cyprus, Finland, France, Germany, Israel, Netherlands, Panama, Paraguay, Sweden and Switzerland), concentration of jurisdiction was established by the passing of legislation. In a smaller number of States (Bulgaria, South Africa and the United Kingdom (England & Wales and Northern Ireland)) concentration of jurisdiction was effected by Rules of Court or the Code of Civil Procedure, with the designation of specialised judges made by administrative decisions of the Lord Chief Justice in the case of South Africa, England & Wales and Northern Ireland. In Hungary concentration of jurisdiction was set up by Ministerial Decree. In the Dominican Republic it was through a resolution passed by the Supreme Court, whilst in Hong Kong SAR it was by way of Ordinance. In Australia, concentration of jurisdiction was established pursuant to a Protocol between the Family Court and the Federal Circuit Court. Finally, in Canada, by creating a network of judges at both the Provincial and Superior Court levels, concentration of jurisdiction appears to be taking place by way of these judges who have been designated to the national networks.

As mentioned above, concentration of jurisdiction very often takes place within the Family Court (Australia, Cyprus and Israel) or the Child and Adolescent Court (Dominican Republic, Panama and Paraguay). The High Court was chosen in a few jurisdictions (China (Hong Kong SAR), South Africa and the United Kingdom (England & Wales and Northern Ireland)). In some States, jurisdiction was concentrated with the Court of Appeal (Bulgaria and Finland) or in the courts of first instance in the jurisdictions where the largest courts of appeal are located (Belgium (five courts), France (37 courts) and Germany (24 courts)). The chosen courts have better infrastructures, including better research facilities. In two cases, jurisdiction was concentrated in a District Court (Netherlands and Sweden). Finally, in the case of Switzerland, concentration of jurisdiction resides with first instance cantonal superior courts.

Finally, it is interesting to note that some States have concentrated jurisdiction in relation to other instruments,

[1] See the Country Profiles under the 1980 Child Abduction Convention on the Hague Conference website at < www.hcch.net >, under "Child Abduction Section", and "Country Profiles".

[2] Australia, Belgium, Bulgaria, Canada, China (Hong Kong SAR), Cyprus, Dominican Republic, Finland, France, Germany, Hungary, Israel, Netherlands, Panama, Paraguay, South Africa, Sweden, Switzerland, United Kingdom (England & Wales and Northern Ireland).

such as the *Luxembourg Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children* (Belgium, Bulgaria, Finland, Germany, Hungary), the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (Bulgaria, Canada (through the Canadian networks of Judges), China (Hong Kong SAR) and Finland), the *Hague 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* (Canada (through the Canadian networks of judges) even though the 1996 Convention is not in force for Canada, Finland and Germany), the *Hague Convention of 13 January 2000 on the International Protection of Adults* (Germany), *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* (Belgium, Bulgaria, Cyprus, Finland, France, Germany, Hungary, Netherlands, Sweden and the United Kingdom (England & Wales and Northern Ireland)), the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (Canada (through the Canadian networks of judges) even though the 2007 Convention is not in force for Canada), and *Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations* (Germany).

We hope that you will find the reading of the following articles as interesting as we did and that they will inspire States which have not yet concentrated jurisdiction to do so in the very near future.

2. Australia

By The Honourable Diana BRYANT AO, Chief Justice of the Family Court of Australia and The Honourable Justice Victoria Bennett of the Family Court of Australia[3]

Australia is a federation. Power to make private law in relation to children of relationships is vested in the Commonwealth government and the power to make public law, in relation to children who are adjudged to be in need of care and protection or who have committed a crime, is vested the seven states and territories.[4] It is a system which is administered cooperatively and without difficulty.

International children's conventions affecting Australia

The *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* ("the 1980 Child Abduction Convention") came into operation in Australia on 1 January 1987 and is currently in force between Australia and 81 other Contracting States.

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* ("the 1996 Child Protection Convention") came into operation in Australia on 1 August 2003 and is in force between Australia and 41 Contracting States.

The *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* ("the 1993 Adoption Convention") came into operation in Australia on 1 December 1998 and is currently in force between Australia and 92 Contracting States.

Australia became a signatory to the *United Nations Convention on the Rights of the Child* ("UNCRC") on 22 August 1990. UNCRC has not been incorporated directly into Australian domestic law. By amendment effective from 7 June 2012, an additional object of the parenting provisions of our *Family Law Act 1975 (Cwth)* is "to give effect to the Convention of the Rights of the Child."[5] UNCRC does not override specific provisions of domestic law or our regulations which implement the 1980 Child Abduction Convention. UNCRC is an aid to interpretation and can be used to resolve ambiguities in domestic legislation and may have be significant in the interpretation of Australian laws and the common law relating to children.

Judicial structure and operation of the 1980 Child Abduction Convention

Family law cases are heard by the Family Court of Australia,[6] which is the superior court of record, and the Federal Circuit Court,[7] which is the trial court. The Family Court of Australia is a specialised court comprising the Chief Justice, the Honourable Justice Diana Bryant, the Deputy Chief Justice and 31 Judges. It sits directly below our supreme court, the High Court of Australia (which comprises the Chief Justice and 6 Justices). The Family Court hears appeals and cases of long duration or of such complexity as renders the case unsuitable for determination by the trial court.

Pursuant to a Protocol between the Family Court and the Federal Circuit Court, all Hague abduction cases are dealt with by the Family Court of Australia as are international relocation cases. Accordingly, in Australia jurisdiction to hear abduction cases at first instance is concentrated to 23 justices of the general or trial division of the Family Court. An appeal from the first instance decision lies to the Appeal Division of the Family Court comprised of three judges often comprised of two Appeal Division judges and a judge from the General Division. An appeal from a decision of the Full

3 The authors are members the International Hague Network of Judges for Australia.

4 The states are Victoria, New South Wales, Queensland, Western Australia, South Australia. The self governing territories are the Northern Territory and the Australian Capital Territory.

5 *Family Law Act 1975* (Cth) s 60B(4).

6 Reference to the Family Court of Australia includes the Family Court of Western Australia which comprises five state judges, under the leadership of Chief Judge Stephen Thackray, and is vested with State and Federal jurisdiction in matters of family law and deals with divorce, property of a marriage or a de facto relationship, matters relating to of children, maintenance and adoptions.

7 Prior to 28 May 2013 the Federal Circuit Court was known as the Federal Magistrates' Court and the judges were known as Federal Magistrates. The change of name reflects the fact that the work of that court was at the level of a County Court or District Court rather than at Magistrates' Court level.

Court of the Family Court to the High Court of Australia requires leave of the High Court. To date, leave has been sought in 19 Hague abduction cases but granted in only six.[8]

The Commonwealth Central Authority in Australia for the 1980 Child Abduction Convention is the same as the Central Authority for the 1996 Child Protection Convention work and is a person appointed within the Commonwealth Attorney-General's Department. Another person is appointed to be the Central Authority for the work of the 1993 Adoption Convention. The Commonwealth Attorney-General designates a person in each of the States and Territories to be the State Central Authority for the 1980 Child Abduction Convention work within that State. This is usually the secretary or head of the state's child welfare department. Accordingly, a State Central Authority has at its disposal the services of trained child protection workers, emergency accommodation and a working relationship with the police. Through the Commonwealth Central Authority, the State Central Authorities have access to some official records, such as immigration records from which it can be determined when a child entered or departed Australia as well as social security payments.

Abduction applications are prosecuted by the State Central Authority. The left behind parent is not required to pay for the costs of the prosecution (Article 26). A left behind parent may prosecute their own case, to the exclusion of the State Central Authority, but it is most unusual. Accordingly, almost every abduction case is prosecuted by a model litigant who has extensive experience in Hague abduction cases. This results in a concentration of expertise in prosecution work. Unlike some other Contracting States, legal aid bodies in Australia do not maintain a panel of specialist lawyers whom they will fund to act for abducting parents to defend the application. Accordingly, the standard of defence work is varied. Where a child is represented in a Hague abduction proceeding, which is exceptional,[9] that representation is funded by the legal aid authority of the state or territory in which the child is located. It is the authors' experience that, within our state of Victoria, independent children's lawyers have extensive experience in international child abduction matters and a personal commitment to undertake the work to a high standard. Skilled representation of the child's interest is essential where an abducting parent fails or neglects to raise an issue for determination such as the jurisdictional facts of habitual residence or right of custody or an exception to return.

Benefits resulting from concentration of jurisdiction

By concentrating jurisdiction to hear Hague abduction applications to the superior, specialist court, hearings can be allocated more quickly and case managed more directionally than they can be in the high volume trial court.

Case management and the ability to expedite the hearing of abduction applications are important because our supreme court, the High Court of Australia, has eschewed a purely summary determination of return applications.[10] Consequently, it is not uncommon for a final hearing to run for between 1 and 3 days and involve commissioning reports by social scientists, other expert evidence and taking cross examination from overseas outside court sitting hours.

We find that the other benefits of the concentration of jurisdiction are:-

- the efficiency with which judicial education about recent developments within the Hague community as well as recent decisions in other Contracting States can be delivered;
- the ability to familiarise our judges with the operation of the International Hague Network of Judges and the ability to facilitate general or direct (case specific) judicial communications between our court and the relevant judge in the Contracting State of habitual residence *via* the International Hague Network of Judges. This is particularly valuable to implement conditions for return, schedule a preliminary hearing in the home State and other safe harbour measures;
- the ease of delivery of information about mediation of abduction cases within our jurisdiction. This specialised mediation must be facilitated, if it is to be facilitated at all, at very short notice so as to not delay any judicial determination of the case. It is usually only available through a small number of service providers who can operate at minimal or no financial cost to the participants and who can provide a co-mediator in each Contracting State (*eg.* International Social Service) or who have the technology to convene the required number of sessions (often three) through audio visual connectivity;
- as a superior court of record, it should be apparent to the courts of other Contracting States that any determination of our Family Court is authoritative and not prone to reversal by multiple rulings after further contests in higher courts. The authoritative nature of our determinations aids enforcement, Article 15 requests and direct judicial communications around conditions for return and safe harbour measures.

We appreciate the benefits of the determination of Hague abduction cases being concentrated in our one specialist and superior court. Likewise, we appreciate the relative ease of dealing with other Contracting States who have, over the last 20 or so years, taken the significant but very constructive step of concentrating jurisdiction to determine these cases to a specific court or level of court within that State. Most respectfully, our experience is that in Contracting States where jurisdiction is concentrated, the 1980 Child Abduction

[8] Leave has been granted in the cases of: *De L v Director General, of NSW Department of Community Services & Anor* [1996] HCA 9; *DJL v The Central Authority* (2000) 201 CLR 226; *DP v Commonwealth Central Authority* (2001) 206 CLR 401; *MW v Director-General of the Department of Community Services* [2008] HCA 12; *LK v Director-General, Department of Community Services* [2009] HCA9 and most recently in *RCB as litigation guardian of EKV, CEV, CIV and LRV v The Honourable Justice Colin James Forrest* [2012] HCA 47.

[9] Section 68L(3) *Family Law Act* 1975

[10] *MW v Director-General, Department of Community Services* [2008] HCA 12 at [46] to [49]

Convention is implemented with a higher degree of cohesion between the executive and judicial arms of government and the judicial determinations from the courts in those States around core concepts of habitual residence, rights of custody and, say, grave risk of harm are more consistent and more timely than those which emanate from States where jurisdiction is diffuse.

3. Belgium

By Myriam DE HEMPTINNE, Judge at the Brussels Court of Appeal, Brussels[11]

When Belgium implemented the *Hague Convention of 25 October 1980 on the civil aspects of international child abduction* (hereinafter the 1980 Child Abduction Convention), it added a chapter to the Act of Assent of 10 August 1998 added to the Judicial Code (Belgian Code of Civil Procedure) entitled "Applications relating to the protection of cross-border rights of custody and of access" containing new Articles 1322 *bis* to *octies*. In that chapter, the legislature organised an emergency procedure "as in summary proceedings" to deal with return applications pursuant to a wrongful removal or retention. This emergency procedure also dealt with applications relating to the organisation of rights of access based on the 1980 Child Abduction Convention, together with applications based on the *European Convention of 20 May 1980 on the recognition and enforcement of decisions concerning custody of children and on restoration of custody of children* (hereinafter the Luxembourg Convention). That procedure was assigned to the purview of the President of the Court at first instance at the location of the child's presence.

The provisions of that chapter were revised and supplemented by the Belgian legislature when the *EU Regulation of 27 November 2003 concerning jurisdiction and the recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility* ("Regulation Brussels IIa") was implemented, with the passing of the Act of 10 May 2007. [12]

At the time, the Minister of Justice established a working group, including judges in particular, in the capacity of experts in the field. After the bill was drafted by that working group, the legislature, faced with increasing complexity in this area of law, chose specialisation of judges and a concentration of jurisdiction, in the image of other EU Member States which had done so previously (including France and Germany, mentioned in the preparatory documents). The motives before the vote on that act are clear from the Justice Commission report, which explains that "this choice is due to the need to reinforce our courts' effectiveness in an area growing more complex by the day. Knowledge of the instruments and international case-law, speed of intervention, reinforcement of direct cooperation among the judges in the various Member States, leading to reinforced confidence in the judicial systems, demanded that specialisation of the courts" (Bill, Chamber Parliamentary Documents, session 2006-2007, 51-3002/001, p. 44 [French version]).

The Act of 10 May 2007 accordingly concentrated jurisdiction with the Courts at first instance established at the locations of Courts of Appeal (Brussels, Mons, Liege, Antwerp and Gent) and, in those cases where the proceedings are to be held in the German language, the Court at first instance of Eupen. These cases, previously assigned to the 27 Presidents of different courts (matching the 27 judicial circuits of the country), are now, starting at the first instance, assigned solely to 6 lower-court Presidents, it being understood that on appeal, the proceedings are handled by one of the country's five Courts of Appeal.

The new Article 1322 *bis* of the Judicial Code lists the proceedings for which this concentration of jurisdiction is now to apply:

- applications based on the *Luxembourg Convention for the recognition and enforcement of decisions concerning custody and restoration of the custody of children*;
- applications based on the Hague Convention of 25 October 1980, for immediate return of the child, for observance of the custody rights or rights of access existing in another State or for the organisation of a right of access;
- applications for the child's return or custody pursuant to a decision to deny return delivered in another EU Member State under Article 11 of Regulation Brussels IIa;
- applications on the basis of Article 48 of Regulation Brussels IIa, for determination of the practical terms of exercise of a right of access; and
- applications on the basis of Article 28 of Regulation Brussels IIa for recognition or enforcement of decisions relating to rights of access or return of the child.

Only the last of those proceedings may be brought unilaterally (Article 1322 *bis* § 2), the others requiring initiation by means of an application *inter partes* (Article 1322 *bis* § 1).

As regards territorial jurisdiction, the passing of the new Act was an opportunity to specify, by the addition of the new Articles 633 *sexies* and *septies* to the Judicial Code, that the case is to be brought before the President of the Court at first instance, established at the location of the Court of Appeal within the circuit of which, as the case may be:

- the child is present (Article 633 *sexies*): this situation relates to return proceedings, when Belgium is the requested State;
- the child has its habitual residence at the time of filing or sending of the application (Article 633 *sexies*): this situation concerns only proceedings relating to issues of custody or the recognition and enforcement of foreign decisions, or failure to abide by rights of access, since a wrongful removal or retention may not result in a

[11] The author is a member of the International Hague Network of Judges for Belgium.

[12] Act of 10 May 2007 for implementation of *Regulation (EC) N° 2201/2003 of the Council of 27 November 2003 concerning jurisdiction and the recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility*, repealing *Regulation (EC) N° 1347/2000, of the Luxembourg European Convention of 20 May 1980 on the recognition and enforcement of decisions concerning custody of children and on restoration of custody of children*, and of the *Hague Convention of 25 October 1980 on the civil aspects of international child abduction*, Moniteur Belge, 21 June 2007.

transfer of the child's habitual residence;
- the child had its habitual residence immediately before the wrongful removal or retention: this situation concerns the procedure established by Regulation Brussels IIa in the State of origin after a decision denying return delivered in the requested State (Articles 633 *septies* and 1322 *decies* § 1); or
- the defendant has his or her domicile or habitual residence, if the child is not present in Belgium: this solution provides for proceedings for recognition and enforcement of a decision delivered in another Member State (Article 633 *septies*).

This concentration of jurisdiction, with a view to the specialisation of judges, should enable Belgium to meet its international obligations in the best possible manner.

4. Bulgaria

By Judge Bogdana JELIAVSKA, Vice President of the Sofia City Court, Sofia, Bulgaria[13]

The Republic of Bulgaria has been a Contracting State to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter the 1980 Child Abduction Convention) since 2003, when this instrument was officially ratified by a law published in the State Gazette, 20/04.03.2003, including a declaration pursuant to Article 6 for the designation of the Ministry of Justice as the Central Authority, and a reservation in accordance with Article 26(2).

From the date of ratification of the 1980 Child Abduction Convention (when national implementation was commenced) until 2007, cases based on this international instrument – which were of a small number (14 cases in five years) – developed and were resolved procedurally according to the general rules of the Civil Procedure Code, sometimes generating significant delay, based on the ordinary procedural rules of the Code.

Procedural rules currently in force were created by a 2007 amendment to the Child Protection Act of 2000 and are found in Article 22(a) to (g) of the rules and, together with the 1980 Child Abduction Convention, now form the legislative frame regarding child abduction in Bulgaria.

With the amended rules the Regional Court of Sofia (Sofia City Court) received exclusive jurisdiction in Child Abduction Convention cases. Thus, from the outset of the development of special procedural rules, concentration of jurisdiction was instituted, also covering cases under the *Luxemburg Convention of 20 May 1980, on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children* and the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*.

This legislative decision was born from the need to develop and apply, in cases as complex and complicated as the illicit removal or retention of children, similar criteria and standards in order to first seek to understand, and then to respond to the objectives of the 1980 Child Abduction Convention – protection of the rights of custody, always respecting the child's best interest.

The current procedural rules implementing the 1980 Child Abduction Convention are, as previously mentioned, in the Child Protection Act, Chapter 3, Article 22(a) to (g). As provided, applications are submitted by the interested party directly to the Sofia Regional Court or through the Central Authority, the Ministry of Justice. The Court has exclusive jurisdiction, regardless of the city or region where the alleged abductor and the child are located at the time of the submission of the application under the Convention. The procedural rules are clear and the legislator has created a shortened, abbreviated procedure in order to try to meet the deadlines set out in the Convention.

In the first five years subsequent to ratification of the 1980 Child Abduction Convention, all first instance judges of the Sofia Regional Court (which formed part of the Civil Section) dealt with cases of illicit removal or non-return of children, whether they were judges of family or civil matters.

In 2009 the organisation of the Court was changed, providing competence on child abduction matters only to family law judges and thus creating a specialised Section for both domestic and international family law disputes.

At present, based on the practice of this Section, judges are endeavouring to create unified standards for the application of the 1980 Child Abduction Convention – a rather difficult task, taking into account the complexity of the subject, both in the field of sociology, and in the application of private international law. But gradually, over time, practice is improving.

In the period between 2007 and 2009, 26 cases were completed at the Sofia Regional Court. The judges applied the return mechanism of the 1980 Child Abduction Convention in only five of these cases, where children were returned to the left-behind parent. In the other 21 cases where judges denied return, they used a variety of exceptions and applied different criteria, giving the impression that the judges were not familiar with the Convention nor its objectives, and were without relevant previous experience in both domestic family law and in international family disputes. They obviously found it difficult to find the right solution.

After the 2009 reforms by the Presidency of the Court, according to which child abduction cases based on the 1980 Child Abduction Convention were given to judges of the Family Section, the creation of Bulgarian judicial practice in this area began – judicial practice that not only took place in a single court, but also in a specialised section of this court.

Bulgaria is a small European country and thus probably for this reason does not have a high volume of cases under the

[13] The author is the member of the International Hague Network of Judges for Bulgaria.

1980 Child Abduction Convention in comparison with other larger countries and with those with more of a tradition in the field of international marital disputes. But as a result of the free movement of persons and open borders at both the European and global levels – as well as a significant increase of cross-border marriages – cases of illicit removal and non-return of children have also increased by a large percentage in recent years. Thus, in a period of just three years – between 2009 and 2012 – the Sofia Regional Court has had 38 cases from different countries, including the United States of America, the Netherlands, Norway, Australia, Spain, France, Greece, Italy, Slovenia, Belgium, the United Kingdom, Luxembourg and Denmark.

In five of the cases, judges ordered the closing of the procedure because the application was withdrawn by the parent who had requested the return, citing reasons of absence of an illicit removal or on the basis of the interests of the child.

In 20 cases the application was rejected with reasons of a different nature: from not meeting the requirements of Article 3, through to the application of Article 13(a) and 13(b), to even the application of the exception of Art 20 of the 1980 Child Abduction Convention relating to the protection of human rights and fundamental freedoms.

In the remaining cases the return of the child was ordered.

Concentration of jurisdiction, in particular among judges of the Family Section of the Sofia Regional Court, which has exclusive jurisdiction in matters under the 1980 Child Abduction Convention, has led to the following practical results:

- judgments for Child Abduction Convention cases given after 2009 are based on the practical experience of the judges of the Family Section;
- judges have started using unified criteria for the application of the Convention;
- the quality of judicial decisions has improved significantly, even as to the application of general rules of private international law and, in particular, with respect to the Convention itself;
- complexity has been evidenced in cases of child abduction, sociologically and legally speaking, pointing to the need for the continuous training of judges, in order to gain foreign legal experience, and to become familiar with good practice guides and various private international law instruments; and,
- it has become evident that cases where the Convention is applied require more time and effort on the part of judges, compared to domestic family disputes, and thus a reform in the organisation of the work in the Section is needed. For instance, to develop new criteria for the distribution of child abduction cases and other family cases, to change how hearings are scheduled, to increase the number of judges and officials in the Section, etc.

As provided for in the current procedural law, appeals of judgments from the Sofia Regional Court are permitted within 14 days after notice is given, solely and exclusively at the Court of Appeal of Sofia.

Unfortunately, there is no specialisation among judges in the appeal court, and cases are distributed among all civil judges. As a result, in most disputes, judicial practice of the Court of Appeal of Sofia is different depending on the chamber hearing the case. Practice is often contradictory, and this fact, taking into account the impossibility of appealing the second instance decision, can cause serious problems, resulting even in danger for the children involved.

Therefore, it will be necessary to change the organisation of the second instance court to ensure that cases are heard by specialised judges, thus allowing appropriate formation and the concentration of jurisdiction in specialised courts only.

To conclude this brief study of Bulgarian judicial practice in applying the 1980 Child Abduction Convention, we can deduce that in our country there is a concentration of cases in the Family Section of the Sofia Regional Court under the Child Protection Act which has led, over time, to good results.

We still have much work and study to do. But most importantly, as a result of the systematic application of the 1980 Child Abduction Convention, the judges of the Family Section have begun to understand its purpose, and the need to act quickly and in a responsible way, always in the public interest – that is, with respect for the law and the protection of rights of custody based on what is most important, the interest of children. Because the Convention was adopted for all – for children, parents, and the world community – it must be respected and applied to defend the rights of each of us in the free, democratic and modern world of the 21st Century.

5. Canada

By The Honourable Justice Robyn M. DIAMOND, Court of Queen's Bench of Manitoba, Winnipeg, Canada[14]

In Canada, there are three Networks of Judges who are responsible for the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter the 1980 Child Abduction Convention). These are the Special Committee on International Child Protection, the Canadian Network of Contact Judges for inter-jurisdiction cases of child protection (Superior Court Trial Level) and the Inter-jurisdictional and Inter-provincial Child Abduction Contact Judges (Provincial Court Trial Level).

In September 2006, the Canadian Judicial Council approved the establishment of the Special Committee on International Parental Child Abduction. This Committee is composed of:

> *"Two Liaison Judges for Canada who will be part of an International Network of Liaison Judges promoted by the Fourth Special Commission of The Hague Conference on Private International Law under the auspices of The Hague Convention on the Civil Aspects of International Child Abduction."*

[14] The author is a Member of the International Hague Network of Judges for Canada.

At that time, Justice Jacques Chamberland, of the Quebec Court of Appeal, and I were appointed the two members of this Special Committee, Justice Chamberland being appointed for the civil law system (Quebec), and myself appointed for the common law system (the other 9 provinces and 3 territories). Both of us have continued to be Canada's two representatives on the International Hague Network of Judges.

In April 2007, the Canadian Judicial Council also approved the establishment of the Canadian Network of Contact Judges (Trial Level) as part of the Trial Courts Committee Family Law Subcommittee. This Network, which I chair, is made up of trial judges, representing every provincial and territorial Superior Court in Canada, and was established to deal with issues of inter-jurisdictional parental child abduction and cases of child custody, whether inter-provincial or international.

In many parts of Canada there is concurrent jurisdiction between the Superior Court and Provincial Courts in cases of inter-jurisdictional custody matters. On 8 June 2008, the Canadian Council of Chief Judges approved the establishment of a Network of Provincial Court Judges with each Chief Judge designating a provincial contact person for Hague Convention applications. Associate Chief Judge Nancy Phillips of British Columbia Provincial Court has been appointed as the Liaison for the Provincial Court Judges with the Canadian Network of Contact Judges.

The establishment of these three networks of judges in Canada is a significant accomplishment, particularly in light of the constitutional structure and size of Canada. In Canada we have 13 provinces and territories, each of which has their own individually federally appointed trial court as well as provincially appointed trial court. Depending on the nature of the family matter, family law cases may be heard at both levels of courts in some provinces and territories. The establishment of these three networks was made possible through formal resolutions passed and supported by every Chief Justice and Chief Judge of all federally and provincially appointed trial courts within Canada.

In 2009, the Terms of Reference for both the Special Committee on International Child Abduction and the Canadian Network of Contact Judges were expanded with the names changed to "The Special Committee on International Child Protection" and "The Canadian Network of Contact Judges for Inter-Jurisdictional Cases of Child Protection". This reflects the increased mandate to include the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, the *Hague 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* and the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance*, in addition to the 1980 Child Abduction Convention.

The members of the two Networks of Trial Judges work closely together in the development of protocols and educational programs. These protocols have included a Procedural Protocol for the handling of return applications under the 1980 Child Abduction Convention designed to expedite Hague return applications as well as the formulation of Guidelines for Direct Judicial Communications.

Where there are requests for a judicial communication in international cases, in the case of a Canadian judge wishing to have contact with an international judge, that Canadian judge would contact their provincial Network Judge, who in the case of Quebec, would contact Justice Chamberland, and for the rest of Canada, would contact me. Justice Chamberland and I would then facilitate communication between the initiating Canadian judge and the appropriate International Hague Network Judge in the other jurisdiction. That International Hague Network Judge would then forward the request for communication to the appropriate seized judge in their jurisdiction. Similarly, when a request is received from a member of the International Hague Network of Judges for communication with a Canadian Judge, in the case of Quebec, the request is made to Justice Chamberland and for the rest of Canada the request is made to me. Upon receiving the request, we would then contact the appropriate Canadian Network Judge who would facilitate communication with the seized judge in their province or territory.

Since the establishment of these Networks there have been a growing number of situations that have illustrated the importance of judicial networking and cross border collaboration. The importance of judicial communication, cooperation, consultation, collaboration both internationally and inter-provincially, have resulted in cases of parental child abduction being resolved in an efficient and speedy manner as contemplated by the 1980 Child Abduction Convention. Since we have established this protocol, I have personally been involved in approximately 20 international cases where I have facilitated direct judicial communications.

These experiences illustrate that the Canadian judicial model, being the two International Hague Network Judges, along with the Canadian Network of Contact Judges and the Provincial Network of Contact Judges, works well but also that the International Hague Network of Judges works well and is extremely efficient. Having attended a number of international conferences with members of the International Hague Network of Judges, I am able to verify their identities and the legitimacy of their requests to my Canadian colleagues without hesitation. International meetings have proven invaluable as they foster working relationships and instil levels of trust among judges throughout the world, who at some point in the future will probably be in contact with each other pertaining to individual cases.

In recognition of the importance and need for Canadian judges to receive appropriate training in the handling of these types of matters, some members of the Canadian Network of Contact Judges have, along with the National Judicial Institute of Canada, produced an educational module that has been presented to Canadian judges throughout the country. An integral part of this educational module is The Hague Convention Electronic Bench Book (EBB) which was co-written by some members of the Canadian Network of Contact Judges. This EBB provides a broad analytical framework and practical step by step suggestions for both case

management and return hearings. This EBB was distributed to Canadian judges in the fall of 2011. In the fall of 2012, as a result of requests received from international colleagues to have access to this EBB, it was made available for distribution to non-Canadian judges through the following email account: thehague@nji.in.ca. A link to the EBB is then provided by the National Judicial Institute of Canada.

6. Hong Kong, Special Administrative Region, People's Republic of China

By Deputy High Court Judge Bebe Pui Ying CHU, Court of First Instance, High Court, Hong Kong Special Administrative Region, Hong Kong[15]

General background

The legal system in Hong Kong is one based on common law principles. Most of our matrimonial and family legislation originated from those in England & Wales, save for provisions which relate to Chinese customary law. Since Hong Kong became a Special Administrative Region of the People's Republic of China on 1 July 1997, all matrimonial and family law in force in Hong Kong previously, including common law, have been maintained. Further, after 1 July 1997, as both Chinese and English are official languages, court trials can be conducted in either language.

There are currently 5 levels of courts in Hong Kong, with the Court of Final Appeal being the highest, as follows:

(i) Court of Final Appeal;
(ii) Court of Appeal of the High Court ;
(iii) Court of First Instance of the High Court (previously called the Supreme Court);
(iv) District Court;
(v) Magistrates' Courts, the Coroner's Court, the Juvenile Court, and various Tribunals;

Historically, and up until about 1972, jurisdiction in matrimonial causes such as divorce, nullity and judicial separation and for those child custody and financial matters arising in matrimonial causes proceedings laid exclusively with the then Supreme Court, now the Court of First Instance of the High Court, although the Magistrates' Courts also had some limited jurisdiction in dealing with certain types of separation and maintenance orders and child custody matters.

District Court

In 1972, through legislative amendments, jurisdiction to hear and determine a matrimonial cause was for the first time conferred on the District Court. While the matrimonial causes proceedings would be dealt with by a Judge of the District Court, financial applications were at that time dealt with not by Judges but by Registrars / Deputy Registrars, or later called Masters in the then Supreme Court.

[15] The author is a member of the International Hague Network of Judges for Hong Kong, Special Administrative Region.

At about the same time, jurisdiction for the applications for other separation and maintenance orders and child custody matters previously dealt with in the Magistrates' Courts was also transferred to the District Court.

By the second half of the 1970's, it was becoming apparent that the length and complexity of family cases, in particular those involving the ancillary issues of custody and financial provision, were increasing.

This resulted in a separate Family Registry Office being created in the District Court Registry in November 1976 with an administration staff to deal with the administration side of family cases.

It was also during this time that appeals were first made by the family law practitioners to the then Chief Justice for the setting up of a specialized Family Court.

Subsequently, on 1 March 1983, amendments to the then legislation were introduced making it mandatory for a matrimonial cause and any other proceedings under our Matrimonial Causes Ordinance to be commenced in the District Court, subject to the power of the District Court to transfer proceedings to the Court of First Instance of the High Court.

Although this was seen at the time as a "downgrading" of the family jurisdiction, concrete steps were taken by the Judiciary at about the same time to create a specialized section in the District Court for family cases. As a result, a 'notional' Family Court was established within the District Court, with two Judges assigned by the then Chief Justice to hear only matrimonial and family cases, including financial applications formerly heard by the Masters, and also private children cases.

There was no special legislation, or any rules of court or any practice directions providing for the establishment of the "notional" Family Court, although those two Judges became known as "Family Judges". At that time, the two Judges were "selected" from among the judges in the District Court taking into account their past experience in family cases and their indication of interest in hearing family cases.

The designation of these two Family Judges heralded the beginning of the concentration of family jurisdiction in the District Court.

Due to the heavy workload in the Family Court, the number of Family Judges increased to four by 1994. During that year, there was a renewed joint appeal from the Family Law Association, the Bar Association and the Law Society of Hong Kong in relation to the establishment of a 'formalised" Family Court.

In 1995, recognizing the growth of family cases and the need for further strengthening of the Family Court, the then Chief Justice, for the first time, appointed a private practitioner specializing in family cases to become a Family Judge. This was followed by the appointment of another private practitioner specializing in family cases in 2003, and a third one in 2007. In July 2006, one of the Family Judges was appointed the Judge in Charge of the

Family Court, who was subsequently appointed the Principal Family Court Judge when the post was created in September 2009. This was generally regarded by the practitioners to be a further recognition of the importance of family cases.

Notwithstanding all the above steps, up until now, there has been no formal set up of a Family Court, although since the early 1990s, the section of the District Court dealing with family cases has been commonly known as the Family Court. With the concentration of jurisdiction, a 'docket system' was also adopted. This means once a Family Judge has been allocated a family case, all matters / applications in that case will thereafter be dealt with by the "docket" judge, whether the matter concerns applications for custody / access / maintenance of a child, or property division / financial provisions for a spouse. Allocations of cases at the Family Court level have been regarded as part of an administrative process and normally a Family Registry administrative staff will distribute them according to the availability of each Judge, and whether the case is more appropriate for a bilingual judge who is conversant in both English and Chinese languages, or a monolingual judge who is only conversant in English.

In February 2009, during our Civil Justice Reform, a new practice direction was introduced, which provided a definition of the "Family Court" for the first time, as being the division of the District Court which is assigned by the Chief Justice to deal with matrimonial and / or family Proceedings.

So far, the 'informal' concentration of family jurisdiction has worked well. At present, there are a total of 9 Family Judges in the District Court, who hear exclusively family cases, and these include applications for divorces / separations, child custody and access, parental orders, relocations, adoptions, protective orders under our domestic violence legislations, all financial applications, whether for a child or a spouse, and all enforcement proceedings as well.

Currently, neither the *Hague 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* nor the *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* has been brought into effect in Hong Kong. If they are brought in, it is anticipated that jurisdiction to deal with matters arising under these two conventions may also lie with the Family Court.

Court of First Instance of the High Court

After 1 March 1983, with the transfer of the bulk of the family work to the District Court, the number of matrimonial / family cases being dealt with in the Court of First Instance of the High Court has gradually decreased, even though family matters of high complexity can be transferred to the Court of First Instance of High Court by the Family Court.

Notwithstanding the above transfer of the bulk of family work to the District Court in 1983, some children matters have remained in the exclusive jurisdiction of the High Court, such as Wardship and other inherent jurisdiction proceedings.

Our Child Abduction and Custody Ordinance came into effect in September 1997. This gives effect to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*. The Court of First Instance in the High Court was conferred exclusive jurisdiction to hear child abduction applications under this ordinance.

Subsequent thereto, to deal with the increased work in this specialized area of family law, in November 1999, a Judge sitting in the High Court with experience in family cases was designated to be the Judge in Charge of the Family Cases List in the High Court, together with another Deputy High Court Judge. The workload was shared between them at that time, and other Judges as assigned and allocated by the Judge in Charge. The Judge in Charge was also appointed to be our representative in the Hague Network of Judges.

In 2004, our Adoption Ordinance was amended to include intercountry adoptions and to give effect to the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption*. While local adoptions are dealt with by the Family Court, the Court of First Instance in the High Court was conferred exclusive jurisdiction to deal with intercountry and / or Convention Adoptions.

Our current Judge in Charge of the High Court Family Cases List was appointed in July 2011. After his appointment, further efforts have been made to create a concentration of family jurisdiction in the High Court. Now, there is a "pool" of 7 judges of the Court of First Instance in the High Court designated to hear family cases in the High Court. A "docket" system has also been adopted for the family cases in the High Court. As there are not enough family cases in the High Court to justify a specialized division, the 7 Judges also hear other cases in the High Court. The family cases in the High Court are allocated to the individual judge by the Judge in Charge.

Court of Appeal of the High Court

There is no particular concentration of jurisdiction, although there are Justices of Appeal who have had experience in family cases and the family appeals are usually fixed before them.

Court of Final Appeal

There were only very few family cases which managed to reach our highest court in the past years. There is no concentration of jurisdiction at that level.

Conclusion

Unlike some other jurisdictions, we do not have a formal specialized Family Court consisting of different levels of courts. The workload particularly at the High Court level does not justify the establishment of a specialized "Family Division". It is found that the present arrangement of having a Family Court only at the District Court level, with a pool of experienced judges in the High Court, both at the Court of First Instance and the Court of Appeal level, doing family cases, has been working satisfactorily.

The 9 Family Judges in the Family Court have regular meetings about once a month when they will review and discuss any problems relating to the Family Court. The Judges in the High Court dealing with family cases also meet from time to time.

Our Chief Justice has also set up various committees relating to family work, such as the Family Court Users Committee, Working Group on Children and Ancillary Relief Procedures in Family Proceedings and a Working Party on Family Procedure Rules. Members of these committees include Judges in the High Court, Family Court Judges, practitioners dealing with family cases, representatives from the Social Welfare Department and our Department of Justice.

The main benefits of concentration of jurisdiction, so far as Hong Kong is concerned, are as follows:

(i) The 'docket' system enables the handling judge to be familiar with a case and to achieve effective case management;
(ii) As there is no formal training programme for new judges to the Family Court, the regular meetings between the Family Judges provide an opportunity for experience and information sharing among colleagues. These meetings are helpful in reducing inconsistencies in approaches particularly in areas where there is a wide judicial discretion.

7. Cyprus

By The Honourable Justice George A. SERGHIDES, President of the Family Court of Nicosia-Kyrenia[16]

Introduction

Cyprus became a member of the European Union on the 1st May 2004. It ratified the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter the 1980 Child Abduction Convention) by Law 11(III)/1994 and the *Hague 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* (hereinafter the 1996 Child Protection Convention) by Law 24(III)/2004.

Concentration of jurisdiction in children matters is a very important matter for Cyprus, since Cyprus is perhaps one of the very few countries in Europe which had ratified the 1996 Child Protection Convention, where there had flourished and are still, to a lesser degree, operating interpersonal conflict of laws rules regarding jurisdiction and applicable law in regard to family disputes. The plurality of different courts and systems of laws in a country is a phenomenon different from the concentration of jurisdiction. It is a kind of fragmentation. That was the situation in Cyprus in the past, where they had been operating religious courts, communal courts and secular courts.

[16] The author is a member of the International Hague Network of Judges for Cyprus, Ph.D. (*Exon*), U.K., Ph.D. (Athens), Ph.D. (Salonica), formerly Adjunct Law Professor at the University of Cyprus.

Despite its long history of internal conflict of laws, Cyprus has managed eventually to achieve concentration of jurisdiction as to children cases.

Concentration of jurisdiction in Cyprus before and after the ratification of the 1980 Hague Child Abduction Convention

In Cyprus, not only after but also before the ratification of the 1980 Child Abduction Convention in 1994, there was concentration of jurisdiction in children matters.

In 1989, a reform was effected in Cyprus family law. In 1983, a lawmaking Committee for the modernization of the Cyprus family law had been appointed by the then Minister of Justice, presided by a member of the Supreme Court. After completing its task, in January 1987, the Committee presented to the Council of Ministers a report with suggestions for reforming the family system of law in Cyprus. What followed since 1989, was the amendment of the relevant article of the Constitution (art. 111), the abolition of the ecclesiastical courts and the establishment of the Family Court and later on the Family Courts of three religious groups, the Maronite, the Latin and the Armenian. The substantial family law was completely reformed and is still receiving amendments, based on modern principles and criteria, being a child-centred law.

A specialized Family Court has been established since the 1st of June 1990. However, over the years and due to the rapid increase of the number of the family cases, the number of the Family Courts has increased. To-day, there are operating three Family Courts in Cyprus: the Family Court of Nicosia-Kyrenia, the Family Court of Limassol-Paphos and the Family Court of Larnaca-Famagusta, each of them having local and international jurisdiction, including child abduction cases.

Unlike divorce cases, where a Family Court is composed of three Judges presided by the President, a single Family Judge (not excluding the President of the Court) may hear any of the other family disputes, including the abduction of children cases.

Until 1998, the Family Courts had jurisdiction only in regard to family matters of Cypriot citizens who were members of the Greek Community and also members of the Greek Orthodox Church. Until that year, apart from the Family Courts, there had been operating in Cyprus the Family Court of the Maronite religious group, the Family Court of the Roman Catholic (Latin) religious group and the Family Court of the Armenian religious group.

However, in 1998, the jurisdiction of the Family Courts of the religious groups was confined by virtue of Law 26(I)/1998 and Law 22(I)/1998 only to petitions of divorce and for the use of the matrimonial home. All the rest of their family jurisdiction including children cases, and of course abduction cases, was transferred to the Family Courts. Also, by Law 26(I)/1998, the family jurisdiction of the District Courts over mixed marriages (*i.e.*, parties of different religions or different nationalities) was transferred to the Family Courts. This Law, promoted the concentration of

jurisdiction in children's cases. The case law, also, played an important role in the development of concentration, as the relevant sections of the amendment Law were interpreted so as to leave no doubt as to the transfer of the jurisdiction of the Family Courts of the religious groups as well as of the District Courts to the Family Courts. (*Vide, Christodoulidou v. Toumaian,* (2007) 1(B) CLR 1024, a judgment of the plenary of the Supreme Court (in Greek), *Damtsa v. Damtsas*, (2006) 1 CLR 1389, a judgment of the Family Court of second instance (in Greek), and *Toumaian v. Christodoulidou*, (2009) 1(B) CLR 881, a judgment of the Family Court of second instance (in Greek)).

Especially due to the above law reform, as rightly put it by the Family Court of second instance in *Niazi Siougrou v. Ulrich*, App. No. 27/09, 10/3/11 (not reported in CLR - in Greek), following the views on the matter of Law Professor, Nikitas Hadjimichael (see Lysias, "Comments on *Christodoulidou v. Toumaian*" (in Greek), Jul.-Dec., 2008, year 1st, issue no. 1st (new series), p. 43 et seq., 47), the Family Courts in Cyprus are "Courts" and not "Tribunals". The Family Courts were further described in *Niazi Siougrou* by the Family Court of second instance, as "superior (or general) courts of limited (or specific) jurisdiction", as opposed to the District Courts, which are "general courts of general jurisdiction". In *Toumaian*, the Supreme Court confirmed that the Cyprus Family Courts were transformed eventually from "Greek Communal Courts" to "general courts of specific jurisdiction" (see also Hadjimichael, op. cit. p. 47 and *Niazi Siougrou, op. cit.*).

The only children cases which *ratione personae* fall under the jurisdiction of the Presidents of the Districts Courts which superseded temporarily, by the Law of Necessity, the Turkish Communal Courts, are the cases where both parties are members of the Turkish Community and citizens of the Republic (Law 120(I)/2003). However, so far, there have been no cases where there was an alleged abduction of a child born by parents belonging to the Turkish Community with ordinary residence in the south part of Cyprus (*i.e.*, the non-occupied by the Turkish military forces part). Under article 7(a) of the Cyprus Constitution, "a married woman shall belong to the Community to which her husband belongs". So, a Turkish woman who marries a Greek man and either of them abducts their child, falls within the jurisdiction of the Family Courts.

The number of all the Family Court Judges, including the three Presidents, is ten, a number relatively small, comparing it with the much bigger number of District Court Judges which currently is seventy. The Family Judges are specialized Judges and they are handling only family cases and not any other civil cases, or any criminal cases, except *quasi* criminal cases, concerning contempt of court orders, issued on various family disputes. The abduction of children, as a criminal offence, is within the jurisdiction of the District Courts and not the Family Courts. By the new section 245A of the Cyprus Criminal Code, Cap. 154, as amended by Law 70(I)/2008, the abduction of a child by one of its parents outside the Republic of Cyprus, is considered an offence. An appeal from a Family Court of first instance is to the Family Court of second instance, which is composed of three Judges of the Supreme Court, sitting in this jurisdiction by rotation, every two years.

The Judges of the Supreme Court are appointed by the President of the Republic of Cyprus almost invariably in practice, following the recommendation of the Supreme Court, on seniority, from the body of the District Courts Judges, and never from the body of the Family Court Judges, who are the only Judges specialized on family law. Law 33/1964 does not place any restrictions for the appointment of the Supreme Court Judges other than the requirement of practice for twelve years as a lawyer or as a judge and being of a high standard. Since the Law does not distinguish between generalist and specialist judges and between generalist and specialist advocates, there is no reason for Judges of the Supreme Court to be appointed only from the body of the District Court Judges and not also from the body of Family Court Judges, so as to enable specialist Judges to sit eventually in the Family Court of the second instance. This approach is in line with article 53 of the *Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialisation of Judges*, which provides that: "The guiding principle should be to treat specialist judges with respect to their status in no way differently from generalist judges. Laws and rules governing appointment, tenure, promotion, irremovability and discipline should therefore be the same for the specialist as for the generalist judges". If a country, in this instance Cyprus, considers it important to have specialised family courts, the whole logic of specialisation and consistency of case law on a specialised field of law would be defeated, if expertise would not cover all judicial tiers.

The Cyprus Central Authority dealing with abduction cases is the Ministry of Justice and Public Order, which is represented by a specialised senior counsel of the Attorney General's Office.

Cyprus, participates in the judicial network established under the 1980 Child Abduction Convention, by having since the 19th of May 2000 an International Hague Network Judge with the duty, *inter alia*, of exchanging information on domestic law with Liaison Judges of other countries.

Domestic procedure to expedite Hague child abduction applications' hearings

Since 2002, there has been in Cyprus an expeditious procedure regarding child abduction applications. This procedure which is applicable by the Family Courts has been enacted to meet the needs of the immediate return of a child under the 1980 Child Abduction Convention. It is regulated by Regulation 7A of the Family Courts Procedural Regulation of 1990 (PR 2/1990), which was effected by an addition made to the basic Procedural Regulation 2/1990 on the 2nd of May 2002 by the Procedural (Amendment) Regulation 23/2002. Regulation 7A was made after my suggestion as a Liaison Judge of Cyprus in Child Abduction Cases to the Supreme Court.

According to para. (2) of the said Regulation 7A, the time for filing an objection to the application is seven days from the day of service. According to para. (4) of the Regulation 7A, the hearing of the application is limited to the facts mentioned in affidavits supporting the pleadings, including supplementary affidavits if allowed by the Court for good reason (para. 3). Though they can offer no oral evidence, the parties have the right to cross-examine the deponents of the other side (para.

(4)). Paragraph (5) foresees the possibility of an appeal which must be filed within 14 days from the day of the pronouncement of the decision. Before Regulation 7A, the procedure followed for child abduction cases was similar to any other civil case, thus permitting oral evidence and with extended periods of filing defence (15 days) and an appeal (42 days).

The benefits resulting from concentration of jurisdiction

In my experience, as a Judge and President of the Family Court in Cyprus for the last 23 years (since the establishment of the Family Court) and as a Liaison Judge for Cyprus for the last 13 years, concentration of jurisdiction, especially for Hague Convention child abduction cases, has significant benefits.

First of all, concentration of jurisdiction furthers certainty and is a shield against confusion. Certainty as to which is the competent court and which is the law applicable, internally, is of the utmost importance in dealing with family and especially children cases.

Concentration enables the Court to consider child abduction cases urgent or as an emergency, something which is needed by their nature for the protection of children.

It enables specialisation and expertise to be built through experience. Handling more cases leads to more expertise, and more expertise leads to a more speedy trial as well as a more child-friendly justice.

Furthermore, experience and expertise lead to a better understanding of the human nature and the needs and interests of the children.

Lastly, concentration of jurisdiction and expertise provide consistency in the case law and give people greater confidence in trusting justice and its institutions.

8. The Dominican Republic

By Antonia Josefina GRULLÓN BLANDINO, Court of Children and Adolescents, National District, Civil Chamber, Santo Domingo, Dominican Republic[17]

Resolution 480-2008

The National Congress of the Dominican Republic ratified the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter the 1980 Child Abduction Convention) in May 2004. Until then, Dominican Law 136-03 (Code for the Protection and Fundamental Rights of Children and Adolescents) lacked a procedure that allowed for the prompt hearing of and ruling on cases involving international child abduction.

On 6 March 2008 our Supreme Court issued Resolution 480-08 where it clearly established a procedure for hearing such cases in courts for children and adolescents in the Dominican Republic.

The Dominican Republic has had two important phases over the course of this history, pertaining to hearings, duration of the legal process and judgments of the courts in relation to applications for the return of minors.

Before Resolution 480-08

Only Article 110 of our Law 136-03 (Code for the Protection and Fundamental Rights of Children and Adolescents) referred to cases of a wrongly removed and / or retained child from his or her habitual residence. Article 110 determined that the Public Prosecutor is the authority designated to return the child to its guardian or person who has the rights of custody. The judicial approach developed in the following manner:

1. Lack of judge's knowledge of the tools necessary for the hearing of these cases: In the event of a child's abduction or illegal retention, the judges, in their rulings, limited the ruling by only deciding to send the case to the Public Prosecutor as the institutional body in charge of the case. Also, they had the authority to decide on matters beyond the return of the child to its habitual residence, such as custody issues, guardianship and visitation rights.

2. Duration of the procedure in the courts: The hearing process was dealt with on par with any other case, without any limitation in terms of timeframe or promptness, making it possible for a case to be heard at each instance of the Dominican judicial system including the Supreme Court, where it might take a year or more in order to have a ruling.

3. Absence of the Central Authority's participation in most cases: The *Consejo Nacional para la Niñez (CONANI)* [National Council for Children] was designated in 2004, and in 2005 the recommended form for return applications, developed at the Hague Conference, began to be used. The majority of the applicants used to go directly to the courts and there was therefore an absence of the Central Authority's participation or even knowledge of the case.

After Resolution 480-08 came into effect

1. Concentration of jurisdiction for the hearing of these cases: Jurisdiction is clearly established by designating the courts for children and adolescents in the territory where the child subject to the retention or abduction is located.

2. Participation of the Central Authority in the investigation process and hearings: The resolution establishes that the Public Prosecutor and the Central Authority (CONANI) should be present at the hearings.

3. The duration of the process in the courts: Statistics have shown that in 2011 and 2012, the average timeframe for the hearing and decisions for these types of cases was two to four months.

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4. Ongoing training and courses for judges of child and adolescent courts in the *Escuela de la Judicatura* [School of the Judiciary], therefore guaranteeing that these cases are being heard and decided by professionals duly trained and given the necessary tools and knowledge to make decisions according to the principles of the 1980 Child Abduction Convention.

5. The resolution clearly establishes that rulings only relate to whether the child is returned or not, excluding decisions pertaining to any other issues.

6. Appeal of the decision rendered at the first instance is the only recourse to appeal which is allowed.

In general terms, the benefits of the concentration of jurisdiction that resolution 408-08 establishes are:

1. Jurisdiction, substantive and territorial, is clearly established in order to hear these cases.

2. Trained and prepared judges hear the cases.

3. The timeframe for the resolution of these cases has been reduced.

4. The presence of the Public Prosecutor's Office and Central Authority in every hearing is guaranteed.

5. There are guarantees that procedures follow the mechanisms foreseen under the 1980 Child Abduction Convention, with utilisation of the Central Authority.

6. The applicant is always represented by either the Central Authority or by other private legal assistance.

9. Finland

By Justice Elisabeth BYGGLIN, Helsinki Court of Appeal, Helsinki, Finland[18]

Finland ratified the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter the 1980 Child Abduction Convention) in 1994. The Convention was implemented by adopting Finnish internal law provisions, as well as inserting the provisions of the Convention into the Finnish Child Custody Act. The aim of the implementation was to make the application of the Convention as effective as possible. In matters concerning child abductions involving Member States of the European Union, the Brussels IIa Regulation also must be taken into account in Finland.

The Finnish government considered it important to ensure consistent interpretation of the legislation. Due to the required specialist knowledge in the field, the urgent nature of the return applications and the limited number of the applications, jurisdiction was concentrated to one Court of Appeal. The Court of Appeal of Helsinki is the only competent Court in Finland to receive applications and make orders for the return of children under the Convention. The Court of Appeal of Helsinki also has jurisdiction in matters concerning recognition and enforcement of decisions given in foreign countries relating to dissolutions of marriage, paternity suits, adoptions, child custody orders, and child maintenance.

There are seven chambers at the Court of Appeal in Helsinki. All the 1980 Child Abduction Convention return applications are allocated to one chamber that is specialised in the subject matter. Within the chamber, applications are immediately allocated to one of the judges and one of the legal secretaries trained in abduction law. Four of the eight judges in the chamber are at the moment appointed to be in charge of Convention cases concerning applications for the return of a child. The judge in charge of a specific case is responsible for the matter from the moment the application is filed to the time of the rendering of the final decision. The matters are decided by three judges, and recent years have seen some increase in the number of oral hearings.

An order to return a child is immediately enforceable. The Supreme Court may, however, order that further enforcement shall be postponed. An appeal against an order to return a child can be made to the Supreme Court within 14 days of the decision of the Court of Appeal. If the Court of Appeal has rejected the application for return of a child an appeal to the Supreme Court can be made within 30 days from the date of the decision of the Court of Appeal.

The concentration of jurisdiction for 1980 Child Abduction Convention cases seems to have achieved the goals set by the legislator. The fact that the judges who handle the return proceedings are specialised in the subject matters ensures that the application of the Convention is efficient and speedy in practice. The persons involved in the process within the judiciary are familiar with the law, the relevant international practice and practical arrangements in similar cases and are therefore immediately ready to concentrate on scrutinising and resolving the problems in the specific case at hand. Further, the concentration of jurisdiction to one court can be seen to guarantee a certain consistency in interpretation of the Convention. The fact that only one chamber at the Court of Appeal in Helsinki handles the applications has further contributed to the efficient handling of the matters.

The Ministry of Justice has on 25 April 2013 appointed a working group to analyse the current situation and make proposals as to any amendments possibly needed in the legislation relating to, *inter alia*, the jurisdiction of the proceedings concerning the return of a child under the 1980 Child Abduction Convention. The task of the working group includes the question of whether there is a need to amend the judicial system in these cases to be more in line with how ordinary civil cases are handled. The aim of any possible legislative reform is to reduce the quantity of work that is required to handle return proceedings and to provide a more rational and appropriate division of the workload between different Courts without jeopardizing legal protections. According to the directives given to the working group, possible amendments should take into account the need to handle decisions for the return of a child in a speedy

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manner and the need to ensure necessary specialised expertise.

The concentration of applications at one court as well as the concentration to the Court of Appeal of Helsinki seems to have been a good solution in many ways. One alternative solution, which has been mentioned, would be to concentrate the jurisdiction to one District Court instead of the Court of Appeal of Helsinki. This District Court would probably be the District Court of Helsinki, where some specialised judges would be appointed to handle the matters. As is the case with ordinary civil and criminal matters, the decisions of the District Court could then be appealed to the Court of Appeal of Helsinki. The time limit for filing an appeal could be the same as it is presently, *i.e.* shorter than in ordinary civil or criminal cases. Corresponding to other civil and criminal cases, an appeal from the Court of Appeal to the Supreme Court would require that the Supreme Court grant leave to appeal. From the point of view of the Supreme Court the advantage would be that there would be no direct appeal from the Court of Appeal to the Supreme Court and the appeal system would therefore be in conformity with that of ordinary civil cases. Such a solution would however have little impact on the workload at the Court of Appeal due to the low number of abduction cases, but could on the other hand perhaps prolong the total duration of proceedings. It will be interesting to see what solutions the working group will propose.

10. France

By Mrs. Isabelle GUYON-RENARD, Auxiliary Judge at the First Civil Section, Supreme Court, Paris[19]

The Act N° 2002-305 of 4 March 2002 on parental authority organised the concentration of French family court jurisdiction with respect to decisions relating to minor children. In doing so, the Act caused actions based on international instruments relating to the wrongful removal of children to be brought before specialised Courts at first instance (created by the former Article L. 312-1-1 of the Code of Judicial Organisation (COJ), now Article L. 211-12). This specialisation of courts, in actions brought under *Regulation (EC) N° 2201/2003 of the Council of 27 November 2003* ("Brussels IIa") concerning jurisdiction and the recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) N° 1347/2000, or under the *Hague Convention of 25 October 1980 on the civil aspects of international child abduction* (hereinafter the 1980 Child Abduction Convention), was organised with a view to the Regulation's entry into force on 1 March 2005. This concentration of jurisdiction was not implemented in other areas of international child protection.[20] It meets the reiterated recommendations of the Hague Conference's Special Commissions with respect to application of that international instrument, repeated in the Guide to Good Practice for Central Authorities and Contracting States.

As regards France, where there are 100 to 130 new return applications every year and which brings an average of 70 to 80 actions, the specialisation of courts has produced several benefits:

1. It mitigates, to some extent, an inconsistency in the handling of cases both by the Public Prosecutor's Offices having jurisdiction to bring the application and by the courts in charge of reviewing the merits of the application and appraising the relevance of the exceptions to return raised by the abducting parent. Seeking a consistent approach, observant of the aims and issues involved in the 1980 Child Abduction Convention, enhances compliance with France's international commitments.

2. It secures expertise in the mechanisms of the 1980 Child Abduction Convention supplemented by those provided for by Regulation Brussels IIa, which are complex and demand knowledge and reflexes which can be developed only through regular involvement in such matters.

3. It also facilitates training for judges and prosecutors, and exchanges between judges specialising in such cases, including the network judge in connection with the training and informed actions he or she may take.

The concentration of jurisdiction was implemented smoothly, owing both to the small number of cases and to the nature of the cooperation procedure, which confers on the judge no other jurisdiction on the merits.

The specialised Courts at first instance were designated by Decree N° 2004-211 of 9 March 2004. They are the largest within each appellate circuit (see appendix schedule VII to Article D. 211-9 of the COJ). Thus only 37 were selected from among the 161 Courts at first instance of metropolitan France and the 4 in the French overseas territories.

Decree N° 2004-1158 of 29 October 2004 reforming procedure in family matters, in force since 1 March 2005, has organised the relevant procedure. A special section, relating to wrongful international removal of children, was accordingly included in the Code of Civil Procedure. This special jurisdiction was conferred on the family court, which typically decides matters related to parental authority (Art. 1210-4). Other family courts to which the same or related disputes are referred are required to decline jurisdiction in its favour, notwithstanding the rules of *lis pendens* and related actions (Art. 1210-9, para. 2). Although the instrument does not so specify, the territorial jurisdiction of the court will be determined by the location where the child lives.

The application for a child's return, in accordance with the 1980 Child Abduction Convention, is to be made, tried and

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[20] It was also decided to abolish the requirement of legalisation of foreign public documents (jurisdiction of Courts of Appeal relating to apostille) under the Convention of 5 October 1961, but it may be challenged if this duty were outsourced to legal professions. This has not been the case for the application of the Convention of 18 March 1970 on the taking of evidence abroad in civil or commercial matters, due to the proximity of witnesses, but the volume of applications could justify a rationalisation.

determined in summary form (Art. 1210-5 Code of Civil Procedure). This form of action permits the family court to issue an expeditious decision that is *res judicata* on the merits. It is accordingly able to meet the requirements of the Convention which sets a maximum period of six weeks to order or deny the child's return, unless that is impossible owing to special circumstances.

The latest enacted provisions in France have reinforced the role of the Public Prosecutor's Office, which is of particular importance when jurisdiction is concentrated. Article 425 of the Code of Civil Procedure, supplemented accordingly by Decree N° 2012-89 of 27 January 2012, creates an obligation to report to the Public Prosecutor all actions brought on the basis of the international and EU instruments relating to international wrongful child removal. That Decree was issued to implement Act N° 2010-1609 of 22 December 2010, which added to Act N° 91-650 of 9 July 1991 an Article 12-1 drafted as follows: "The Public Prosecutor may call directly on the law-enforcement agencies to obtain execution of rulings issued on the basis of the international and European instruments relating to the international wrongful removal of children". Articles 1210-6 to 1210-8 of the Code of Civil Procedure have been created for the purpose. They provide the Public Prosecutor's Office with the most suitable means of securing execution of return decisions. It is provided that unless such rulings are executed voluntarily, the Public Prosecutor having jurisdiction is the one assigned to the specially-designated Court at first instance within the jurisdiction of which the child is located (Art. 1210-6).

The benefits of organizing jurisdiction through the specialisation of courts allow the view that France's goal of expedience and efficiency has been fully achieved.

11. Germany

By Judge Sabine BRIEGER, Judge of the Family Court, District Court of Pankow/Weißensee, Berlin, Judge Martina ERB-KLÜNEMANN, Judge of the Family Court, District Court of Hamm, Hamm,[21] and Dr Andrea SCHULZ, Head of the German Central Authority

The situation in Germany before concentration of jurisdiction took place

The *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter the 1980 Child Abduction Convention) entered into force for Germany on 1 December 1990. Pursuant to German implementing legislation enacted by federal law of 5 April 1990, jurisdiction for Hague return cases was vested in all 620 German family courts with more than 1,000 judges. Family courts have existed in Germany since 1976 and are special sections in most local courts, as first instance courts dealing with family matters. The number of incoming applications (abductions to Germany) received by the German Central Authority was rather low in the beginning. From 1995 to 2000 it became stable at an annual average of about 85 cases. Among these were between 35 and 45 cases per year which, even if they went to court, did not have to be decided, either because the application was withdrawn, the parties reached agreement or the matter was otherwise disposed of. In comparison with about half a million new cases annually in the family courts, each family judge dealt with a return case under the Convention, if at all, on an average of once during his or her professional life.

The court decisions, though, showed that this system did not work well. Other Contracting States which had a significant number of cases with Germany (in particular the United Kingdom, France and the United States of America) complained about the length of return proceedings and their outcome. Even though there were – and still are – only two instances, court proceedings often lasted for a year, sometimes even two. Courts often treated them like custody cases, obtaining evidence through expert opinions, entering into in-depth considerations on the best interests of the child and easily accepting defences under Article 13(1) *b)*.

The German Federal Ministry of Justice as the Ministry in charge of the 1980 Child Abduction Convention was the addressee of this international criticism, but the administration of justice as such is a matter for the states. Federal courts in civil and family matters only exist at Supreme Court level, and Hague cases do not come before that court. Due to the independence of the judiciary, the Federal Government had no way to influence the case law of the family courts. Nevertheless, several binational judicial conferences were held between 1997 and 2001 (Anglo-German, Franco-German and US-German). Training at the German national level was also offered but not readily attended as it was difficult to predict for any particular judge whether he or she would ever be faced with a Hague return case.

As international political pressure persisted, the Federal legislator concentrated jurisdiction for cases under the 1980 Child Abduction Convention (all return applications and access applications brought by the German Central Authority based on Article 21 of the Convention) in 24 family courts. This was done nine years after the entry into force of the Convention for Germany by way of a change to the federal implementing act, which entered into force on 1 July 1999. Germany has 16 states and 24 courts of appeal. Jurisdiction for Hague cases at first instance was concentrated in one family court per district of an appellate court, namely at the family court in whose district the court of appeal is located. While the concentration in 24 courts was influenced by respect for federalism and existing structures of court administration, the choice of the particular courts was inspired by the fact that legal literature and collections of decisions existed in the libraries of the appellate courts but not necessarily in the library of each family court. Hence the choice of the family court closest to the court of appeal.

The federal implementing act contains a clause enabling states to further concentrate jurisdiction by ordinance. One state (Lower Saxony) has done so and concentrated in one

[21] Both Judge Sabine Brieger and Judge Martina Erb-Klünemann are members of the International Hague Network of Judges for Germany.

out of three courts which had jurisdiction for Hague cases under federal law.

Since 1 March 2001, the act implementing the 1980 Child Abduction Convention also ensures that parallel proceedings are avoided and strengthens Article 16. If Hague return proceedings are brought before the specialised court and proceedings for return, access or the surrender / delivery of a child are already pending before the local family court in whose district the child is present, section 13 of the implementing act obliges the local court to transfer the proceedings to the specialised court before which return proceedings are pending. If proceedings with regard to the three objects mentioned above are instituted later, the specialised court before which return proceedings are pending has exclusive jurisdiction for these matters. The specialised courts are more likely to be aware of Article 16 of the Convention which prevents them from deciding on the merits of custody, under the conditions set out, even if they have (international) jurisdiction. Moreover, they also know that pursuant to Article 10 of Regulation (EC) No 2201/2003 (hereinafter Brussels IIa) and Article 7 of the *Hague 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* (hereinafter the 1996 Child Protection Convention), in the case of abductions falling under the scope of these instruments they would not even have jurisdiction for custody issues. And in the exceptional case of refusals under Article 13 of the 1980 Child Abduction Convention, they are aware of their obligations under Article 11 paras 6-8 of Brussels IIa.

Experience shows that it is equally important in particular for larger courts with many judges to also concentrate jurisdiction for Hague cases internally. Because of judicial independence which is protected by the German Constitution, this cannot be done by law or ordinance but has to be done by rules of court at each individual court. In the meantime, at first instance 15 family courts have concentrated on one or two judges internally. In four courts, three or four judges are handling Hague cases, and only three courts have more than five judges dealing with them (Koblenz: 5, Karlsruhe: 8, Frankfurt: 11). The picture at the appellate level looks even better: 19 courts of appeal have concentrated on one panel (senate) and three courts of appeal on two panels (senates). This is facilitated by the fact that the rules of court enacted by the body elected for such purposes at each appellate court normally attribute jurisdiction for a number of first instance courts in the district to each panel of the appellate court. Therefore all appeals against decisions of the one first instance court hearing Hague return cases in the whole district of the Court of Appeal will come before the same panel(s). Leaving aside substitutes in cases of absence, this makes a total of 64 judges at first instance and 92 judges at the appellate level in Germany.

Concentration alone, however, is not sufficient. The Federal Ministry of Justice, and since 2007, the Central Authority within the Federal Office of Justice (established in 2007) has been hosting two conferences per year since 2000 for German judges having jurisdiction for Hague cases. Both conferences per year have the same programme, and the agenda contains basic information for newcomers, information about new developments and extensive room for an exchange of experience among participating judges. Speakers are mainly judges and Central Authority staff (all three co-authors of this article play a major role at these conferences), but also legal and social professionals handling Hague cases and sometimes academics. In addition, judges from two other jurisdictions are normally invited to attend and to report on their country's system with regard to the 1980 Child Abduction Convention.

Benefits resulting from concentration of jurisdiction in German experience

Concentration of jurisdiction has led to more expeditious and effectively conducted proceedings. Already by 2008 43% of Hague return applications in Germany were resolved by the court within 6 weeks. The average time to reach a decision or an agreed solution, especially at first instance, decreased significantly.

Receiving a Hague return application means at first several hours of work to read the application carefully, to think about difficult judicial questions, to work out an exact timeframe, to contact a *guardian ad litem* to represent the child, and to choose an interpreter. The formal requirements should not be underestimated. It is obvious that it is much easier to do all this when one has experience. Each of the two judicial co-authors of this article has dealt with more than 50 Hague return cases so far, although it has to be admitted that most of the other German judges have heard fewer Hague cases. We assert that the more return cases one has heard, the easier it is to deal with the formal procedure as well as with substance.

Concentration of jurisdiction ensures the expertise of judges. Cases under the 1980 Child Abduction Convention are very specialised proceedings, different from custody or access proceedings. Knowledge of international legislation and case law as well as resources like the Central Authorities, network judges or the help offered by the website of the Hague conference should be present in the mind of a judge deciding return cases. This cannot be expected from a judge who only hears an abduction case once or twice a year. But it can be ensured when judges decide several cases a year. Resources can also be used more reasonably: judicial training in this field needs to be addressed to a few judges only and can be offered at a high level. International and national networks can also be created among the specialists.

Specialisation also means relief for the other courts which do not get Hague cases anymore and which can contact the specialists with their questions on international family law arising in other cases.

Courts can be created where judges are experts in international family law. In sensitive and urgent return proceedings, the situation for the children is insecure and provisional. By creating specialised courts it can be ensured that the best interests of the children as defined by the 1980 Child Abduction Convention are the primary focus.

Additionally, special techniques like mediation can be used more effectively if the courts are specialised. In Germany a national working group of different professionals involved in Hague return proceedings and in mediation helped to find an effective way to implement mediation into court proceedings without causing delay.

Specialisation of courts also gives room for specialisation of attorneys. The latter has taken place in Germany to some extent but not yet as much as would be desirable.

Concentration of jurisdiction in other areas

In 1999, jurisdiction was only concentrated for cases under the 1980 Child Abduction Convention (return and access as explained above) and for the recognition and declaration of enforceability of foreign custody and access orders under the *European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children*. As Brussels IIa became applicable in Germany on 1 March 2005 and the 1996 Child Protection Convention on 1 January 2011, recognition and declaration of enforceability of custody and contact orders under those instruments were added, as well as cases under Articles 41 and 42 of Brussels IIa (direct cross-border enforcement of contact orders and certain return orders) and Article 48 of Brussels IIa (practical arrangements for the exercise of access) and the procedure for obtaining consent for cross-border placement of children in Germany (Article 56 of Brussels IIa, Article 33 of the 1996 Child Protection Convention).

For the reasons given under 2., concentration has proven so successful in international child protection matters that it was subsequently also introduced for inter-country adoption (recognition and determination of effects), recognition and declaration of enforceability of foreign decisions under the *Hague Convention of 13 January 2000 on the International Protection of Adults* and, most recently, *Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations*.

To sum up: still each Hague case has difficult components but we feel in a privileged position in Germany, now that judges with more experience handle these cases. Although the parties and sometimes their attorneys have to travel a longer distance to the court they frequently inform us afterwards that this was easy to accept because in return they were able to have their case heard by a more knowledgeable court. That means that in addition to better experience and knowledge within the courts, specialisation also leaves the persons involved more satisfied.

12. Hungary

By Judge dr. Márta GYENGE-NAGY, judge at the Municipal Court of Szeged, Szeged[22]

Introduction

The enlargement of the European Union and the free movement of workers within it have considerably increased the number of cross-border disputes, and made clear in Hungary the need for access to international legal instruments in relation to other Member States of the European Union and to third countries. Hungary acceded in 1986 to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter the "1980 Child Abduction Convention") (Act 14 of 1986). An implementing Ministerial Decree has also been issued (Decree 7/1988// VIII.1/IM) in order to specify the extra-judicial procedure relating to children wrongfully removed to or retained in Hungary or the return to Hungary of children retained or removed abroad. In addition, as Hungary is a Member State of the European Union since 1 May 2004, it is also required to apply Regulation Brussels IIa.

The specific features of the judicial procedure in Hungary

A single court, the Central Court for the Districts of Budapest (*Pesti Központi Kerületi Bíróság*), has jurisdiction for proceedings relating to the return of children wrongfully removed or retained in Hungary. The number of such cases is fairly low.[23] Nevertheless, any ruling concerning Hungary's international commitments has an impact on the country's image abroad, and also arouses public sentiment and media attention. From the point of view of the child and the parent accompanying the child, execution of the return decision is a sensitive issue, while absence of execution harms or may harm the left behind parent - and in the long term, the child - by affecting the fundamental right to family life. Thus it is no accident that the legislation relating to the application of the Convention has changed several times in the past decade.

Jurisdiction and provisional measures

In line with practice of the European Court, Hungarian case law considers that the child's best interest demands immediate restoration of exercise of the right of the parental authority having suffered damage. In accordance with guidelines issued by the Curia of Hungary (the Supreme Court), if return proceedings are initiated pursuant to the 1980 Child Abduction Convention, the competent court may not take any measure inconsistent with the aim of the Convention until a decision regarding return is made. However, the fact that the court to which the application relating to the rights of the child's custody is referred is not always informed of the initiation of return proceedings can cause a problem. If the application for return is channelled through the Central Authority, in order to prevent any decision inconsistent with the Convention, that authority,

[22] The author is a member of the International Hague Network of Judges for Hungary.

[23] Between 1 January 2010 and 31 December 2012, of 28 child return cases, 24 were subject to a final decision; return was ordered in 13 cases and denied in 11. Of the remaining four cases, three were discontinued and in one an agreement was reached. All but eight cases were appealed, with final judgments delivered by a court of second instance; in seven cases, a review procedure was also initiated, and an injunction for enforcement was issued in four cases.

sua sponte, informs the court trying the proceedings of the application. It would be desirable in such cases for all the courts to apply the same practice: *i.e.*, if a Hungarian court has jurisdiction to rule on the right of parental authority, it ought to hold in abeyance the proceedings relating to rights of custody until a final judgment has been delivered in the abduction proceedings.

In relations between Hungary and the other Member States of the European Union, under Article 11(6) and (7) of Regulation Brussels IIa, the court of competent jurisdiction is that of the Member State where the child was habitually resident before the abduction. Under Article 20(1) of Regulation Brussels IIa, in abduction proceedings, the court may take provisional measures. In Hungary, under Hungarian law, the court having jurisdiction in cases of wrongful child abduction may take provisional measures, including protective measures, which in most cases concern contacts between the applicant parent and the child during the proceedings or until the child's return.

Hungarian procedural rules in return cases, including issues of execution of return decisions

In order to assist in complying with the period of six weeks set by Article 11(3) of Regulation Brussels IIa, domestic Hungarian law has laid down specific rules: the parties must be heard within eight days after the application reaches the court. Of the 24 cases determined on the merits, only six lasted more than six weeks: on the basis of other States' experience, this is faster than the average. In order to be able to meet this deadline, the Hungarian court maintains a stand-by service during the summer and Christmas holidays. Naturally, the concentration of jurisdiction facilitates the acquisition of a certain level of expertise, resulting in reduced delays.

Speed would be fundamental during appeal proceedings also, but there is no specific rule relating to the timing of an appeal. The customary period for appeal (15 days) in itself makes it impossible to issue a final judgment within six weeks, as stipulated by the international instruments.

In Hungarian practice, with respect to evidence, the hearing of witnesses is limited. Evidence consists of documents, emails, SMS messages, Skype conversations and sound recordings. The appointment of an expert or the procurement of a welfare report are rare, but increasingly, the judge hears the minor child directly, in accordance with general European practice and under the pressure of having to make an expeditious decision. The child is heard outside the parties' presence, and usually, a court-appointed guardian is in attendance; the judge records the hearing, which is then reported to the parties. Among children heard to date, the youngest was aged five and a half, and the eldest, nine.

Issues of execution of return decisions

Since the promulgation of the 1980 Child Abduction Convention, Hungarian legal rules relating to the execution of return decisions have changed several times. In the past, execution was not necessarily within the jurisdiction of the court which decided upon return, bur rather of the court having jurisdiction at the location where the child is present. This procedure delayed by several weeks, or even months, the child's return and accordingly, the restoration of the child to the left behind parent. This legislation was not consistent with the requirement of the "most expeditious procedures available in national law" under Article 11(3) of Regulation Brussels IIa.

Aims

In Hungary, the consistency of case law is promoted by the fact that a single court, the Central Court for the Districts of Budapest, has jurisdiction to try wrongful child abduction cases. However, the current Hungarian rules do not adequately secure the exceptional nature of such cases at all stages of the procedure (including execution), and have not provided for the human resources and material conditions required for recourse to international mediation (in particular judicial mediation).

With the aim of promoting understanding of the law and in order to better inform foreign jurisdictions, we wish to prepare for the Central Authority an authoritative interpretation of Hungarian rules relating to parental authority. We intend to organise specific training courses for jurists (judges and counsel) involved in return cases, including on the psychological aspects of a child's testimony, and in the interest of informing public opinion in an appropriately objective and even-handed manner about specific cases, we shall also reinforce judicial communications with the media.

Through the realisation of these aims, we wish to contribute to a more rapid and flexible procedure in cases of wrongful child abduction, endeavouring to encourage amicable settlement and maintaining family relations, as a result serving the best interests of the minor child concerned.

13. Israel

By Judge Benzion GREENBERGER, District Court of Jerusalem, Israel[24]

The concept of "Concentration" as it applies to the Hague Convention posits that there is an obvious advantage for each Member State to "concentrate" the judicial jurisdiction to hear Hague cases in a particular, specialised, court or courts within its country-wide judiciary, thus developing a cadre of judges with mastery of Hague Convention jurisprudence, and thereby improving, if not guaranteeing, the professionalism and the quality of the Hague decisions emanating from that country. Of equal importance, a specialised bench will be more sensitive to and aware of Hague jurisprudence developments in other countries as well as its own, and this will in turn contribute to increasing uniformity in the corpus of Hague judgments worldwide.

In Israel, the above advantages of concentration have long

[24] The author is the member of the International Hague Network of Judges for Israel.

been recognised in the field of Family Law generally, as expressed in the adoption of the Family Courts Act of 1995, which established the Family Courts in the various districts of the country. Prior to the passage of this important legislation, judicial jurisdiction regarding the various aspects of family law litigation was bifurcated among various courts: cases regarding the various aspects of family law, including, of course, cases involving children, were heard in the Juvenile Court, Magistrate's Court, District Courts, and even the Supreme Court (habeus corpus motions), depending on the particular subject matter of the case; and alongside all of the above, the Rabbinical Courts possess concurrent jurisdiction in many matters relating to family law disputes.

The establishment of the Family Courts in Israel concentrates the original jurisdiction relating to all family law matters in specialised courts, empanelled in each district in the country, thereby adopting the principle "one family one judge" as the appropriate judicial approach to all family law matters. Of particular importance is the statutory requirement, unique to Family Courts, that in addition to the general requirements for eligibility to appointment to the bench, judges appointed to the Family Courts must have acquired professional experience and knowledge in the particular field of Family Law as a prerequisite to their appointment.

Regarding Hague Convention cases, these are heard in Family Court, and all Family Court judges are qualified to hear them. Thus, while there is no specific concentration vis-à-vis Hague cases, these are heard by a relatively limited number of judges in the country who specialise in family law, and who are therefore better qualified to be involved in this complex area of the law.

A recent development worthy of note in this regard is the administrative decision of the Chief Judge of Jerusalem District Court, in which three-judge panels hear appeals from the Jerusalem Family Court, to empanel a specialised three judge panel for Hague Convention appeals specifically, and on which panel will sit the judge representing Israel in the Hague Convention Judges Network. This model has yet to be adopted in other districts in the country, but this promising development is a further indication of the trend toward concentration in Israel to date.

14. The Netherlands

By Annette C. OLLAND, Senior Judge Family Law and International Child Protection at the District Court of The Hague, President of the Dutch Officie of the Liaison Judge International Child Protection[25]

Historically, the Netherlands counted 19 District Courts and each of them had jurisdiction in cases of international child abduction. Combined with the limited number of incoming International Child Abduction cases in the Netherlands (between 25 and 30 on a yearly basis), in practice this meant that a family judge in a district court would handle a few child abduction cases in a lifetime. Many district courts and individual judges, as well as other parties, thought that this was undesirable given the required specialist knowledge for these cases and their urgent nature. It was generally felt that this practice, combined with the length of the proceedings – which, including the proceedings before the Court of Appeal and before the Dutch Supreme Court, could mount up to 18 months or more – was not in the best interest of the child and it lead to a lot of criticism from several parties and institutions, including politicians.

Meanwhile, in January 2006, the Family Division of the District Court of The Hague set up a bureau, the so-called Office of the Liaison Judge International Child Protection (hereinafter: BLIK), in order to build up and expand knowledge in the field of international family law. The direct cause for establishing BLIK was the appointment of the President and Vice-President of the Family Division of the District Court of The Hague as Liaison Judges in 2005. Their task is to facilitate contacts between Dutch judges and their foreign colleagues in pending cases involving the same minor(s) that are filed with courts in different States. BLIK soon developed into a knowledge centre and help desk for judges hearing international family law cases and a contact point for foreign judges. Thus, the Family Division of the Court of The Hague gathered specialist knowledge in the field of international child abduction and international child protection. Soon other District Courts in the Netherlands expressed their wish to be able to refer international child abduction cases to the District Court of The Hague. The District Court of The Hague was willing to hear these cases if necessary.

The criticism of the implementation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter the 1980 Child Abduction Convention) in the Netherlands lead to the publication of a report by the Royal Commission on Private International Law that was published in August 2008, which addressed the question whether the implementation could be improved.[26] The report held two recommendations. Firstly, it recommended that appeal to the Dutch Supreme Court in Hague child abduction cases should be limited to appeal in cassation on a point of law. Secondly, the Commission recommended concentrating the administration of justice at first instance and on appeal in Hague child abduction cases in one or a limited number of courts.

Inspired by this report of the Royal Commission on Private Law, the Dutch Minister for Justice declared his intention to improve the position of those directly involved with international child abduction. To this end, the Dutch International Child Abduction Implementation Act[27] and

[25] The author is a member of the International Hague Network of Judges for the Netherlands.

[26] Dutch Royal Commission on Private International Law, *Knelpunten bij de uitvoering van het Haags Kinderontvoeringsverdrag 1980 in Nederland* [Practical problems in relation to the enforcement of the 1980 Hague Convention], Kamerstukken II 2008/2009, 30 072, no. 15.

[27] Act of 2 May 1990 concerning the Implementation of the 1980 Hague Convention on International Child Abduction and the 1980 European Custody Convention, Stb [Dutch Bulletin of Acts and Decrees] 1990, 202; The Act came into force on 1 September 1990.

the Dutch International Child Protection Implementation Act[28] needed to be amended. On 1 April 2010 the preliminary draft amendment was presented to Parliament.

In anticipation of this draft amendment and in response to the District Courts' call to be able to refer international child abduction cases to the District Court of The Hague because of its specialist knowledge in the field, the Dutch Council for the Judiciary by decision of 4 February 2009 appointed the District Court of The Hague as the alternative court with the power to hear child abduction cases in addition to other District Courts. This designation meant that the other courts were able to hand over the cases of international child abduction for the whole procedure to the court of The Hague, without the consent of the parties. It turned out that the Courts referred their international child abduction cases most of the times and the Family Division of the District Court of the Hague would, from then on, handle most of the incoming International Child Abduction Cases.

The aforementioned developments finally lead to a change of the Dutch International Child Abduction Implementation Act that came into force on 1 January 2012. This amended Act aimed to considerably speed up the return application procedure and make an end to two other undesirable situations. In short, the amended Implementation Act (among others) implied the following:

- The court of first Instance in The Hague and consequently the Court of Appeal of the Hague are competent for all incoming International Child Abduction Cases (in stead of, before, 18 courts). Thus, the Family Division of the Court of the Hague and of the Court of Appeal of the Hague have become specialised Courts, dealing with about 25 to 30 cases on a yearly basis;
- Parties can no longer appeal to the Dutch Supreme Court in Hague Child Abduction cases;
- In all cases, the child will stay in the Netherlands for the duration of the appeal in the return application proceedings.

As of 1 January 2012 the concentration of jurisdiction at first instance at the District Court of The Hague is a fact. From our experience, the benefits of concentration of jurisdiction are evident: the Family Division of our Court now has formed a team of experienced and specialised judges who handle Hague Child Abduction cases on a regular basis. Not only our judges but also our clerks and other staff are dedicated to a swift and smooth handling of these cases. The increased number of cases to be handled made it possible for the Family Division of the District Court of the Hague – in cooperation with the Ministry of Justice, the Dutch Central Authority, the Dutch Centre of International Child Abduction, the Bar and specialised family mediators – to develop and implement the so-called 'pressure cooker procedure', including cross-border mediation. As a result, the proceedings before the District Court, including cross-border mediation, do not take up more than six weeks.[29] An appeal to the Court of Appeal may be lodged within two weeks. A hearing will take place within two weeks from the lodging of the appeal, and the Appeal Court decision will follow two weeks later. Consequently, the proceedings from the notification at and handling by the Central Authority (which should take up to 6 weeks) until the final decision of the Court of Appeal takes up 18 weeks (3x6) at the most.

Thus, from our experience, concentration of jurisdiction has lead to a considerable improvement, both in terms of quality of the decisions and in terms of duration of the proceedings.

15. Panama

By Delia P. CEDEÑO, Judge of Children and Adolescents of the First Judicial Circuit of Panama, Panama City, Panama[30]

When we speak of "jurisdiction" we are referring to the authority of each State to apply the law to resolve a dispute, definitively and irrevocably, exercised exclusively by courts composed of autonomous and independent judges.

"Concentration" is a technique in the service of judicial economy – a legal approach used by the judge and recommended to the parties, in order to hear a variety of connected legal questions at a single trial.

The above leads us to note that when we refer to "concentration of jurisdiction," it would be with the objective that international return applications are processed in certain courts in order to comply with the constitutional guarantee to directly assume the role of resolving a conflict between a requesting party and the respondent.

In Panama, since the creation of the Special Jurisdiction for Minors (by Act 24 of 1951), applications for the international return of children were in principle received at the General Secretariat of the Supreme Court of Justice by way of international warrants submitted by the Ministry of Foreign Affairs, to then be sent to the Tribunal for Minors for processing, or alternatively to the Juvenile Court (which by that time had been created), always taking into account the domicile of the child. Panama adopted the *Hague Convention of 25 October 1980 on Civil Aspects of International Child Abduction* (hereinafter the 1980 Child Abduction Convention), by Law 22 of 10 December 1993.

When the Family Code of 1994 entered into force, international return requests were sent directly by the Ministry of Foreign Affairs to the Juvenile Court of the

[28] Act of 16 February 2006 on the Implementation of the 1996 Hague Convention on the International Protection of Children and the Brussels IIa Regulation, Stb 2006, 123; The Act came into force on 1 May 2006.

[29] First of all a pre-trial review takes place within two weeks from the filing of the application. The judge at this pre-trial review explores the possibility of mediation if it has not taken place at the preliminary stage yet. Mediation should take place within two weeks. The mediation is conducted by two professional mediators, preferably a lawyer and a psychologist. If the parents fail to succeed in reaching a settlement within two weeks, a second hearing will take place before the full court, followed by a decision on the return application within two weeks.

[30] The author is a Member of the International Hague Network of Judges for Panama.

domicile where the identified minor was residing with the alleged perpetrator of the wrongful removal or retention, pursuant to Article 778 of the Family Code.

We can confirm that in the Republic of Panama, concentration of jurisdiction has been accomplished in order to hear requests for the return of a child since the creation of the Juvenile Court, as a special court to deal with issues concerning underage persons since 1951.

Subsequent to the entry into force of the Family Code, in 1995, Article 747 established that Special Jurisdiction for Minors would be exercised by the Supreme Court, by Superior Courts, and by the Regional Juvenile Courts.

The same law stated in Article 744 that in any proceeding which is related to a minor, the Juvenile Courts would have exclusive jurisdiction. These courts are currently called Childhood and Adolescence Courts, mandated by the modified Act 40 of 1999 (and added in Article 157 in order to establish the change in designation of these courts).

In defining the competencies of courts specialised in childhood and adolescence in Article 754 of the Family Code, it is stated that these courts have jurisdiction over disputes that are not expressly attributed to another authority, and thus by not giving this jurisdiction to another court judges for childhood and adolescence matters have concentrated jurisdiction.

In Supreme Court jurisprudence from 1997 (the case of *Horna Whitehurst*), the Court determined that the Childhood and Adolescence Courts, which are part of the Special Jurisdiction for Childhood and Adolescence, are competent for international return applications, which reaffirms that there is concentration of jurisdiction for this procedure.

Based on experience, we note that concentrating jurisdiction allows the taking and implementation of quick measures in order to secure the prompt return of children, as is foreseen in Article 7 of the 1980 Child Abduction Convention. At the same time, the exercise of the judicial function in these procedures is facilitated, including the hearing, judicial determination and enforcing of a decision, with the aim of protecting minors from the harmful effects that can be caused by their wrongful removal or retention, and to facilitate their safe return to their habitual residence.

16. Paraguay

By María Eugenia GIMÉNEZ DE ALLEN,
Judge of the Court of Appeals for Children and Adolescents, Central Department, Asunción, Paraguay

Introduction

Achieving the correct application of international treaties on the international return of children raises the issue of concentrated jurisdiction, with specialisation to handle these cases. In this brief analysis, I state my opinion on the utility of concentrated jurisdiction in Paraguay.

Some facts about Paraguay

Firstly, I consider it important to provide some facts about my country, the Republic of Paraguay, in order to better assess the suitability of concentrated jurisdiction for handling cases involving the international return of children.

Paraguay, according to Article 1 of its Constitution, "is a social State under the rule of law, which is unitary, indivisible, and decentralised." Paraguay has an area of 406,752 km2, and, according to official figures from the latest census of 2012, a population of 6,672,631 inhabitants. The Judiciary of Paraguay is decentralised in 17 Judicial Districts, with a total of 39 Courts of First Instance for Children and Adolescents. These courts have exclusive jurisdiction in cases relating to the rights of children and adolescents, i.e., they are courts specialised in these matters. In summary, there are 39 judges across the country with authority to judge a case on the international return of children in the first instance, not including judges at higher judicial levels who could have jurisdiction in these matters.

Current regulation in Paraguay

Paraguay does not currently have what would be called concentrated jurisdiction, and thus the resolution of these issues would fall to any of the Judges of First Instance for Children and Adolescents. Under current regulations, the judge of the place of habitual residence of the child or adolescent has the authority to resolve a request for the international return of children, under the international legal instruments ratified by Paraguay: the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter the 1980 Child Abduction Convention) and the Montevideo Convention of 15 July 1989 on the International Return of Children.

Training to gain expertise

The most significant advantage of concentrated jurisdiction in which only some judges have jurisdiction to handle cases of the international return of children, in my opinion, is the expertise they gain on this matter: obviously, the more cases they solve, the more experience they gain. However, in a small country like Paraguay, concentrated jurisdiction is not the only way to ensure the correct application of international treaties on the international return of children. With a smaller number of judges with jurisdiction in child and adolescent issues, providing them with training is not too difficult a task. It is a need that can be satisfied with ongoing training programs for the range of justice operators involved in the application of international treaties on the international return of children: not only Judges of First Instance, but also Public Defenders (Defenders of the Child), Courts of Appeals for Children and Adolescents, and the Supreme Court itself, in addition to multidisciplinary teams specialised in the area of children and adolescence.

Training by the Judges of the Network

Training in the application of international treaties involves the Judges of the International Hague Network of Judges in

particular, who have the important role of contributing to the organisation and participating in training seminars where best practices on the correct application of legal instruments in this area are publicised. It is a function of the Judges of the Network to advise colleagues on jurisdiction issues in relation to international treaties and other legislation, and on existing relevant international jurisprudence, without breaching the independence of each judge in solving every dispute subject to their decision.

It can be said that Paraguay has made significant progress with the appointment by its Supreme Court of two judges as members of the International Hague Network of Judges, who are fulfilling, in practice, this important role of training and advice to fellow judges on the correct application of international instruments.

A change in the rules

In my opinion, the implementation of concentrated jurisdiction in the Paraguayan legal system would require legislation providing for this change, as it would entail changing rules of jurisdiction laid down by the law, bearing on issues of public order.

Conclusion

In closing, I would like to state that concentrated jurisdiction certainly has significant advantages; however, considering the circumstances of my country (territory, population, legislation and judicial organisation), at present, the training of justice operators is the most practical way of achieving the correct application of legal instruments on the international return of children in the Republic of Paraguay.

17. South Africa

By The Honourable Mrs Justice Belinda VAN HEERDEN, Supreme Court of Appeal, Bloemfontein, South Africa[31]

International child abduction

The *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter the 1980 Child Abduction Convention) was incorporated into South African domestic law in terms of the *Hague Convention on the Civil Aspects of International Child Abduction Act 72 of 1997* (date of commencement 1 October 1997). From the outset, jurisdiction in Hague matters was vested only in the High Courts. Indeed, the Central Authority for South Africa is the Chief Family Advocate who has delegated her powers under the 1980 Child Abduction Convention to the Office of the Family Advocate attached to each of the High Courts which to all extents and purposes function at provincial level.

The whole of the 1980 Child Abduction Convention Act was repealed by section 313 of the Children's Act 38 of 2005 (date of commencement 1 April 2010). However, section 275 of the Children's Act states that the 1980 Child Abduction Convention "is in force in the Republic and its provisions are law in the Republic, subject to the provisions of this Act". The whole Convention is annexed to the Act as a schedule. Section 45(3) retains the exclusive jurisdiction of the High Courts in Hague abduction matters. Lower courts, such as children's courts at magistrate's court level, are therefore excluded.

The main problem with concentration of Hague abduction jurisdiction in the High Courts is that these courts have broad civil and criminal jurisdiction and do not have a special chamber dealing with family and child law in general, and Hague abduction matters in particular. Prior to 2007, this meant that there were no High Court judges with specialised training in the 1980 Child Abduction Convention to deal with such matters. In January 2007, a high level meeting took place between the Chief Justice (the head of the judiciary in South Africa), the author of this note and Lord Justice Mathew Thorpe, Head of International Family Law in the United Kingdom, to address instances of the failure of the judicial system in South Africa to achieve acceptable international standards in the management and determination of return applications brought under the 1980 Child Abduction Convention. Spearheaded by the Chief Justice, at a subsequent meeting of the Heads of Court in November 2007, the Judge-President of each High Court nominated one or more judges to assume a special responsibility for international family law cases. The intention was that the judges nominated would receive specific training to equip them better to deal with the special challenges of international family law cases. These judges would then build up a repository of experience in the management and adjudication of such cases. In exceptional circumstances preventing the nominated judge (or one of the nominated judges in High Courts with several nominees) from trying the case, the nominated judge would be available to assist the judge to whom the case was assigned. In addition, the nominated judges were to be responsible for liaison and collaboration with judges in other jurisdictions within the Global Hague Network. The author of this note was designated by the Chief Justice as the co-ordinator of the nominated first instance judges, and as the primary liaison judge for the South African jurisdiction.

This gave rise to a South African Judicial Network spanning the provincial High Courts, enabling particular judges at each High Court to apply their special expertise in Hague Abduction matters, while retaining their jurisdiction to deal with general civil and criminal cases. Apart from specific training of the nominated judges, which took place in 2008, there has been ongoing in-house training at several of the High Courts. Moreover, practice directives dealing with the urgency of Hague Abduction matters and dedicated case management of such cases have been issued at some of the High Courts. Regulations issued under the Children's Act also cover the practical aspects required to implement the 1980 Child Abduction Convention, including a provision that proceedings for the return of a child under the Convention must be completed within six weeks from the date on which judicial proceedings were instituted in a High Court, except where exceptional circumstances make this impossible.

[31] The author is the member of the International Hague Network of Judges for South Africa.

By and large, this informal concentration of jurisdiction in nominated High Court judges has worked well. There is, however, a need for an ongoing training of nominated judges and the speedy replacement of nominated judges who leave the High Court (usually on appointment to the Supreme Court of Appeal).

Intercountry adoption

The *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (hereinafter the 1993 Adoption Convention) was incorporated into South African domestic law by section 256 of the Children's Act and the whole Convention is annexed to the Children's Act as a schedule. In terms of the Children's Act, a children's court has jurisdiction over inter-country adoptions. For purposes of the 1993 Adoption Convention, the Central Authority is the Director-General of Social Development.

Before the coming into operation of the Children's Act, section 18(4)(f) of the then applicable Child Care Act 74 of 1983 prohibited a non-South African citizen from adopting a South African child. This effectively meant that inter-country adoptions were unlawful. In *Minister of Welfare and Population Development v Fitzpatrick* 2000 (3) SA 422 (CC), this section was declared to be unconstitutional and invalid. The Constitutional Court ruled that inter-country adoptions should proceed through the existing children's courts, like all other adoptions. In the subsequent Constitutional Court judgment in *AD & another v DW and others* 2008 (3) SA 183 (CC), the court noted that, in the context of inter-country adoption, the correct route to follow would be adoption proceedings before the children's court. As indicated above, this exclusive jurisdiction of the children's court in respect of inter-country adoptions has now been formalised in terms of the Children's Act.

A children's court has a status similar to a magistrate's court at district level, and as there are children's courts in every magisterial district in South Africa, they are much more accessible to litigants, and much less expensive, than the High Court. While children's courts have a specialised child law jurisdiction, this jurisdiction spans a wide range of matters involving children, including South African domestic adoptions. It is, however, generally accepted that children's courts do have the necessary expertise and experience to ensure proper compliance with the 1993 Adoption Convention and that the concentration of jurisdiction in such courts in this regard ensures that the safeguards and procedures envisaged by the Convention are followed. Since children's courts are found in every magisterial district throughout the country, in the region of 384 such courts exist in South Africa. Concentrated training of all presiding officers would not be possible under present circumstances.

18. Sweden

By Judge Ann-Sofie BEXELL, Stockholm District Court, Stockholm, Sweden[32]

[32] The author is the member of the International Hague Network of Judges for Sweden.

On 1 July 2006 a legislative amendment entered into force in Sweden under which all applications concerning the return of children under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* would be heard by Stockholm District Court as the court of first instance.

Before 1 July 2006 Hague cases had been heard by all of the 23 administrative courts in Sweden; these courts mainly deal with cases between a public authority and an individual party, for example tax cases, social cases and migration cases. It was considered that Hague cases, which have, of course, two individuals as parties / opposing parties were no longer suited to the activities of these courts.

An all-party committee of inquiry tasked by the Government with conducting a review of an earlier reform of the rules for custody, etc. was also tasked with investigating whether Hague cases should be gathered under one or a few decision-making bodies. The reasons for this were that there are relatively few Hague cases and it had therefore turned out to be difficult to maintain the expertise required for the speedy processing of these cases. According to the committee of inquiry, international experience also showed that the Hague Convention operated more effectively in the countries in which these cases had been concentrated to a limited number of judges.

The committee of inquiry proposed transferring the Hague cases to the general courts, which hear cases about custody and access, and concentrating them to a single district court, Stockholm District Court. The inquiry referred to the Guide to Good Practice drafted by the Hague Conference, according to which Hague cases should be concentrated to one court or a limited number of courts. The advantages of concentration were said to be more uniform case-law, greater experience and expertise among judges hearing these cases and therefore speedier processing.

In Stockholm District Court, Hague cases are heard at two divisions that have a total of 20 judges. In practice, however, Hague cases are heard by about 10 judges. The number of cases is 25-30 per year. The advantages of the reform have been seen in the speed with which these cases are decided. The cases are almost always decided within six weeks. The same day as an application is received, it is sent to the opposing party for an opinion along with a summons to a hearing three to five weeks ahead. A request is also sent to the social welfare committee in the municipality where the child is staying asking the committee to obtain the views of the child and report them in an opinion to the District Court. At the meeting the judge always tries to mediate between the parties to get them to agree to a solution that is in the best interests of the child. If a consensus solution cannot be reached, the District Court issues a final decision one-two weeks after the meeting.

The decisions of Stockholm District Court can be appealed to Svea Court of Appeal in Stockholm, and its decisions can, in turn, be appealed the Supreme Court. In both superior courts leave to appeal is required. The Court of Appeal has concentrated Hague cases to one division.

19. Switzerland

By Daniel BÄHLER, Appeal Judge, Supreme Court, Bern (Switzerland), and Marie-Pierre DE MONTMOLLIN, Cantonal Judge, Cantonal Court of First Instance, Neuchâtel (Switzerland)[33]

Switzerland acceded to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter the "1980 Child Abduction Convention"), effective as of 1 January 1984. Over time, the topic of child abduction gave rise to a growing debate in the media, in Parliament and among experts; the Convention's application was criticised. In particular, there were complaints regarding the time-consuming nature of proceedings. In response to parliamentary action, the Federal Council (Swiss Cabinet) observed in 1998 that the average duration of return proceedings, from the time when the child's residence had been located, was nine to twelve months.

Switzerland is a federal State. The legal system is a matter for each of the twenty-six cantons (members of the Federal State). Each canton has two court levels; the lower courts usually have limited territorial jurisdiction, delineated by district. Child abductions were subject to the jurisdiction of the courts at first instance. The possibility of appealing against their rulings to the various cantonal courts or cantonal supreme courts, and then to the Federal Tribunal, was one of the main causes of the procedure's length. This was compounded by the fact that it was also frequently necessary to bring a legal action to obtain the enforcement of a return decision. Finally, the carrying out of enforcement was a matter for the child protection agencies, which were organised by commune or district in several cantons.

One of the committees set up by the Federal Department for Justice and Police (Ministry of Justice) to reinforce child protection suggested in 2005 assigning applications for the return of abducted children to the jurisdiction of a single cantonal entity, in charge of both the ruling on the return and of defining the terms of enforcement of a decision. This proposal was based on the recommendations of the Hague Conference. It was approved by the Federal Council and Parliament, and included in a federal statute on the Hague Conventions (Federal Act on International Child Abduction and the Hague Conventions on the Protection of Children and Adults of 21 December 2007). Efforts at effecting broader concentration were forsaken for political reasons, as this would have required federal jurisdiction in the matter or the creation of a supra-cantonal court. Each canton was requested to appoint a single authority in charge of executing return decisions. The statute was enacted on 1 July 2009.

Since then, applications relating to the return of children are dealt with in the first instance by the cantonal superior courts, although these courts in principle only render decisions on appeal, in the second instance. A right of appeal to the Federal Tribunal is available, and the latter as a rule issues its determination fairly quickly, within a few weeks. The goal of reducing the duration of proceedings has accordingly been achieved.

The main factor determining the duration of proceedings in a specific case is the way in which the case was handled in the first instance. The jurisdiction conferred on the superior courts has resulted in return applications being referred to a small number of experienced judges. This facilitates development of the especially important know-how required to conduct and try such cases. It facilitates contacts with the Central Authority, which is able to provide valuable general or case-specific advice or information. Two days of information and ongoing training have already been held under the patronage of the Swiss Central Authority. These meetings have also allowed - no small benefit - a simplification of direct contacts among the canton courts having jurisdiction themselves. Swiss cantons are small in size compared with the territorial units of other federal States, and accordingly, each canton court tries only a small number of cases within the purview of the Hague Conventions; these cases may be counted, even in Switzerland's largest cantons, on the fingers of one hand. Hence it is all the more important to know the practice in neighbouring cantons and to draw inspiration from it as often as possible. This process is continuing and will bear fruit, we hope, in the medium term.

During the preparatory work for the aforementioned federal statute, Switzerland acceded to the *Hague 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*, which required the creation of one or more Central Authorities under that Convention. Switzerland used the option allowed for federal States to designate one Central Authority in each canton. These Central Authorities exercise in principle all the powers conferred on Central Authorities by the Convention. The task of the federal Central Authority is to forward to the canton Central Authority the communications received from abroad. The same division of the Federal Department of Justice and Police (the Federal Office of Justice in Bern) is in charge of that function as for the 1980 Child Abduction Convention (and also the *European Convention of 20 May 1980 on the Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children*, the *Hague Convention of 29 May 1993 on the Protection of Children and Co-operation in Respect of Intercountry Adoption* (hereinafter the 1993 Adoption Convention) and the *Hague Convention of 13 January 2000 on the International Protection of Adults*). Its responsibilities also include providing the foreign authorities with information about Swiss law and child protection agencies, representing Switzerland in relation to foreign Central Authorities, advising the cantonal Central Authorities on those Conventions and ensuring they are applied, and, finally, promoting collaboration of the cantonal Central Authorities among themselves, with experts and institutions, and with the Central Authorities of other Contracting States. In this sense it may be regarded as an informal network of Central Authorities. The same scheme had previously also been used for the 1993 Adoption Convention. As regards the courts and authorities in charge

[33] The authors are Members of the International Hague Network of Judges for Switzerland.

of child protection, the regular jurisdiction rules remain applicable, and no concentration of jurisdiction is planned.

20. United Kingdom (England and Wales)

By The Right Honourable Lord Justice Mathew THORPE, Judge of the Court of Appeal, Head of International Family Justice, The Royal Courts of Justice, London, England and Wales, United Kingdom[34]

The benefits that derive from concentrating jurisdiction to decide return applications under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* are almost too well known to spell out. To list a return application before a judge who has never before tried a Hague Case is a recipe for error or impracticality in crafting the resulting order. It is axiomatic that the concentration should be elevated, that is to say in the courts of the capital or provincial cities dignified with the provincial Court of Appeal. The fewer the judges the greater will be the individual's share of the case load. The greater the share the sooner will judicial expertise and confidence develop. The smaller the corps the easier is the delivery of initial training and also of on-going CPD training.

There has been a worldwide movement towards the introduction of concentration. This is not the path that my jurisdiction has trod since from the ratification and subsequent legislation of the Convention jurisdiction has been confined to the Family Division of the High Court, the highest tier in the hierarchy of trial courts. There are now 18 judges of the Family Division, judges of the highest calibre who have specialised in family justice both at the Bar and on the Bench. It is rare for the Court of Appeal to grant permission to appeal a grant or refusal of a return order made by one of the judges of the Division and rarer still for an appeal against such an order to be allowed.

Whilst it is appreciated that in some jurisdictions, such as the United States of America, the practical impediments to introducing concentration may seem overwhelming, there can now be no doubt that a higher quality of justice results from restricting case management (in itself a vital function) and subsequent trials to judges who are profoundly experienced in the law, in the procedures and in the use of direct judicial communication and collaboration.

21. United Kingdom (Northern Ireland)

By The Honourable Justice Ben STEPHENS, The Royal Courts of Justice, Belfast, Northern Ireland, United Kingdom[35]

In Northern Ireland family cases are heard at three judicial tiers. The overwhelming majority are heard in the Family Proceedings Courts which are located throughout Northern Ireland. The next judicial tier is termed the Family Care Centre. There are fewer such centres but they also located throughout Northern Ireland. The final judicial tier is the Family Division of the High Court located in Belfast. The Lord Chief Justice assigns High Court Judges to the various divisions of the High Court. All in-coming Hague Convention abduction cases are dealt with in the Family Division of the High Court in Belfast and the Lord Chief Justice has assigned all those cases to be heard and determined by me or in my absence by Gillen J. The court office that deals with all the cases that fall under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (hereinafter the 1980 Child Abduction Convention) is the office attached to the High Court known as the Office of Care and Protection (Children). Officials within that office are assigned by the Northern Ireland Courts and Tribunals Service at the request of the judges to recognise and give priority to all Hague Convention child abduction cases. The delegated functions of the Northern Ireland Central Authority are performed by the Central Business Unit, of the Northern Ireland Courts and Tribunal Service, an agency within the Department of Justice. The central authority in Northern Ireland usually refers the application to an experienced solicitor drawn from a firm familiar with this area of law and subsequently referred to a small panel of counsel who deal with all these cases on behalf of applicants. There is concentration of jurisdiction in relation to 1980 Child Abduction Convention to one first instance court in Northern Ireland and they are to be heard and determined by one of two judges sitting in that court. An appeal from the High Court is to the Court of Appeal again located in Belfast.

As far as I am aware jurisdiction in Hague Convention abduction cases has always been concentrated in this way in Northern Ireland. Accordingly I am unaware as to when or why concentration of jurisdiction took place, whether reform was necessary, and if so who initiated the reform.

Concentration of jurisdiction is achieved in two ways. The first is by Rules of Court applicable at all of the judicial tiers. The relevant rule for the High Court is Order 90 of the Rules of the Court of Judicature (Northern Ireland) 1980, for the Family Care Centre it is Order 51 of the County Court Rules (Northern Ireland) 1981 and for the Family Proceedings Court it is the Magistrates' Courts (Child Abduction and Custody) Rules (Northern Ireland) 1986. In effect these rules require the applicant to commence proceedings in the High Court in Belfast. The second way is by the administrative decision of the Lord Chief Justice to assign all of the cases to one of two named High Court Judges.

I have no doubt that concentration of jurisdiction for Hague Convention child abduction cases has considerable benefits. For instance it enables expertise to be built through experience. It facilitates reviews of performance. It provides consistency. It facilitates judicial liaison. I am also the Liaison Judge and accordingly I will ordinarily be not only the judge hearing and determining applications but also the judge seeking liaison with the judge in the jurisdiction to which the children are potentially to be returned.

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[35] The author is the member of the International Hague Network of Judges for Northern Ireland, United Kingdom.