

Judicial Communications

This volume of The Judges' Newsletter features extracts of annual reports of the Dutch Office of the Liaison Judge – International Child Protection (BLIK) (1 January 2011 – 1 January 2012), the German Members of the International Hague Network of Judges (1 January 2011 – 31 December 2011), and the Office of the Head of International Family Justice for England and Wales (1 January 2011 – 31 December 2011). Articles from other Members of the International Hague Network of Judges on their judicial communication experiences and practices are always welcome additions to The Judges' Newsletter. If you would like to share your experiences through The Judges' Newsletter please do not hesitate to contact the Permanent Bureau.

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

Report from 1 January 2011 to 1 January 2012

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 2011 to January 2012. A first presentation of 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 the 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 2011

2.1 Continuation of cross-border mediation

The report begins by discussing the developments in 2011. One of them is the continuation of the use of cross-border mediation in international child abduction cases. The procedure was developed in the pilot mediation programme which took place in 2009 and 2010, and was presented in the previous issue of the Judges' Newsletter (Volume XVIII).

Those involved in the mediation process have managed to make considerable progress in speeding up the return application procedure. Pre-trial court hearings have clearly contributed to the quality of full court hearings and speedy case processing times. In the majority of cases in which a full court hearing took place, a decision was given directly after the hearing. Further, in several cases a full court hearing was not necessary since the parents had reached a settlement during the mediation which was arranged at the pre-trial hearing. In cases in which no full settlement could be reached, the positive outcome was that

parents tried to get on speaking terms with each other again and aimed to come to an amicable settlement of their disputes after having battled each other fiercely for years. Mostly, this ultimately resulted in a partial settlement, the arrangements for which were laid down in a partial agreement or mirror agreement. In 2011 the District Court of The Hague heard twenty-six return applications. In sixteen cases a pre-trial review hearing took place and, of these, fourteen cases were referred to mediation. In three of these cases, however, mediation did not actually take place. Six out of eleven cases referred to mediation resulted in full settlements. In these cases arrangements concerning the child's place of residence, his or her contact with the non-resident parent and his or her upbringing were laid down in a settlement agreement, after which the Central Authority withdrew the pending return application.

In view of the success of mediation and pre-trial hearings, the District Court of The Hague will continue with pre-trial court hearings and referrals to mediation in international child abduction cases in 2012, the cost of which will be partially funded by the Ministry of Security and Justice. Parties entitled to free legal aid will be requested to pay an income-related fee for the cross-border mediation. Parties not qualifying for free legal aid may be eligible for subsidised mediation.

2.2 Preliminary draft amendment

Another important development in 2011 was that the Dutch Parliament approved proposed amendments to the Dutch International Child Abduction Implementation Act and the Dutch International Child Protection Implementation Act.

One amendment is the concentration of jurisdiction at first instance. As of 1 January 2012, the District Court of The Hague will have sole jurisdiction to hear return applications under the 1980 Hague Convention, and consequently jurisdiction on appeal will lie with the Court of Appeal of The Hague. Appeal to the Dutch Supreme Court in return cases has been limited as of 1 January 2012 to appeal in cassation on a point of law.

The amended Implementation Act now also sets out that the first instance decision will suspend any appeals lodged, unless the court decides otherwise in the child's best interest, either on request or on its own initiative.

Finally, as of 1 January 2012 the Central Authority no longer has powers of legal representation for the left-behind parent in international child abduction cases under the 1980 Hague Convention. The Central Authority now has a mediating role in child abduction cases. If parents fail to reach a settlement they are referred to an attorney who in turn may present the case to the court.

2.3 Coming into force of the 1996 Hague Child Protection Convention

The 1996 Hague Child Protection Convention⁵² came into force for the Netherlands on 1 May 2011 after ratification

⁵² 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.

by the Netherlands on 31 January 2011. It replaces the 1961 Hague Convention concerning the powers of authorities and the law applicable in respect of the protection of infants in relations between its Contracting States. BLIK has received many questions about possible conflicts between the 1961 and the 1996 Hague Conventions in cases where parental responsibility was granted before or after the coming into force of the 1996 Convention.

3. The legal framework

Chapter 2 of the report presents the legal framework in which BLIK operates: the 1980 Hague Convention on the Civil Aspects of International Child Abduction; the 1980 European Custody Convention;⁵³ the Brussels IIa Regulation;⁵⁴ the 1996 Hague Child Protection Convention; 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, whose 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 and knowledge centre 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 2011 twenty-six return applications and three other cases involving aspects of international child protection were filed before the District Court of The Hague. The Court also rendered seven decisions in cases that had been initiated in 2010, six of which were return applications. Out of the 26 return applications, the parties chose mediation in fourteen cases, but in three cases the mediation never took off. In four cases mediation did not result in a settlement, in one case a partial settlement was reached which was laid down in a mirror agreement. Mediation resulted in full settlements between the parents in six abduction cases, after which return applications were withdrawn. Liaison requests were made to BLIK by three foreign judges and one Central Authority, all 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 eight conferences and international meetings in 2011.

⁵³ European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children of 20 May 1980.

⁵⁴ 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.

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

The German members of the International Hague Network of Judges

Report from 1 January 2011 to 31 December 2011

Sabine BRIEGER

Judge at the District Court Pankow/Weissensee

Martina ERB-KLÜNEMANN

Judge at the District Court Hamm

1. Introduction

This article is a summary of the Report on the activities from January to December 2011 of Sabine Brieger and Martina Erb-Klünemann, the two German members of the International Hague Network of Judges (IHNJ). Ms Brieger was appointed as second German member of the IHNJ on 20 June 2011. Both judges are also members of the European Judicial Network in civil and commercial matters (EJN), but the report only concerns their activities as part of the IHNJ.

The IHNJ is more and more widely known in Germany. The German courts with special jurisdiction according to the International Family Law Procedure Act (Internationales Familienrechtsverfahrensgesetz) are mostly familiar with the IHNJ and make frequent use of it. The two German members of the IHNJ also regularly take an active part in the biannual Hague Child Abduction Convention seminar organized by the German Federal Office of Justice for the 22 specialised Family courts and the regional appeal courts (Oberlandesgerichte) in Germany.

On the other hand, the over 620 German Family Courts without special jurisdiction often do not know about the IHNJ or the work of its German members. Several initiatives are currently being undertaken in order to disseminate information about the IHNJ and the EJN more widely.

Up to now, the requests made to the German members of the IHNJ were predominantly from other German colleagues (outgoing requests). The overall feedback was very positive and most Judges described this service as being very useful and were very thankful for the help provided.

2. The activities of the German members of the IHNJ

2.1 Establishing connections

The main task of the members of the IHNJ is to provide help and information to the German and foreign judges who face

questions with regard to a specific family law case involving an international element and who turn to the German members of the IHNJ. This work is guided by the Recommendations developed by the “Joint Conference of the European Commission and the Hague Conference on Private International Law” (Brussels, 15-16 January 2009) and by the “Sixth Meeting of the Special Commission on the practical operation of the 1980 and 1996 Hague Conventions” (The Hague, 1-10 June 2011).

A typical case starts with a telephone enquiry from a German Judge. If needed, the German member of the IHNJ explains her role and helps to formulate the questions to be sent to the foreign judge. The German member of the IHNJ also draws attention to the question of the involvement of the parties and providing information to them, as well as to the proper filing of all information concerning the request with the member of the IHNJ. The request is then sent to the foreign member of the IHNJ, usually by email. Knowing other members from the IHNJ personally, through meeting at conferences for example, has proven very helpful and an accelerating factor. So far, all contacted German and foreign judges have agreed to direct judicial communications. Typically, the foreign member of the IHNJ will give the German member of the IHNJ the contact information of the foreign judge. The German member of the IHNJ will then get in touch with the foreign judge, as most German judges wish that the answer to their request would also go through the channel of the German members of the IHNJ, mostly for language reasons.

The German members of the IHNJ received 37 requests in 2011 (compared to 13 in 2010), mostly from German courts (29 requests). The requests mainly concerned the United States of America, Switzerland, Turkey, and the United Kingdom. Most requests were dealt with within one day. The requests which involved establishing contact with a foreign judge were dealt with within 4 days at most.

The cases in which a foreign member of the IHNJ could be contacted were dealt with the most efficiently, which shows the importance of designating a member of the IHNJ in all countries.

The cooperation with the German Central Authority as well as with some other contacted Central Authorities was always very good and mutually beneficial. Central Authorities could for example sometimes provide help where no member of the IHNJ had been designated in the other country.

2.2 Seminars and conference

The German members of the IHNJ are regularly invited to and participate in seminars and conferences in Germany and abroad on the topic of international child protection and direct judicial communications. Participation in these conferences is also important in order to exchange practical experiences and meet other Network Judges or otherwise interesting contact persons. Ms Erb-Klünemann had the chance in June 2011 to participate as a member of the German delegation at Part I of the Special Commission on the practical operation of the 1980 and 1996 Hague Conventions, which was certainly a highlight of 2011.

2.3 Building and maintaining contacts

Participating in international seminars and conferences is a great way to get to know personally more and more colleagues from the IHNJ and “unofficial” liaison judges from all over the world, as well as German and foreign judges, members of Central Authorities, government offices, the Permanent Bureau, NGOs and academics in the area of international family law.

There are synergies between the IHNJ and the EJM and it is therefore highly recommended, as expressed in paragraph 8 of the Recommendations of the Joint Conference of the European Commission and the Hague Conference on Private International Law, to designate the same judge or judges to both the IHNJ and the EJM, as is the case in Germany.

3. Instruction sheet

An instruction sheet was developed in order to ensure quick and easy processing of information requests. This instruction sheet is reproduced at the end of this article.

Instructions concerning direct judicial communications

On the basis of the Recommendations of the “Joint Conference of the European Commission and the Hague Conference on Private International Law”, 15-16 January 2009, Brussels

You have contacted the Judicial Networks with a request for support in establishing a contact abroad.

As German member of the IHNJ we will endeavor to help you, together with our foreign colleagues. To this end, we need the following information from you, preferably by e-mail:

1. Please share your own exact contact details including telephone number and e-mail address.
2. Explain shortly the facts of the case which form the background of your request. Give as many details as possible concerning any ongoing foreign proceedings, including the name of the court, the date and the file number.
3. Please be as specific as possible when framing your questions.
4. Indicate who, according to you, should answer these questions.

If your question is a general one concerning foreign law or procedure, the foreign member of the IHNJ may well be in a position to directly give you a general answer.

If you would like to contact the competent judge abroad, please inform us accordingly and share all the information you have in order to identify the judge. If available, please give us the judge's name, the exact denomination of the court and its address, and any other contact details, as well as the file number of ongoing proceedings.

5. Which means of direct judicial communication would you prefer? Please answer the following questions:
 - a. Would you like as far as possible to communicate

- directly with your foreign colleague? Which foreign languages do you speak?
- b. Or would you like that all communications go through the member of the IHNJ?
6. When do you need an answer to your questions?

Please note that the attempt to establish contact and undertake direct judicial communication must be done in a transparent way. It is therefore recommended to inform the parties and to record all related information and documents in the case file.

We will inform you as quickly as possible about the progress of our efforts.

The German members of the European Judicial Network in civil and commercial matters and of the International Hague Network of Judges.

The Annual Report of the Office of the Head of International Family Justice for England and Wales: A Brief Summary

by Victoria Miller

The 2011 Annual Report of the Office of the Head of International Family Justice for England and Wales (hereinafter "the Office") was published in April 2012.

Since the Office's creation in April 2005 it has delivered both the objectives of the Head of International Family Justice and a service to judges and practitioners both within the jurisdiction and in other jurisdictions transiently troubled by a pending case with an English dimension. The Office is effectively a helpdesk for international family law in England and Wales, in particular handling requests to establish judicial contact between an English court and foreign court in a given case. Its role is to support cross border judicial collaboration and to enhance the expertise necessary for handling the large number of cases relating to aspects of international family law. The aim: to speed up the unwieldy judicial and administrative processes that cause even more heartbreak when, say, the child is in one country and the agonised parent is left behind.

Direct judicial communications, via the Office, have delivered excellent results for families across the globe. Lord Justice Thorpe, the Head of International Family Justice for England and Wales, has dedicated a great deal of time and effort to ensuring effective worldwide judicial collaboration and is, to the outside world, the visible representative of our Family Justice System. As a result of Lord Justice Thorpe's hard won contacts, many of which are personal, following meetings at international conferences, we are able to make diplomatic contact with judges from other jurisdictions. It is these relationships that have generated the mutual confidence and trust required to ensure a growing worldwide commitment to the facilitation of International Family Justice.

Year on year the Office has seen a significant rise in the number of requests for its liaison function, namely requests to establish judicial communications between an English court and a foreign court. When the Office was created in 2005 we had just 3 cases, in 2008 it was 50, in 2010 it was 92 and in 2011 it rose to 180, a 96% increase on 2010. The 180 cases concerned 51 jurisdictions across the globe. 83% of the cases referred to the Office were from an internal source (we class requests as internal when they come from the judiciary, practitioners and government departments within the jurisdiction). 59% of the requests for assistance came from practitioners, often directed by the Judge. Those cases concerned a variety of matters including child abduction, relocation and care proceedings. The request is usually acknowledged within 24 hours, a communication is then sent to the requisite International Hague Network Judge or European Judicial Network Judge and, on average, a response is received from the Network Judge within 12 days.

As found in previous years, more cases concerned Europe than any other part of the world with 75 cases in total. This amounts to 42% of the total number of cases referred to the Office in 2011, a figure which has grown significantly from the 26% and 25% recorded in 2008 and 2010 respectively. This may, in part, be as a result of economic migration and free movement of persons within Europe.

So far this year (up to 21st June 2012) we have had 142 new requests for judicial liaison in relation to specific cases. If this pattern continues unabated it will lead to 300 new cases in 2012. A 67% increase on 2011. What the figures in this summary do not illustrate is the number of cases that we are still assisting with from previous years. At present there are 38 cases from 2011 alone that the Office is still assisting with. Therefore the Office has assisted with at least 180 cases so far this year. Below are a few examples of the type of cases that we assisted with 2011.

Case A

The English High Court was hearing an Anglo-Norwegian child abduction case concerning two children, both girls, aged 6 and 3. The father was Norwegian and the mother was English. The mother brought the children to the UK by stealth in September 2010 – an admitted wrongful removal. The only defence raised was under Article 13(b) on the basis that a return would impact adversely upon the mother's health and consequently upon the children. An adult psychiatrist advised that the mother was suffering from an Adjustment Disorder which was likely to worsen if she were required to return to Norway unless appropriate measures were put in place to protect her from real or perceived threat. A number of specific interventions were suggested by the psychiatrist so as to ameliorate the situation and mitigate any negative effects upon the mother's mental health if she returns to Norway. The lawyers were working upon securing the father's agreement to a number of protective measures.

Several questions arose in relation to the matter and the English High Court Judge hearing the case requested the assistance of the Office in finding out information from the

International Hague Network Judge in Norway. The questions sent were as follows:

1. How long would an application for relocation take to conclude on the basis that both sides would desire a speedy process?
2. Could the mother apply for interim permission, pending the final hearing, to relocate to England?
3. Are the courts in Norway able to provide the mother with protective orders as appropriate? For example, injunctions restraining the father from harassment and so on.
4. What view would the courts in Norway take of undertakings offered to the English court so as to ensure a 'soft landing' for the return?
5. Would the parents be entitled to legal aid to litigate the relocation question as well as residence and contact?

The questions were dispatched along with a case summary and the liaison judge provided a detailed response within 24 hours of the request being sent. Following this information the English court made a return order which was subsequently upheld by the Court of Appeal and the Supreme Court.

Case B

The case concerned two children who travelled to Kenya for their mother's funeral and were subsequently wrongfully retained by their maternal grandparents. On the application of the father the children were made Wards of the English court and various orders were made for their return, all of which had been thwarted. It was hoped that with the agreement of the maternal grandparents the children would be returned. However the grandparents obtained a Guardianship order in the children's court in Nairobi.

The Office contacted the International Hague Network Judge in Kenya and asked for her assistance in bringing to the attention of the Kenyan judge the English court orders. The Network Judge held a meeting with the Director of Children's Services in Kenya and requested the implementation of the English court orders. Soon after the Director obtained an order from the children's court for the return of the children and the children were returned.

The speed with which we were able to resolve these two cases is illustrative of the excellent service that the Office provides and the collaboration fostered between network judges.

The Office has also seen a rise in the number of general enquiries, namely handling of requests for advice from Family Division judges and enquiries from academics, the Ministry of Justice and foreign Ministries, the Central Authority, Foreign and Commonwealth Office and charitable organisations. This may, in part, be as a result of the continuing growth in international family litigation. 65% of children born in London in 2010 had at least one foreign parent. This figure illustrates the potential for significant future growth in international family litigation.

The year 2011 was an important one for the Office. In addition to the large number of cases and enquiries referred to the

Office, between us Lord Justice Thorpe and I attended thirty conferences and seminars worldwide. In particular we both attended the Sixth Special Commission in The Hague to review the practical operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction 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. Three and a half weeks were spent debating a wide range of issues, the product of which went to the General Affairs Committee in April 2012.

What is clear from the Report is that at the highest levels of the judiciary across the world, much work is being done behind the scenes for the benefit of many transnational families, speeding up responses, cutting delays and assisting implementation of transnational court orders.

The full report can be accessed on www.judiciary.gov.uk.

Case studies extracted from the Annual Report of the Office of the Head of International Family Justice for England and Wales (pp. 26-28)

Anglo-German child abduction

The case concerned two children who had been removed from Germany to England by their mother without their father's consent. The Office received a request from the English High Court Judge hearing the matter to contact the IHNJ in Germany regarding the meaning of a custody order that the German court had made prior to the mother removing the children. Essentially the question we asked the IHNJ in Germany was whether it was unlawful under German law, having regard to provisions of the German custody order, to change the place of residence of the child from a place in Germany to a place in England without the permission of the father or appropriate German court.

Within thirty minutes we received a response and an answer to our query; which was essentially that the mother needed the consent of the father or the court before relocating. The English court then requested an Article 15 declaration from the German court. The Office sent a further request to the IHNJ in Germany and in less than two weeks we had an Article 15 declaration. The speed in which we were able to resolve this is exceptional and no doubt down to the excellent collaboration between our two jurisdictions.

Anglo-Polish care case

This case concerned two children who were previously habitually resident in Poland but were removed from Poland by their father and uncle and brought to England. They had travelled by road and rail through Europe, including Italy and France before arriving in England. Within four

days of their arrival they were taken into police protection having been found in a make-shift shelter near live train tracks. It soon became clear that there were ongoing care proceedings concerning the children in Poland and, although the father and uncle had the consent of the mother to take the children out of Poland, they did not have the consent of the Polish social services department who had a care order for the children.

Unfortunately communication between the English and Polish social services had broken down and it was proving difficult to establish who had jurisdiction in the matter; whether the children should be returned to Poland and under what conditions. The uncertainty surrounding their legal status was, consequently, delaying making any meaningful plans for their future. Therefore the Office was contacted or assistance. We were able to reach our judicial contact point in Poland to find out information as to the present position under Polish law and set the wheels in motion for collaboration between our two agencies.

The tendency of dangerous parents to bolt when social services are exercising legitimate protective powers is all too common and much to be disregarded by demonstrating that there is no gain in flight. Judicial collaboration is required for the protection of children at significant risk of harm. We are seeing a rising number of these types of cases being referred to the Office, mostly involving Eastern-European countries.

Anglo-Australian child abduction

One of the IHNJ in Australia (there being two) requested the assistance of the Office in providing information about any criminal proceedings taken against the mother in England for removing her child to Australia without the consent of the father, the mother's lawyers having indicated to the judge that if any criminal or like proceedings have been instituted against the mother, they will seek that any return of the child (with the mother) be conditional on those proceedings being abandoned or criminal sanctions being nullified.

Within 24 hours the Office provided the judge with the information. A further request was then made for assistance in listing a hearing in the English court to consider whether

consent orders can be made to facilitate the return of the child to England. The undertakings which were sought were given by the father and were threefold. First, that he will not abuse or assault the mother. Second that he not be an informant or complainant in any criminal or like proceedings against the mother arising out of her wrongful removal of the child from the UK or seek that she be prosecuted in that respect. Third, that the father not cause any proceedings to be taken ex parte the mother or to be allocated a first or preliminary hearing date which is earlier than 16 days after the day upon which the child departs Australia. The Office liaised with the applications judge and the father's lawyers in the UK and a Consent Order was made by the English Court within 24 hours of the request being made.

The mother is now applying to relocate to Australia.

Anglo-German custody case

The case concerned a child born in Germany to unmarried parents who subsequently came to live in the UK and married. The mother appointed her mother as guardian of the child in her will. Soon after the mother died and the grandmother started proceedings concerning the child in the English court, fearing that the father may relocate with the child to Germany. The father then removed the child to Germany without the grandmother's knowledge or consent and without the courts permission and applied to the German court for sole custody. The Judge hearing the matter in Germany did not know whether she had jurisdiction under Article 8 of Brussels IIa and therefore requested the assistance of the Office for information in relation to a number of questions concerning English law on parental responsibility: What was the effect of the mother's will; who had rights of custody when the child was removed; did the father have the right to decide to move to Germany on his own or did he have to ask the grandmother or the court; what is the effect of the Wardship order made by the English court; is there a case pending in the English court; is the child still a Ward of court; and is it a case of Article 19 (2) of Brussels IIa?

The Office, having had sight of the papers in the case, was able to provide the German judge with answers to her queries which resulted in a swift conclusion to the case.