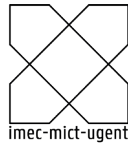




**Missing
Children
Europe**



co-funded
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HEAR ME OUT!

**Results of
legal research**



Objective

The team analysed case law on international child abductions in Europe to find out:

1

whether and how judges give substance to the notion of the best interests of the child;

2

whether judges hear children.

Methodology

The analysis covers 938 national cases from 17 EU countries (Belgium, Bulgaria, the Czech Republic, Croatia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Malta, the Netherlands, Poland, Romania, Sweden and Spain, see Figure 1). Case law from the European Court on Human Rights (ECtHR, 54 cases) and the European Court of Justice (ECJ, 8 cases) was included to the extent it could enhance the understanding of the notion of best interests. Legislative provisions include the 1980 Hague Child Abduction Convention, EU Regulation Brussels IIbis and the United Nations Convention on the Rights of the Child.

Figure 1 – The analysis covered 17 national jurisdictions in Europe

Best interest of the child

The research confirmed that the principle of the child's best interests is acquiring importance in international child abduction proceedings in Europe. Yet, reference to the principle **does not appear broadly and is not homogeneously spread** among the selected jurisdictions. Out of the 938 national cases considered, reference to the child's best interests was found in 495 decisions or **52%** only (361 or 38% explicit and 134 or 14% implicit references). Implicit reference means that the courts use wording such as 'the child's wellbeing', 'development', 'growth', 'balance', 'equilibrium' in their reasoning. In the remaining 47%, no reference was made to the child's best interests (see Figure 2).

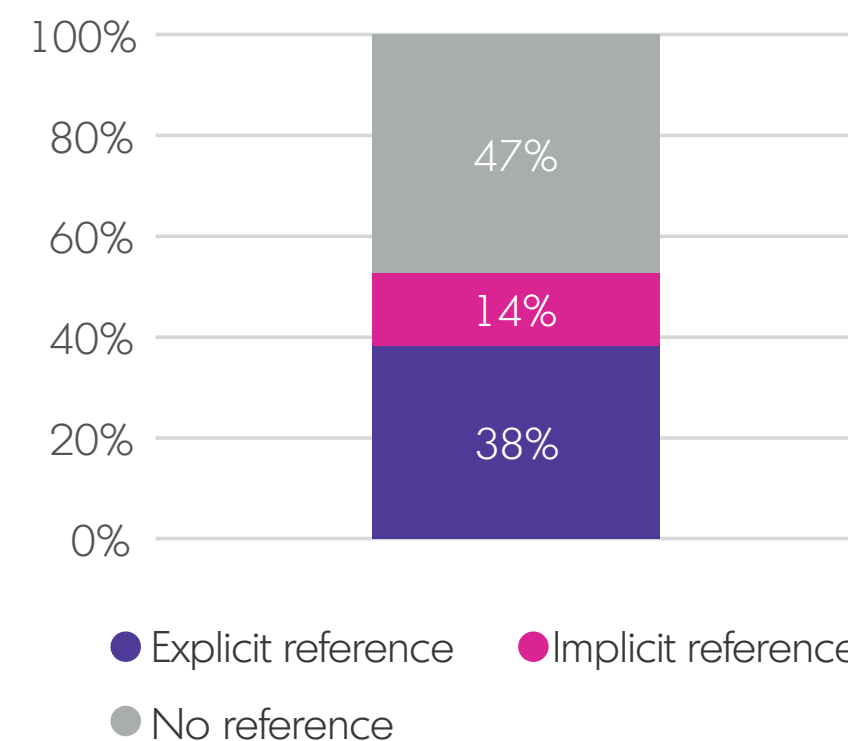


Figure 2 – Reference to the best interests of the child in national case law

It emerges from the analysis that national courts encounter **difficulties in assessing the child's best interests**. They tend to prioritise the main goal of the Hague Abduction Convention, namely that abducted children should in principle return speedily to the country of their former habitual residence. However, in line with leading ECtHR case law in *Neulinger and Shuruk v. Switzerland* and *X. v. Latvia*, courts cannot order return mechanically, but must take into account the **situation of the specific child in light of the Hague Abduction Convention's exceptions**. It is in this sense positive to see how courts attempt to reconcile the best interests principle with the Convention. In fact, the principle of the child's best interests is frequently used in connection with the Hague Abduction Convention's grounds for non-return. The concept does not have the effect of expanding the scope of application of the Convention's grounds for non-return, but it can assist in a more child-centred interpretation of these grounds.

In particular, the exception of a **grave risk of harm or of an intolerable situation** was linked to the child's best interests in 293 cases. When examining the particular factors that can lead to the applicability of the grave risk exception, courts explain what they understand under the notion of the child's best interests. Factors considered in this regard include, amongst others, the child's relationship with both parents, the child's degree of integration in the country of refuge, evidence regarding violence or abuse, separation from the primary caregiver or the necessity of special care.

A total of 67 cases link the child's best interests to the ground for non-return that the child objects to return. However, courts generally considered this ground for refusal together with other factors, especially with an overall assessment concerning the integration of the child in the new environment. In some decisions, the return of the child was ordered despite his or her objection. Whether the child's objection will lead to a refusal of return depends in particular on the degree of maturity the court attributes to the child and on the firmness or consistency of the child's words.

Another 56 cases link the child's best interests to the child's settlement in the new environment, while 43 decisions found a link between the child's best interests and the left-behind parent's exercise of custody, consent or acquiescence. Only six cases link the child's best interests to fundamental rights in the context (see Figure 3).

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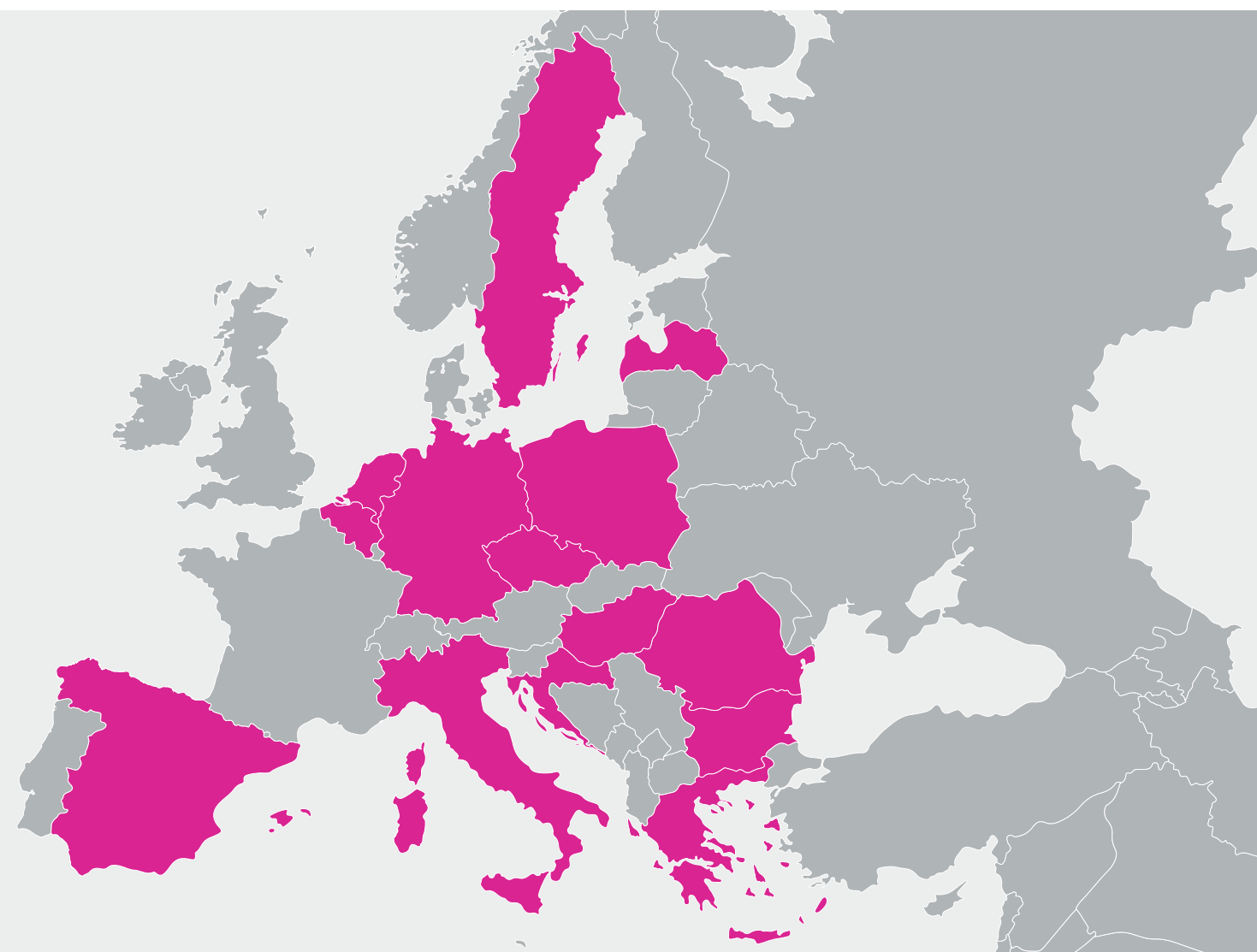
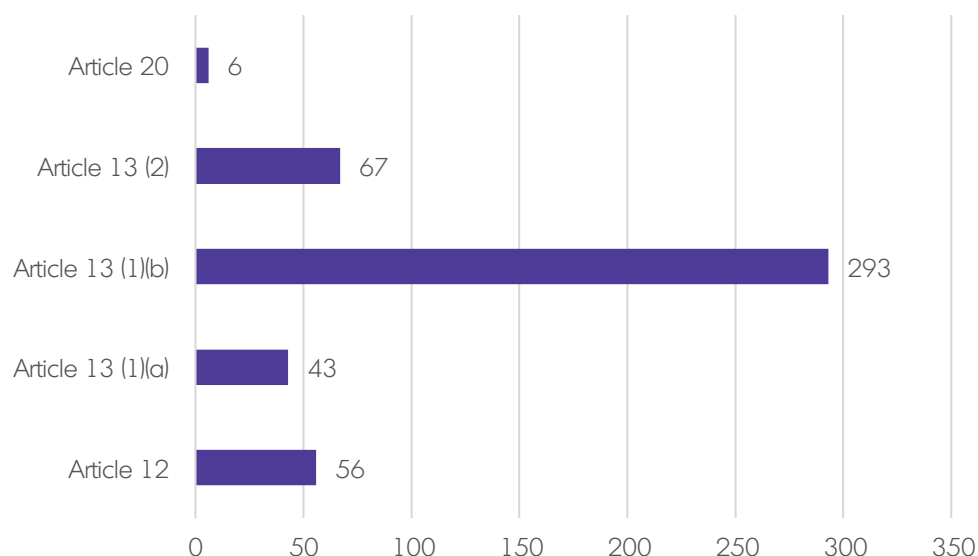


Figure 3 – Number of cases referring to the exceptions to return under the HCCA



Hearing children

When the courts hear children, they mostly take the child's views into account to give substance to the child's best interests and to assess the possible need to use one or several grounds for non-return. The hearing of the child is discussed in 320 cases out of the 433 that cover the best interests of the child. One or

more children were heard during the procedures in 194 of these, representing 61%.

Of the 50 cases in which all of the involved children are between zero and three years old, the children are heard in 20% of the cases. Hearing of children younger than four never took place in front of a judge. Of the

207 cases in which all of the involved children are between four and sixteen years old, the children are heard in 68% of the cases. In 44 cases, the age of the involved children was unknown and in nineteen cases there were children involved that belong to both age categories so that these cases could not be taken into account in the age analysis.

Cases in which the child is heard/not heard split up according to age category

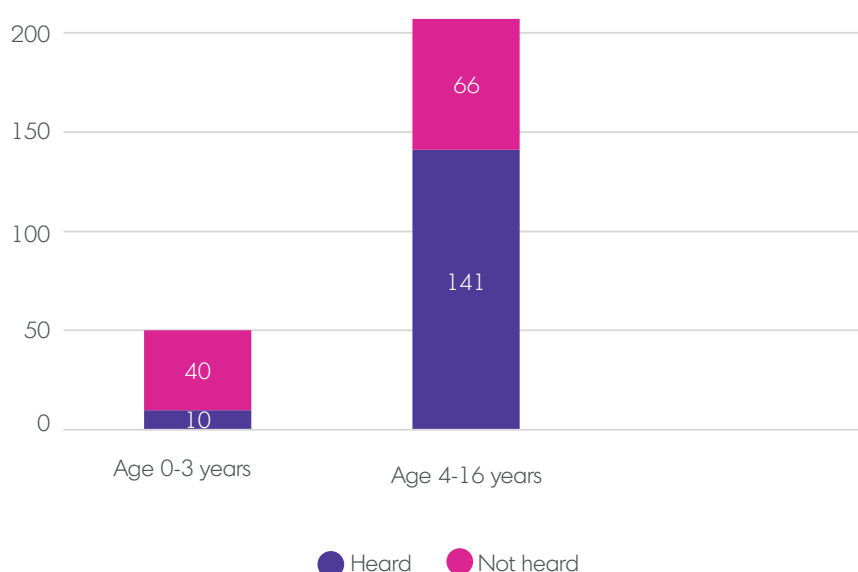


Figure 4 – Cases in which the child is heard / not heard split up according to age category