

DOMESTIC VIOLENCE AND PARENTAL CHILD ABDUCTION

THIS BOOK HAS BEEN PREPARED UNDER THE AUSPICES
OF THE POAM PROJECT



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DOMESTIC VIOLENCE AND
PARENTAL CHILD ABDUCTION

The Protection of Abducting
Mothers in Return Proceedings

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Domestic Violence and Parental Child Abduction. The Protection of Abducting Mothers in Return Proceedings

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FOREWORD

The changing context that the Hague Child Abduction Convention has had to operate in has been well-documented. It has emerged that the type of abduction that is most prevalent is not the type that was in the minds of the drafters. Thanks to statistics collected by the central authorities of State Parties and their regular analyses by Professor Nigel Lowe and his colleagues, we now know that mothers are the abducting parents in around 70% of cases. From other research, we also know that the reasons underlying these abductions are diverse.

Today, between the fortieth birthday of the Hague Child Abduction Convention's creation and the fortieth birthday of its entry into force, the Convention has over 100 State Parties. It has solicited a wealth of literature and case law on all possible levels. The European Court of Human Rights has issued no less than 78 judgments on the Child Abduction Convention and its application in light of the European Convention on Human Rights. The Court of Justice of the EU, through its interpretation of the Brussels IIa Regulation (2201/2003), has ruled on matters of child abduction in 17 cases. Add to this the numerous policy meetings, briefings and documents, and practice guides, at international, European Union and national levels, as well as EU-funded and postgraduate research; one would think that everything has been said.

Yet, sticky issues remain. The one addressed by this book is one that is pervasive and difficult to tackle. When mothers take their children and go to another country to get away from domestic violence, how can the law protect the children against the negative effects of abduction and, at the same time, protect the mothers from the violence they set out to guard themselves and their children against? Can the law provide an adequate response? Can the Hague Child Abduction Convention operate in such situations at all? Some courts have devised legal mechanisms such as undertakings or mirror orders to accompany return orders. These are meant to protect the returning parent, most frequently the mother. They are, however, not always easy to implement in the country to which the child (and parent) return(s).

The European Union legislator has, over the past twenty years, been thoroughly committed to cooperation in the fields of civil and criminal law. Many regulations and directives have resulted. Some of these might be underused. The editors of this book, and the researchers involved in the POAM project that led to it, identified two underused instruments in EU law that might help to solve the problem of abducting mothers fleeing from domestic violence. Their approach was to look not only at what the current law does, but also at its potential. Their research confirmed the perceived underuse of the Regulation for the Recognition of Protection Orders in Civil Law and the Directive on the European Protection Order in child abduction cases, but they went further. They investigated the ways in which protection orders could, and perhaps should, be used to provide protection to abducting mothers. If the legal instruments can be used in this manner, the Hague Child Abduction Convention can continue to operate, but with the aid of newer instruments that are adapted to the newer reality of child abduction cases. Getting more than a hundred States to agree to an amendment or an addition to an international convention is nearly impossible, and perhaps not desirable. Using guides and soft law to convince State Parties to operate in a particular way is feasible but strenuous and time-consuming. So why not use what we have in terms of other legislation, at least at the level of the European Union? That is what this book is seeking to do.

In what has become a good tradition for EU-funded research projects, outputs provide knowledge in an accessible way to practitioners of various domains and, in addition, advance the state of legal knowledge for academia. The contributions published in this book are only a part of the outcome of the project: the partners have also published national reports about the current state of affairs. They have made available the POAM Best Practice Guide, which will assist with improving the situation of mothers abducting, or considering abducting, their children due to violence that they face at home.

Thalia Kruger

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PREFACE

This book marks the conclusion of the POAM (Protection of Abducting Mothers in Return Proceedings) project, a collaborative research project conducted between 2019 and 2021, which explored the intersection between domestic violence and international parental child abduction within the European Union. The project, which was funded by the European Union's Rights, Equality and Citizenship Programme (2014–2020), was concerned with the protection of abducting mothers who had been involved in return proceedings under the 1980 Hague Abduction Convention and the Brussels IIa Regulation, in circumstances where the child abduction had been motivated by acts of domestic violence from the left-behind father. In the project, we examined the usefulness of Regulation 606/2013 on Mutual Recognition of Protection Measures in Civil Matters and Directive 2011/99/EU on the European Protection Order – which both allow cross-border circulation of protection measures and, so far, have not attracted much attention in practice – in the context of such return proceedings.

The volume mainly collects the ideas given at our final conference, where the POAM research team presented the results of the project: the event was held online due to the pandemic, and not, as initially planned, in Munich. During this conference, each project partner presented a part of the project, and distinguished external speakers commented on each part presented. Based on these presentations and comments, the contributions of this book, highlighting some of the topics of our project, were drafted. Furthermore, the Best Practice Guide developed during the project for the application of Regulation 606/2013 and Directive 2011/99/EU in child abduction cases committed against the background of domestic violence will be documented as an annex.

We have to thank many individuals and institutions for their invaluable help during the project: the European Union for the generous funding (and our EU project officer for flexibility in adapting our project to the needs of the pandemic), our four universities (the University of Aberdeen, the Ludwig Maximilian University of Munich, the University of Milano-Bicocca and the Josip Juraj Strossmayer University of Osijek)

for the constant support, the POAM research team for their excellent work, and many colleagues from academia and practice for their valuable participation during the many workshops and training sessions held. Finally, we are deeply indebted to the authors for their manuscripts, Onyója Momoh and Tatjana Tertsch for their editorial work, and Intersentia for publishing this book.

Aberdeen, Munich, Milan and Osijek, December 2021
Katarina Trimmings, Anatol Dutta, Costanza Honorati
and Mirela Župan

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