

Judicial Communications

Report on the Training of Moroccan judges on the 1980 Hague Child Abduction Convention

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A training session was held on 15-17 December 2010 at the Senior Legal Staff Training College of Morocco regarding practical implementation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, which Morocco has recently acceded to. That training session, directed mainly at judges, was organised by the Supreme Court of Morocco in collaboration with TAIEX and the Hague Conference.

I enjoyed the good fortune of being on the panel of coaches, which also included Philippe Lortie, First Secretary, and Nicolas Sauvage, Legal Officer of the Conference.

That good fortune was first of all the opportunity to pass on legal knowledge backed by thirty years' experience in applying the Convention. You are aware of the remarkable teaching skills developed by the Conference: documentation presented orally with slide-shows, repeated in full in French and Arabic paper versions, high-quality simultaneous interpretation, a genuine opportunity to question and discuss, sub-group hypothetical case studies pooled at full sessions, presentation of the INCADAT database, etc.

All the fundamental issues were reviewed: the role of Central Authorities, the judges, provisional and preventive measures, the criteria for the return ruling, its enforcement, but also the role of international family mediation and the Judges' Network.

A comprehensive environment was presented to the Moroccan judges, ranging from theoretical knowledge to methodological tools.

That good fortune was also everything we received in return. I discovered a body of open-minded judges, made up of young and dynamic men and women, fluent in French, all highly motivated by the acquisition of that new knowledge. I was especially impressed by the earnestness of the work, the quality of the methodology applied to the various case studies and the concern for taking all the relevant factors into account, so that the real issues were raised.

Pondering cases of split families with our Moroccan colleagues highlighted their commitment to promoting the new Family Code of 2004. The family courts have been established and are applying the new rules. Applications for no-fault divorce are being presented in large numbers, often by the wives. The time allowed for trying cases is strictly limited, and observed.

The interests of the child and the parents' equal rights are being taken into account. The family judges are accordingly playing an essential part in the country's modernisation.

All this against the backdrop of Morocco's wonderful hospitality, lively, warm and food-loving!

The experience is a favourable omen for the Convention's application and for Moroccan judges' cooperation in the Judges' Network.

The Dutch Office of the Liaison Judge International Child Protection (BLIK)

Report from 1 January 2010 to 1 January 2011

1. Introduction

The following article is a summary of the Report on the activities of the Dutch Office of the Liaison Judge International Child Protection (BLIK) from January 2010 to January 2011. A first presentation of the BLIK's activities was made in Volume XV of the Judges' Newsletter.

BLIK has performed the duties of a liaison judge since its creation on 1 January 2006. It has since then acquired a position of permanent importance as a centre of expertise and an advisory body in the field of international child protection for judges in Family Divisions of Dutch District Courts. It is a mainstay of the Family Division of the District Court of The Hague which over the years has heard a large number of cases relating to aspects of private international law.

2. Developments in 2010

2.1 Preliminary draft amendment

In a first chapter, the report discusses the developments in 2010. On 1 April 2010, the Dutch Ministry of Justice presented to Parliament a preliminary draft amendment to the Dutch International Child Abduction and Child Protection Implementation Acts, aiming to improve the position of those directly involved with international child abduction. The preliminary draft aims to considerably speed up the return application procedure by concentrating jurisdiction in one or a limited number of courts, both at first instance and on appeal. The draft amendment also proposes to remove the Central Authority's powers of legal representation in child abduction cases.

2.2 Mediation pilot

Another important development in 2010 was that the District Court of The Hague ran a pilot on cross-border mediation in international child abduction cases from 1 November 2009 until 1 May 2010. In summary, the return procedure during the pilot is as follows. Within six weeks after the submission to the Central Authority of the application for return it has

an interview with the parent(s) and arranges a mediation session if possible. If the parents fail to reach a settlement, the return application will be brought before the District Court. The proceedings before the District Court also take no more than six weeks. 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 already taken place at the preliminary stage. 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 reach 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. 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 result is a sort of 'pressure cooker procedure' which lasts no more than 18 weeks (3x6).

The Verwey-Jonker Institute (for social scientific research) has evaluated the mediation pilot. The results turn out to be positive. The report³⁸ finds that ten cases were referred to mediation in the reference period, leading to full or partial settlements in six cases. These mediations took place either at the pre-hearing stage after some intervention or after the pre-trial reviews. The Central Authority has referred four out of fifteen incoming cases to mediation. In two cases this has resulted in full settlements and in the third case in a partial settlement, whilst in the fourth case no agreement could be reached. The District Court referred relatively more incoming cases to mediation. Out of twelve incoming cases, six were referred to mediation. In one case parties reached full agreement, in two cases partial agreement, and in the remaining three cases no settlement could be reached. In these latter two categories further hearings before the full court proved necessary. If parties had reached a partial settlement this usually concerned their contact with the other parent after the court's decision, be that either the granting or refusal of a return order. If the number of cases referred to mediation appears small, it should be kept in mind that the number of return applications in a year is also limited. After the pilot had officially ended (1 May 2010), several cases were heard which had been filed at the time the pilot was still running and which therefore qualified for free mediation. The results in those cases, however, could not be taken into account in the analysis by the Verwey-Jonker Institute. Remarkably enough, it is in exactly these cases that a full settlement was most often reached. This may be attributable to the broader experience gained by the mediators in these very complex cases.

Note

³⁸ I. Bakker e.a., *Evaluatie pilot internationale kinderontvoering*, Utrecht: Verwey-Jonker Institute 2010.

3. The legal framework

Chapter 2 of the report presents the legal framework in which the BLIK operates: the 1980 Hague Convention on the Civil Aspects of International Child Abduction; the 1980 European Custody Convention³⁹; the Brussels IIa Regulation⁴⁰; the 1996 Hague Child Protection Convention⁴¹; the Dutch International Child Abduction Implementation Act and the Dutch International Child Protection Implementation Act.

4. The duties and activities of BLIK

Chapter 3 outlines the duties and activities of BLIK, which main task is to support the Liaison Judges in the performance of their duties. The Liaison Judge serves as a contact point for Dutch judges who hear child abduction cases or other cases involving aspects of international child protection, and who want to contact a foreign judge, as well as for foreign judges who want to contact a Dutch judge in this respect. BLIK also serves as a help desk for Dutch judges and runs a website which is only available to the judiciary.

5. Cases handled by BLIK

Chapter 4 gives an overview of the cases handled by BLIK. In 2010 thirty four return applications and other cases involving aspects of international child protection were filed before the District Court of The Hague. Mediation resulted in full settlements between the parents in seven abduction cases, after which return applications were withdrawn. Liaison requests were made to BLIK by 8 foreign judges, mostly from Member States of the European Union. The BLIK Help desk answered 12 information requests by Dutch District Courts. The Liaison Judges and other staff members of BLIK attended 11 conferences and international meetings in 2010.

6. Other

Finally, the report also provides information in chapters 5 and 6 concerning the staff and finances of BLIK. For a complete version of the report, we invite you to contact BLIK at Liaisonrechter.internationale.kinderbescherming@rechtspraak.nl

Notes

³⁹ European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children of 20 May 1980.

⁴⁰ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

⁴¹ 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.