

**Report of the Commissioner for Fundamental Rights on case AJB-1299/2018  
(published in February 2018)**

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### **The initiation of the investigation**

In accordance with the spirit of the Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter the “Ombudsman Act”, I pay special attention to the rights of the children, as a priority investigation area. I have launched several projects focusing on the enforcement of children’s rights. This year, I initiate an investigation into the parental child abduction cases in Hungary.

The parental child abduction is closely linked to the protection of the children’s rights, the international dimension makes the weak parties more vulnerable. The parental child abduction occurs when one of the parents takes the child away from his or her country of habitual residence without the permission of the other parent. In these cases the removal or the retention of a child is in breach of custody rights under the law of the child’s habitual residence, and these custodial rights were actually exercised or would have been so exercised but for the removal or retention. The retention in the child abduction terminology means that a parent goes abroad with the child legally, but his intention has changed and stays in that country. The parental child abduction covers both the removal and the retention.

The growing number of complaints related to parental child abduction cases shows that the left-behind parent and even the authorities concerned do not have any adequate, proper information about the procedure and the legal background. The existing and future networks of stakeholders involved in parental child abduction cases should be strengthened in order to improve cooperation and the exchange of knowledge. Given the uncertain regulatory environment, the importance of the prevention and the overview of the relevant procedures, I initiated an investigation into the parental child abduction. I would like to also highlight that I cooperate with organizations aiming at the promotion of the enforcement and protection of children’s rights through awareness-raising activities.

Within the framework of this investigation, the Ministry of Justice, the Central District Court of Pest, the Ministry of Human Capacities, the Office of the Prosecutor General, the National Police Commissioner, the heads of selected government offices and various NGOs were requested to provide detailed information.

### **The relevant fundamental rights**

- the requirement of legal certainty under the rule of law: “Hungary shall be an independent, democratic rule-of-law State.” (Article B (1) of the Fundamental Law);
- the right of children to protection and care: “Every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development.” (Article XVI (1) of the Fundamental Law);
- the right to due process: “Everyone shall have the right to have his or her affairs handled impartially, fairly and within a reasonable time by the authorities. Authorities shall be obliged to give reasons for their decisions, as provided for by an Act.” (Article XXIV (1) of the Fundamental Law).

### **Legislative instruments applied in the case**

- 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 (hereinafter the „Brussels II Regulation”);

- Act XXXI of 1997 on the Protection of Children and the Administration of Guardianship (hereinafter the “Child Protection Act”);
- Act C of 2012 on the Criminal Code (hereinafter “Criminal Code”);
- Act V of 2013 on the Civil Code (hereinafter “Civil Code”);
- Law-decree 14 of 1986 on the promulgation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter „Hague Abduction Convention”);
- Government Decree no. 149/1997 (IX. 10.) on Guardianship Authorities, Child Protection Procedure and Guardianship Procedure (hereinafter the “Guardianship Decree”).

### **The facts of the case as established**

1. The Hague Abduction Convention and the Brussels II Regulation provide for the *establishment of a central authority* for discharging the duties which are imposed by them upon such authorities. The central authorities provide information and legal advice to the requesting parents, transmit the documents, maintain contacts with the central authorities of the countries concerned, and cooperate in discovering the whereabouts of a child. By virtue of Decree 7/2014. (XI. 14.) on the Organizational and operational rules of the Ministry of Justice and the Hague Abduction Convention, the tasks of the Hungarian Central Authority shall be performed by the ***International Private Law Department of the Ministry of Justice.***

In his response, the *Minister of Justice* informed me that the central authority’s main task in the procedure aimed at returning the wrongfully removed child to Hungary is to facilitate the *enforcement of the Hungarian requesting parents’ interests* in the country where the child was taken to. The procedure shall be conducted abroad, in the state where the child was taken to. The central authority shall *provide assistance in the proper preparation of the application for the child’s return* and *render legal aid* throughout the entire procedure to the entitled person acting without legal representative. If an application is incomplete, it shall issue a call for missing documents to the requesting parent, and, if necessary, assists the requesting parent in obtaining those documents. If the application is complete, it shall have the *documents translated*, then forward the application, together with the translation, to the central authority of the country concerned. In the course of the procedure conducted abroad, it shall cooperate with the foreign central authority and keep the requesting parent continuously updated regarding the procedure. The central authority may also have tasks that require contacting the competent Hungarian court or authorities, or the competent foreign court or authorities (e.g., requesting a home study report, obtaining court documents). In some cases, in the interest of *facilitating the return of the wrongfully removed child to Hungary*, it shall contact the Ministry of Foreign Affairs and Trade, the Hungarian representations abroad, or other authorities. In performing its tasks specified in the Hague Abduction Convention and the relevant regulations, the Hungarian central authority in many cases *provides more extensive assistance to the requesting parents* than certain foreign central authorities (e.g., legal assistance in preparing the application for the child’s return, free of charge translation).

The *central authority plays a key role prior to launching court proceedings* in connection with the return of children wrongfully removed to Hungary. It examines the incoming applications for return and decides on their *acceptability*. If the whereabouts of the child and the abducting parent are unknown, it shall request the police to find them. In certain cases, it shall ask for the guardianship authority’s cooperation in confirming whether the child is indeed staying at the address specified by the requesting parent. In cases requiring immediate action due to the child’s being in danger, it shall contact the guardianship authority and, in some cases, the Ministry of Human Capacities or the police. In order to protect the child, if necessary, *it shall call for taking*

*protective measures*; when petitioned by a foreign authority, it shall call on the competent guardianship authority or court to take the necessary action.

The central authority shall accept the incoming application and *try, first and foremost, to ensure the voluntary return of the child or the amicable resolution of the matter*. In its course of action, the central authority shall briefly notify the abducting parent (via mail or on the phone) of the legal background and its interpretation, or even call on the abducting parent, within the framework of a personal meeting, to voluntarily return the child. At the same time, it shall notify the parties of the possibility of mediation. *In the absence of another solution, it shall take the necessary measures to initiate court proceedings*. In the case of a requesting parent who has no authorized legal representative in Hungary, the central authority shall *authorize, on behalf of the requesting parent, an attorney, whose fees shall be covered by the authority*, to act as the requesting parent’s legal representative. In the course of the proceedings, the central authority shall participate in forwarding court documents abroad, cooperate with court executive officers, as well as with the Ministry of Foreign Affairs and Trade and the Ministry of Human Capacities.

However, in the Minister’s opinion, the implementing regulation of the Hague Abduction Convention, *in its present form and from several aspects, is not suitable anymore for ensuring the smooth implementation of the Hague Abduction Convention and the Brussels II Regulation*, since it does not or does inadequately regulate certain tasks of the central authority, or the cooperation between the central authority and the Hungarian courts and other authorities. *The implementing regulation was not amended when the Brussels II Regulation took effect*; therefore, some task deriving therefrom are not regulated, either. In practice, the scope of the central authority’s tasks has been *significantly extended*; these new tasks are *not covered at all by the implementing regulation*. Such tasks include, e.g., pursuant to Article 7 c) of the Hague Abduction Convention, securing the voluntary return of the child or bringing an amicable resolution of the issues. Furthermore, during the court proceedings, the central authority performs several tasks that are regulated by the Brussels II Regulation. For instance, in cases falling under Section 11 (4) of the Brussels II Regulation, when a child is to be returned, the Hungarian court obtains assurances from the country of the child’s earlier habitual residence that adequate arrangements have been made to secure the protection of the child through the central authority. In light of the above, it seems necessary to replace the prevailing regulation connected to the domestic implementation of the Convention and the Regulation with a more comprehensive regulatory framework that better meets the practical needs; the Ministry is reviewing its feasibility.

The Minister also reported that an initiative had been made at the European level *to make the Member States’ respective regulations regarding the lawful removal of children easily accessible to the parents concerned*. The Member States’ national regulations were moved to the website of the European Judicial Network, operating in civil and commercial cases, with the latter having been moved to the European e-Justice Portal<sup>1</sup>.

Based on the *statistical data* (from January 2010 through December 2015) at the central authority’s disposal, it may be established that 60% of all removals (both from and to the country) are perpetrated by the mothers, and 40% by the fathers. The average age of those mothers is between 32 and 36 years, while, in the case of the fathers, it is between 40 and 45 years of age. Some 55-65% of the wrongfully removed children are boys, and 35-45% of them are girls. The average age of children affected by abduction is between six and ten years in the case of both sexes. During the reviewed period, most cases occurred in Budapest (158 cases - 36%), followed by Pest County (79 cases - 18%) and Fejér County (40 cases - 9%).

	2010	2011	2012	2013	2014	2015
<b>Incoming cases</b>	12	25	23	22	25	28

<sup>1</sup> [https://e-justice.europa.eu/content\\_lawful\\_removal\\_of\\_the\\_child-289-hu.do?clang=hu](https://e-justice.europa.eu/content_lawful_removal_of_the_child-289-hu.do?clang=hu)

<b>Outgoing cases</b>	44	58	74	82	72	111
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The central authority's experience shows that *clients resort to mediation in an extremely low number of cases*. As far as removals are concerned, in most cases, the parents' relationship is so conflicted that they prefer to turn to the court with the assistance of a legal representative. Experience shows that the conflict between the parties is usually so deep that they are unable to recognize the importance of an amicable resolution. Furthermore, they use no mediation because *they are not familiar with this alternative form of dispute settlement*. Furthermore, in Hungary, people have not realized that amicable resolutions could bring around more efficient, quicker, and, in the long run, much better solutions, and there are no professional service providers in the country yet.

In the Minister's view, it would be desirable if the highest possible number of parties could avail themselves of mediation services either prior to or in parallel with the court proceedings. In order to reach this objective, the Ministry, in cooperation with the French Ministry of Justice and the Federal Office of Justice of Germany, and with the financial support of the European Commission, conducted a project under the title "*Mediation in unlawful international child abduction cases - an amicable solution in the interest of children*". Two European-level expert meetings were held in the course of the project, and several staff members of the Ministry participated in a study tour in Germany. Furthermore, a group of international experts prepared a *Handbook*<sup>2</sup> as well. The Handbook, in addition to presenting France's and Germany's best practices, describes the tasks to be performed by the parties concerned in the interest of the mediation's success. The Handbook also contains some recommendations whose objective is to raise awareness of the option to use mediation.

The Ministry's *experts are still working on the preparation of introducing mediation services in child abduction cases*. They are setting the framework for such services taking into account the lessons learned from the EU project, as well as the recommendations made by the European Commission and the Hague Conference on Private International Law. Their work focuses on mediation prior to launching court proceedings, since it offers the most efficient and quickest conclusion of abduction cases, serving the child's best interests. *The objective is to make the parties concerned decide in favour of mediation in the majority of cases*. On the one hand, it is beneficial to the parties concerned and makes the Ministry's work easier; on the other hand, such services are in conformity with the competent ministry's principal objectives as well. This type of mediation requires highly trained, professional mediators, so the publication of a *roster of special mediators* and, in parallel, the organization of special training courses will also be necessary. To the Ministry's knowledge, there is only one mediator dealing with such cases; however, it has no information whatsoever on her professional activities.

The Ministry is familiar with *the activities of the European Parliament Mediator for International Parental Child Abduction*. Contacts were established years ago; the Mediator was invited to the opening and closing conferences of the project. Unfortunately, she could not attend personally, so she greeted the conferences' participants in a letter, then in a video message. Upon the project's completion, in a letter sent to the Minister, she requested the nomination of an official liaison officer. The Minister nominated the Head of the Ministry's International Private Law Department as liaison officer.

The available information indicates that *the Mediator's services are used by a relatively small number of parents*. Although there are no statistical data going back for years, according to the information received from the Mediator, *98 requests were submitted to her Office between September 2009 and December 2011*. Among those, 45 were related to the Brussels II Regulation, 42 to the Hague Abduction Convention, and one to the issue of international adoption; *there were only 10 cases when mediation was requested*. The Mediator was contacted by the fathers (60 cases), mothers (18 cases), members of the Committee on Petitions of the European Parliament (eight cases), and members

<sup>2</sup> [http://www.kormany.hu/download/8/75/70000/EN-guide\\_mediation.pdf](http://www.kormany.hu/download/8/75/70000/EN-guide_mediation.pdf)

of the Parliament (six cases). *Up till now, 123 minors between the ages of 3-11 were affected* in those cases. Among them, there were 76 girls and 47 boys. Based on the document prepared by the European Parliament Mediator, it may be stated that the European Union pays special attention to the use of mediation in cases of abduction; however, in the Minister's view, *in addition to its continuous development, this service should also be widely advertised*, and it could provide specific assistance to the Member States' central authorities in introducing mediations services built on a common basis and of the same professional level.

Based on the information provided, the central authority's scope of tasks regarding abduction cases does not cover *regulating the follow-up* of closed cases, including the child's situation and reintegration. However, in many cases, they receive feedback from requesting parents who express their appreciation for the cooperation, indicating that the children have successfully reintegrated to their earlier environment. In certain cases, when the Hungarian court had ruled in favour of returning a child abroad, they were informed by the parent that, upon their arrival, the other parent had not complied with his statements made before the Hungarian court (e.g., had not ensured proper accommodation to the child and the mother, forcing the mother to a shelter). In some cases, they were informed that the child had serious problems even after having been returned, the child needed the help of a psychologist or psychiatrist in processing the trauma and accepting the new situation.

*The central authority does not keep a record of the rate of abduction cases with child protection history.* Based on their estimates, abductions were preceded by child protection measures in 10-15% of the cases handled with the cooperation of the central authority.

Based on the statistics at the central authority's disposal, it may be clearly established that *the number of abduction cases is continuously increasing*. An ever-growing number of children are wrongfully removed from Hungary, in particular, to the Member States of the European Union. Wishing to exercise the freedom to work in another Member State, more and more parents decide to take their children with them without the consent of their spouses or the approval of the court or the competent authority. As far as motivations behind abductions are concerned, statistics show that, *in 40-50% of all cases, the parent takes the child abroad with the intent of settling down*; in a significant number of cases, parents leave Hungary and take their children with them for the purposes of taking up long-term employment abroad. They have come across cases when, although the parent staying home has given his/her consent to the child's stay abroad for a certain period, *the other parent fails to return the child to Hungary upon the termination of that period*. Their experience shows that, when the parent intends to take the child abroad for good or for a longer period, in most cases *he/she does not have adequate information on the legal conditions for lawfully moving abroad*.

In many cases, being unfamiliar with the relevant legal regulations, parents take their children abroad being unaware of the fact that they may be subjected to a procedure. In several cases, it may be established that, prior to moving abroad, the parent received sufficient information as regards the necessity of the other parent's consent; however, *in the absence thereof, he/she failed to request the guardianship authority to take action, or, in the meantime, due to the excessive duration of the guardianship authority's procedure, wrongfully removed the child*. In many cases, the central authority concludes that the left-behind parent, having the rights of access, would consent to the long-term residence of his/her child abroad (e.g., he/she is in favour of the child's attending school abroad and learning the language). As it would make significantly more difficult or even restrict maintaining contact with the child, he/she'd rather institute proceedings in order to have the child returned to Hungary.

Statistics show that, while, in the past, mainly children born from mixed-nationality marriages or partnerships used to be affected, nowadays, *in most cases of abduction from Hungary, both parents are Hungarian citizens*. In such cases, typically, the parent takes the child abroad when *taking up temporary or long-term employment* there; as a result, he/she separates the child from the other parent exercising custody rights, thus preventing him/her from keeping in touch with the child.

The situation is further complicated when *the abducting parent remarries abroad, and another child is born from that marriage*. The foreign court proceeding in the child abduction case would order the child's return to Hungary; however, it may cause a problem if the mother decides to come back together with the child affected by the proceedings, as it would mean her separation from the other child who was born abroad.

In proceedings aimed at returning children wrongfully removed to Hungary, the facts of the case are usually the following: *the parents used to live abroad in a mixed marriage or partnership*, and, following the breakdown of their relationship, the Hungarian citizen parent brings back the child to Hungary without the consent of the other parent or the approval of the foreign court. In such cases, problems are often caused by the *cultural, educational, and other differences between the parents*, which leads to a situation when the circumstances of the Hungarian citizen parent *become significantly more difficult* (e.g., language barrier, lack of job opportunities). In many cases, the situation is aggravated by the physical or psychological abuse – typically – of the other parent, or, in some cases, even of the child. In most cases, the Hungarian citizen parent *does not have any information as to whether taking back the child to Hungary qualifies as abduction* under the law of the state of the child's habitual residence. Typically, those parents explain that *they "only" move back to Hungary* together with their child who is also a Hungarian national because, without the help of the other parent, lacking the necessary language skills and job opportunities, they are unable to take care of the child in the country of their habitual residence. The number of abduction cases when both parents are Hungarian citizens, but *only one of the parents working abroad comes back to Hungary together with the child* (e.g., his/her employment plans have come to nought, or he/she could not settle in), is continuously increasing.

In conclusion, the Minister pointed out that, *in their experience, the system established pursuant to the Hague Abduction Convention is – basically – working satisfactorily* and, in most cases, their cooperation with foreign central authorities is smooth. However, due to these cases' special nature, there are some individual cases whose handling is not free of problems, but those problems are not systemic.

The Minister stressed the importance of prevention, which *can be promoted through providing wide-ranging information* to the parents affected and the authorities in contact with them. Their experience shows that, in many cases, parents act wrongfully because they do not have information on the conditions, provided by the law of the state of the child's habitual residence, under which they may lawfully take the child abroad or move to another state for good. At the same time, with regard to the child's stay abroad, it is imperative to settle the issue of the other parent's rights of access. The Minister deemed it important to make the specific regulations of the lawful removal of the child easily accessible to parents residing in the given state. That is why, on the Ministry's website, they published an info-material for the parents and other parties concerned on the legal regulations and procedures related to taking children abroad and, for preventive purposes, on the possibilities of the lawful removal of the child.

Lastly, in his response, the Minister drew attention to the fact that, if the abduction had already been carried out, and in the interest of the earliest solution of the case, the authorities in direct contact with the parents (e.g., the guardianship authority, the police) *should have proper information<sup>3</sup> <sup>4</sup> on the abduction proceedings, on the possibility to launch such proceedings*, and they should send the left-behind parent to the Ministry as soon as possible. In order to provide adequate information, the Ministry is ready to help to hold training sessions and to deliver presentations on the subject.

**2. The implementing regulation of the Hague Abduction Convention designates the *Central District Court of Pest* as the court with exclusive jurisdiction in child abduction cases.** In child abduction

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<sup>3</sup> [https://igazsagugyiinformaciok.kormany.hu/download/a/b2/a0000/Nemzetkozi\\_gyermekelvitel\\_tajekoztato-20140414.pdf](https://igazsagugyiinformaciok.kormany.hu/download/a/b2/a0000/Nemzetkozi_gyermekelvitel_tajekoztato-20140414.pdf)

<sup>4</sup> [https://igazsagugyiinformaciok.kormany.hu/download/9/b2/a0000/jogellenes\\_gyermekelviteli\\_GYIK.pdf](https://igazsagugyiinformaciok.kormany.hu/download/9/b2/a0000/jogellenes_gyermekelviteli_GYIK.pdf)

proceedings, the return of the child is not automatic – the court decides on ordering or refusing the return of the child within the framework of an *expedited non-contentious court procedure*. Pursuant to Article 11 (2) of the Hague Abduction Convention and Article 11(3) of the Brussels II Regulation, the court shall *make a decision within six weeks after the application was submitted*.

In his response, *the senior judge of the Central District Court of Pest (hereinafter the “CDCP”)* pointed out that the CDCP’s proceedings are limited exclusively to the abduction to Hungary. If a child is wrongfully removed from his/her habitual residence in Hungary and taken abroad, the court of the state where the child is taken to shall have jurisdiction to conduct the proceedings.

	2010	2011	2012	2013	2014	2015
<b>Incoming cases</b>	18	14	10	11	16	12

Between 1 January and 20 June 2016, *11 cases were filed*, which *indicates a significant increase in the number of such cases*. Based on these cases, it may be established that many Hungarian citizens working abroad married or entered into partnership abroad, resulting in the birth of a common child. In the cases of the amendment or termination of employment contracts, loosening and termination of partnerships, dissolution of marriages, it is typically *the Hungarian citizen mother who returns to Hungary together with a child*, without the father’s consent. In addition to the relatively low average age of the children (5-6 years), it should also be mentioned that *abduction of infants to Hungary is happening increasingly*. It shows that tensions arising from the changes following the birth of a child are quickly becoming unbearable. From the aspects of the application of the law, determining the habitual residence of an infant may be problematic taking into account that, *in most cases, the perpetrator of the abduction is the mother*. In the majority of such cases, the party concerned *requests the refusal of the infant’s return* on the grounds that the infant’s separation from the mother would place the child in an intolerable situation. In those states where social conditioning as regards the mother’s dominance in taking care of the infant is not so strong, this issue is not so relevant.

According to the senior judge, there are not enough data pertaining to the age of parents perpetrating or “suffering” abduction, which may be explained by the fact that, in many cases, one of the parties concerned was *prevented from showing up* before the court, so his/her personal data could not be recorded. The data at hand show that, typically, the age group of those between 35 and 45 is the most affected among such parents.

The entry into force of Book Four (Family Law) of the new Civil Code has moved into focus the Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. In proceedings aimed at returning children wrongfully removed to Hungary, *mediation is usually used prior to the judicial phase, resulting in two proceedings running in parallel*. However, it must be pointed out that there are no data pertaining to whether and by whom mediation is used prior to the judicial phase. Since court proceeding must be completed within a *short, six-week period*, judges usually concentrate on establishing the facts of the case, and tend to approve settlements concluded by the parties – they typically manage to close the cases in six weeks. Consequently, due to the strict time constraints, *there is no time to use mediation with translation and interpretation in the judicial phase*; on the other hand, the court does not have any information on the existence of mediators specializing in this particular field.

In the cases of children wrongfully removed to Hungary, *Hungarian judges have not availed themselves yet* of the services of the European Parliament Mediator for International Parental Child Abduction. They are aware of the possibility of mediation; however, taking into account procedural deadlines, they have not used such services yet.

In proceedings aimed at the return of children wrongfully removed to Hungary, *the child has to attend a hearing only if the information provided by the child has relevance to the merit of the case and if*

*the child's age allows it.* Hearing the child may be of significance if the requested party has based his/her defence on Article 13 of the Hague Abduction Convention (potential reasons for refusing to order the return of the child). In such cases, the *court has to establish* whether the requesting parent was actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention, as well as if the child's return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

Prior to the ruling, it has to be clarified if the child opposes being returned and if he/she has reached a degree of maturity when his/her opinion has to be taken into account. Data obtained during the child's hearing usually facilitate the proper establishment of the facts of the case. Children under four are difficult to interview even by an expert psychologist, conducting a hearing at this age is out of the question. If a hearing is required, children under six are typically *interviewed by an expert psychologist, while children over six are mostly interviewed directly by the court.*

There were very few cases during the last ten years *when an expert psychologist was appointed by the court.* Direct court hearings are conducted by the judge through initiating a conversation that is adequate to the child's age, asking open-ended questions. In most cases, proceedings are conducted in a life situation when *the child is in a crisis* (his/her habitual residence has changed, his/her contacts with one of the parents have been made difficult, the conflicts between the parents have become aggravated). The court pays special attention to ensuring that the hearing before the court is not emotionally overwhelming; therefore, such hearings are conducted *in child-friendly hearing room.* During the interview, the judge tries to lead the conversation in a way that would reveal the most as regards intra-family relationships and life situations preceding and following the child's removal.

The proceeding judges have to attend *professional and sensitizing training* whose educational materials include the forms of conducting interviews, which the judges may master with the assistance of an expert psychologist. Furthermore, simultaneously with issuing a subpoena to the parents, the child is also issued an info-material explaining, in a manner corresponding to the child's age, why and in what capacity (affected party, witness) he/she has been summoned by the court. The child is also informed that, if the issues of parent's responsibility, child placement or parental custody are to be decided on, the court is interested only in the child's opinion, responsibility for the subsequent judicial decision shall be assumed by the court, not the child. The court has only six weeks to conclude the proceedings; *this timeframe is too short for securing the services of outside experts.*

According to the senior judge, the majority of abduction cases has no prior child-protection history in the state of the child's habitual residence.

The child abduction almost always *has its roots in the breakdown of the parents' relationship,* and in such cases one of the parents wishes to return to his/her "hinterland", to be in the proximity of his/her family. Cross-border relationships are often marred by cultural differences which may be amplified if those relationships fall into disarray. There are cases when, in the event of domestic violence, the parent living in the home country of the spouse, due to the lack of appropriate language skills or only because he/she feels vulnerable, will not seek protection from the state of his/her habitual residence but simply flees to his/her home country. It is an often manifesting, mistaken belief that children may be freely taken to the country of their citizenship since they are but "going home". The lack of adequate legal knowledge may also play a role in abduction, e.g., abducting parents often justify their action with erroneous information received from a foreign mission or consulate.

The senior judge pointed out that the parties in the non-contentious procedure are, for the most part, *people in an emotional crisis.* The requesting parent is in a crisis situation since his/her child is in a foreign country, at thousands of kilometers from him/her, which will inevitably make maintaining contact difficult or impossible. In most cases, however, the requested parent is also



in a crisis situation, since he/she removed his/her child “home” back to Hungary because he/she did not see any other option following the breakdown of his/her relationship.

*One can detect a kind of new trend:* couples and partners, exercising their right to move freely within the European Union for work purposes, go abroad in order to improve their living conditions (in such cases, typically, both parents are Hungarian nationals). The party moving abroad to work is accompanied by an infant or toddler and the other parent taking care of the child. If the relationship breaks down, it becomes clear to the parent taking care of the child that, due to his/her lack of language skills and/or work experience, staying further abroad becomes existentially impossible. He/she does not have the financial resources required by separation, cannot enter the employment market, his/her and his/her child’s livelihood is in danger, so, not seeing any alternative to this vulnerable situation, he/she decides to move back home

One may also observe *the appearance of partner violence* in these non-contentious procedures. If the parent taking care of the child, predominantly the mother, lives in an abusive relationship, upon the aggravation of the crisis situation (since she is not familiar with the institutional or legal background of the given country) *she will bring back her child to Hungary looking for protection in a secure family environment.* According to the Brussels II Regulation, she is not necessarily entitled to do so because, if it may be established that appropriate measures have been taken in the country of the child’s habitual residence to ensure the protection of the child upon return, the court may not reject the request for the return of the child.

The *habitual residence of the child* is a key factor in the proceedings, providing ground for establishing wrongfulness. This legal concept *has no legal definition*; when establishing habitual residence, the Hungarian judicial practice takes into account partly the facts related to the child, and partly the will of the parents.

In order to harmonize the administration of justice within the Hungarian judiciary, the Curia (the highest judicial authority) renders, inter alia, uniformity decisions. The *concept of habitual residence* is defined in the Supreme Court’s Civil Law Uniformity Decision 950/2003. According to the definition, ensuring, in harmony with the child’s interests, the inviolability of the right of parental custody is a legal interest protected by the Hague Abduction Convention. The place of caretaking, constituting the cornerstone of the right of custody, is not the legal residence or place of stay, but the place where parent and child may live together, in a natural and undisturbed environment, for an extended period, even if without the intent to stay there forever, including an adequate, common dwelling, the workplace of the parent providing for the child, as well as the micro-community where the child may settle in during a given period. Should the above conditions be met, habitual residence does not depend on whether the parents exercising the right of joint custody consider that place as final.

**3.** The phenomenon of abduction is difficult to examine in the context of a police procedure as the prevailing Criminal Code does not expressly mention abduction as a criminal offence. According to the **Head of the National Police Headquarters** (hereinafter the “NPHQ”), the police may proceed in cases of abduction only if a criminal complaint has been lodged with the authority on suspicion of the felonies of abuse of a minor, preventing the exercise of rights of access, or changing of the custody of a minor.

In the case of the criminal offence of preventing the exercise of rights of access as stipulated in Section 210 of the Criminal Code, the Hungarian criminal law protects the interest in complying with the administrative decision on establishing and maintaining contact with the minor and presumes the imposition of a procedural fine. In the case of the criminal offence of changing of the custody of a minor as stipulated in Section 211 of the Criminal Code, the Hungarian criminal law protects the interest in implementing the court or administrative decision on the custody of the minor. The factual element is the lasting change of the custody, which, in the NPHQ’s view, results in serious difficulties in the application of the law, since there is no

uniform interpretation of “lasting”. It is obvious that, in addition to the act of abduction, additional conditions are required for initiating a criminal procedure, i.e., police action.

The **requested police departments** listed the following measures taken by them in the course of their proceedings related to abduction. In order to clarify the situation, they obtain all court and guardianship authority decisions connected to custody and visitation; to this end, *as an immediate measure, they send requests* to the competent organs. If there is an enforceable decision on custody, and it may be established that the parent exercising custody rights based thereon has not consented to the child’s removal, or the intent to lastingly change the custody or hide the child can be proved, the police will start large-scale data gathering at the residence, place of stay, and workplace of the person reasonably suspected of having committed the wrongful act.

If the child’s whereabouts are still unknown, the police will issue a warrant or, when factual elements of a criminal offence may be identified, order an investigation. If the search for the child is successful, the police will withdraw the warrant and, with the guardianship authority’s cooperation, return the child to the parent exercising custody, and conduct a criminal procedure against the perpetrator. If new information becomes available, according to which the child has been taken abroad, the police will take action, in order to find the perpetrator, through *issuing a domestic, European, or international arrest warrant* and requesting domestic and international legal assistance. Children recovered abroad are placed in child protection institutions until they are transported back home. The Police Headquarters of Baranya County pointed out that since 2003, the establishment of their family liaison officer system, the personnel had shown increased sensitivity towards child protection cases.

*In general*, the police departments reported that many Hungarian citizens do not know what authority they can receive help from in the case of a child abduction. Therefore, when they turn to the police, and the legal preconditions of police action are missing, they receive an information prepared by the Ministry of Justice, and they are briefed that, pursuant to the Hague Abduction Convention and the relevant EU regulation, they can request assistance from the central authorities designated by the individual Member States for this purpose.

Since the Criminal Code does not expressly mention abduction as a criminal offence, it is not included in criminal statistics, either. The requested police departments could not provide exact statistical data as regards the number of such cases, either. For instance, in Baranya County, between 2011 and 2016, criminal procedures were launched for the misdemeanor of changing of the custody of a minor on two occasions. In Borsod-Abaúj-Zemplén County, between 1 January 2010 and 31 May 2016, six criminal procedures were launched for the misdemeanor of changing of the custody of a minor in connection with the abduction. In Győr-Moson-Sopron County, between 1 January 2011 and 31 May 2016, four criminal procedures were initiated and concluded in abduction cases.

The NPHQ’s experience shows that, in abduction cases, parents *do not take advantage of the mediation service*, which is attributable to their acrimonious relationship. According to the head of the child welfare centre of Csongrád County, their mediator, due to his professional qualifications and expertise, may efficiently intervene in such cases in order to restore dialogue between the parties, find common ground, and prevent the recurrence of abduction. In the NPHQ’s experience, mediation is quite often used in criminal procedures concerning minors; however, *in abduction cases*, the parties concerned rarely take advantage of this form of assistance. It is usually attributable to the deterioration of their relationship and the rejection of compromise solutions. There are cases when the party going abroad intends to change custody and re-regulate access keeping his/her place of residence in secret, *refuses to communicate, to settle, even to contact a mediator*.

The Police Headquarters of Hajdú-Bihar County has little experience in abduction cases; however, as they pointed out, parents either do not want at all to come to an agreement in such cases, or they had already tried and failed. It is this insoluble conflict that leads to the perpetration of the wrongful act or the refusal to take advantage of mediation. The experience of the Metropolitan Police Headquarters of Budapest shows that parents affected by abduction cases do

not use mediation, probably because of their acrimonious relationship, or the long-lasting conflict that prevents them from realizing that their child's interest would be best served by a compromise. None of the aforementioned police departments knows any mediator specialized in cases of abduction. The police departments are familiar with the services of the European Parliament Mediator but have not used those services yet.

The police departments *did not report any cases of abduction when the child had to be subjected to a hearing*. The term "*special hearing room*", formerly "*child-friendly hearing room*", was introduced by Decree 34/2015 (XI. 10.) of the Minister of Justice on the establishment of hearing rooms for defendants or witnesses under 14 years of age and victims requiring special treatment. Special hearing rooms are set up to accommodate the needs of defendants or witnesses under 14 years of age and victims requiring special treatment, to strengthen their sense of physical and psychological security. The Metropolitan Police Headquarters of Budapest and the county police headquarters have to establish at least one special hearing room in their area of competence. Hearing rooms for children, established earlier, may be in use until 1 January 2018. After that date, they may remain in use only if transformed in accordance with the Decree's provisions. The scope of persons who may be present during the hearing shall be regulated by the procedure requiring the hearing. For instance, regarding the hearing of a minor in the course of the investigation, pursuant to Section 87 of Act XC of 2017 on Criminal Proceedings (hereinafter the "*Criminal Proceedings Act*"), in the event of a procedural act requiring the participation of a person under 18 years of age, the court may order the presence of a forensic psychologist during the procedural act. According to these police headquarters, persons exercising the rights of a minor's legal representative may be present during almost all police proceedings.

If a warrant is issued in connection with the child's disappearance, the rules regulating the hearing of the child are implemented in accordance with Section 13 (3) - (4) of Decree 63/2013. (XI. 28.) of the Minister of Interior on the transmission of data to certain search warrant registration systems and on the detailed rules for conducting the search. Accordingly, a minor shall be heard in the presence of his/her legal representative or, in the absence thereof, his/her ad hoc guardian, and, if possible, a psychologist, drawing up minutes of the hearing, on the reasons and circumstances of his/her disappearance and the possibility of an wrongful act having been committed against him/her. Regional or local investigative authorities possessing a certified special hearing room in their area of competence shall conduct the hearing in that special hearing room. If the minor's disappearance may be related to the wrongful behaviour of the minor's parent, caretaker or any other legal representative, the presence of a psychologist at the hearing is mandatory.

While performing their victim support tasks, the police *shall cooperate* with the Office of Justice, the metropolitan and county government offices as victim support services, with civil organizations specialized in victim support, and the diplomatic and consular missions accredited in Hungary. The NPHQ, within the framework of professional management, provides methodological assistance to the performance of tasks related to victim support. Keeping in mind the physical and psychological traumas suffered by the under-age victim, and in accordance with the provisions of the Criminal Proceedings Act, a psychologist may be present during the investigative actions. Outside the frameworks of the criminal proceedings, it may be recommended to visit the psychologist of the child welfare centre of the minor's domicile, or the psychological help service of the victim support services. It is a primary duty of the investigative authorities to ensure the medical treatment of physical injuries.

The Police Headquarters of Csongrád County noted that they have a close professional relationship with the Paediatric and Juvenile Psychiatry Department of the Paediatric Clinic of the University of Szeged. When investigating criminal offences committed against children, and pursuant to the provisions of the Child Protection Act, the police shall contact the competent guardianship authority and child welfare service to inquire about prior child protection history. Obtaining documents generated in family litigation is also a part of the evidentiary procedure. If

necessary, expert psychologists, forensic medical experts, and the teachers concerned of the child's school are also involved in the procedure. Furthermore, it is justified to contact every authority, civil society organization, institution that may have relevant information regarding the minor and his/her family. If a warrant has been issued, the police shall immediately inform the competent guardianship authority on the minor against whom the warrant has been issued. If the police learn about the possibility of the minor's staying abroad, they shall contact the International Law Enforcement Cooperation Centre (ILECC).

Among the *reasons for abduction*, the police departments listed the parents' acrimonious relationship, lack of communication, and lasting family conflicts. Several police departments reported typical cases when one parent denies access, and the other parent compensates through contacting the child in secret or failing to return him/her by the agreed time. The risks of abduction may be increased by the differences in the educational concepts of parents with different cultural backgrounds and their different long-term plans for the future.

**4. The proceeding guardianship authorities** may come across the phenomenon of abduction in cases related to the determination of the place of access or the child's residence abroad for long-term stay or for the purpose of settlement.

Terms related to abduction *appear randomly* in the case documentation of the *district offices performing child protection and guardianship tasks* in the areas of the competence of government offices (hereinafter the "first instance guardianship authority") and the *government offices performing child protection and guardianship tasks* (hereinafter the "second instance guardianship authority"). They can be found most often in the reasoning part of decisions, in connection with the statement of the facts of the case, as well as in the written records of briefings held on the subject, and in the texts of final judicial decisions delivered in child return cases. The government offices *do not have any case statistics at their disposal* from which data related to abduction cases could be obtained. The Baranya County Government Office added that the first and second instance guardianship authorities annually submit reports to the Central Statistical Office, although they have no such obligation. Although it is possible to record *international guardianship cases* in the electronic document management system used by the guardianship authorities, it cannot handle queries about cases related to abduction.

The *guardianship authorities do not have internal professional protocols* as regards abduction cases. According to the Hajdú-Bihar County Government Office, the Ministry of National Resources sent out the rules of international procedure in abduction cases to all guardianship authorities in the form of the "Guidelines to the implementation of the Brussels II Regulation", published back in 2005. The Baranya County Government Office pointed out that, due to the more and more often surfacing international aspects, *a professional protocol applicable to abduction should be developed in order to facilitate the administration of the law*, so that guardianship authorities could properly react to the actual issues.

The government offices *do not have information regarding mediation services provided in abduction cases*. Only the Csongrád County Government Office reported one occasion in the last six years when they proceeded in a case in Mórahalom, in the course of which the parties used mediation in the interest of re-regulating access. *None of the government offices was aware of any mediators in their respective counties who were specialized in such cases*. Judging by the responses received, they know about the European Parliament Mediator dealing with the child abduction, but they have never turned to her.

As far as hearings in abduction cases are concerned, the government offices have no experience, but they provided information on the relevant statutory conditions. Pursuant to Section 128 (1) of the Child Protection Act, children with limited legal capacity, as well as incompetent children in possession of power of judgment shall be interviewed in the course of guardianship proceedings. Section 11 of the Guardianship Decree adds that a child shall be interviewed during the guardianship procedure only in exceptional cases, upon assessing all the

circumstances of the case, provided that the hearing serves the child's interest and the expected evidence cannot be obtained any other way. The guardianship authority shall interview the child either directly or through the family and children welfare service, an education counsellor, expert and rehabilitation committee, psychiatric assistance institution, or other institution or expert specialized in family protection. Therefore, the involvement of an expert psychologist in guardianship cases is not mandatory.

In abduction cases conducted in the government offices' area of competence, no expert help was used in processing traumas suffered by children. The *Baranya County Government Office* added that only the expert assigned to the guardianship case may make a suggestion as regards processing the trauma, and the parent is notified of the possibility to take advantage of the assistance provided by family and children welfare services and centres. In cases providing grounds for placing the child under protection, the parent may be ordered, as a rule of conduct, to ask expert help in processing the trauma. In the case of families in a difficult financial situation, *providing free-of-charge family therapy* may also facilitate processing the trauma suffered by the child. The Borsod-Abaúj-Zemplén County Government Office noted that, following the return proceedings known to them, the children underwent a lengthy psychological treatment in order to correct the severe psychological damage they had suffered.

The requested government offices provided detailed information on the competence of the central authority and, on several occasions, redirected the parents concerned to the International Private Law Department of the Ministry of Justice. No connection between abduction cases and earlier guardianship authority cases can be substantiated with statistical data.

The *Baranya County Government Office* reported that abduction is usually preceded by conflicts between the parents. Parents blame each other for failed contacts, ignore the child's interest in handling their conflict, and *use the child, emotionally attached to both parents, as a means* to settle their real or imagined grievances. In procedures aimed at ensuring access, fines are imposed, second instance procedures are conducted on the basis of the clients' appeal, and the exclusion of the proceeding authority is requested more and more frequently. These circumstances combined *further aggravate* the conflict between the parties. In all abduction cases, the parents were familiar with the relevant legal regulations; abduction could not be justified by the lack of information. The government office emphasized that *obtaining the mandatory home study unjustifiably delays the procedure* of determining the child's residence abroad in accordance with Section 24 of the Guardianship Decree, which may prompt the parent, unwilling to wait for the guardianship authority's decision, to perpetrate the abduction. This risk could be avoided *through ensuring the enclosure of other documents* containing the substantive elements of the home study.

However, *according to the Borsod-Abaúj-Zemplén County Government Office*, abductions are perpetrated typically due to the lack of knowledge of the relevant legal regulations. There were cases when obtaining the consent of the other parent was impossible because the separated parent's whereabouts were unknown, or the parties' relationship had deteriorated to the extent when all forms of communication were terminated.

*According to the Pest County Government Office*, giving priority to the parents' interests, ignoring the child's interests, using the child as a means to further either parent's agenda are all decisive factors in such cases. Their general experience shows that parents more and more often resort to the child abduction due to the *misinterpretation of a legal regulation*, the prolonged judicial proceedings, and the *lack of qualified experts* in this particular area. According to the first instance authorities, they receive phone calls related to the subject discussed herein on a monthly basis. It is not without importance that people can obtain various, albeit often erroneous information on this topic through the internet.

5. The mission of the **Hintalovon Children's Rights Foundation** (hereinafter the "Foundation") is to protect and promote the rights of children living in Hungary. Their objective

is to make adult society take as much responsibility as possible for the balanced development of children.

My request was answered by the Chairman of the Board of the Foundation and its professional leader. As they see it, the actual number of abduction cases is significantly higher than the number of cases officially reported to the central authority or the court. This latency may be explained by the fact that very few parents know *what exactly* makes taking their child abroad or bringing him/her back home wrongful; quite often their legal representatives also fail to explain them the difference. On the other hand, even those who know will not resort to the available – stipulated by the Hague Abduction Convention – court proceedings *as the latter's tools are not sensitive enough to the needs of the child or the parent*: these lawsuits decide only on the return of the child while the applicant may have other objectives.

Their experience shows that the number of abduction cases has been increasing since Hungary's accession to the EU; people looking for a partner or wanting to start a family often find their partner abroad. According to European statistics, roughly every second marriage ends in divorce, and the trend is the same in the case of couples of mixed nationality. After the separation, one of the parties often changes his/her country of residence. Furthermore, the *number of families moving abroad and heads of households working abroad has been steadily growing in recent years*. The adult members of the family often disagree on how long they want to stay abroad, to what extent their expectations have been met. As a result, one of the adults, whether they separate or not, moves back home, often taking the child in common with him/her. It may be the case that it is the child in common who prevents a parent from moving back home. According to the data at their disposal, the ratio of abduction cases when *both parents are Hungarian nationals is increasing*. These cases often do not reach the central authority or the court because the parties concerned do not fully understand their options.

According to the Foundation, *there is no training in Hungary which educates mediators specialized explicitly in abduction cases*. Since it is about a peculiar legal situation and court proceedings, the minimum criteria and training method of mediation were developed, in addition to various foreign organizations, by a European network, the *Cross-border Family Mediators (CBFM)*. There are some mediators in Hungary as well who provide mediation services in abduction cases without being familiar with these criteria. In these cases, there is a risk that the agreement reached by the parties is not approved by either country's authority so it will not be enforceable. They added that *one of the Foundation's staffers is the only mediator in Hungary who has completed the CBFM's training and is a member of the CBFM's network*.

Their experience shows that neither the central authority nor the court can recommend trained mediators in such cases. Therefore, even if the legal representatives supported mediation or, at least, informed their clients on the possibility to use it, they could hardly find a mediator who could undertake such cases with proper qualifications and responsibility.

To the Foundation's knowledge, *children affected by such cases are interviewed only by the judge in the return proceedings*. They are not familiar with any Hungarian case when a paediatric psychologist was present at the hearing; at best, a *psychological report* was requested by the court. In the abduction cases submitted to the Foundation, there was no need so far to interview the children. Should the need arise in the proceedings assisted by them, they would support the conduct of a single interview by a qualified professional. They would not involve a psychologist in the mediation procedure, and it has so far been not necessary to involve the affected child, either. If an older child wanted to attend, they would make a decision based on the circumstance of the particular case.

In 2009, within the frameworks of an EU pilot project, *the Foundation's staff members wrote a preventive handbook<sup>5</sup> on abduction for professionals dealing with children*. In Hungary, it was published and distributed, in the Hungarian and English languages, by the Kék Vonal Child Crisis Foundation. Due to the increasing number of cases, it would be necessary to *update the handbook*, as would be

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<sup>5</sup> Kerpel, Éva (2009): Prevention and damage control in cases of international child abduction. Budapest: Kék Vonal Gyermekkrízis Alapítvány.

to prepare a similar instructional manual for those potentially affected (persons studying, working or moving abroad).

As they pointed out in the handbook and kept on experiencing ever since its publication, the main cause of abduction is that the abducting parent is unaware of his/her action's being in violation of the law. In the case of separated parents, the difficulties of maintaining access are a less frequent factor than *blocking access*. In addition, just as in cross-border cases, children are often used as a means to punish the other parent. Their experience shows that it is rare for a legal representative to call the client's attention to the legal regulations providing for parental custody and to the probability of the other parent's getting deprived of his/her rights of custody. After the breakdown of their relationship, many parents think that the other parent has suddenly become unsuitable for participating in their child's life as a parent, often doing their best to convince the child thereof. Broader knowledge of the relevant legal regulations and the legal consequences of abduction (immediate return and, in some countries, criminal liability) *would prevent many parents from changing the child's habitual residence without the other parent's consent*.

The *preventive handbook* covers in details the risks of abduction. Abduction is often preceded by a *family crisis, dysfunction*, which typically derives from a multi-cultural relationship or a stronger-than-usual dependency. Furthermore, in the case of separated parents, limited access to the child and communication difficulties between the parents may also be risk factors. Currently, hundreds of thousands of adults with Hungarian citizenship work or study abroad – it may also be mentioned as a risk factor.

The staffers of the Foundation pointed out that the parties affected by abduction cases have very little information. It is not a Hungarian phenomenon that *even the parties' legal representatives are not familiar with* the prevailing legal regulations on abduction and initiate such time-consuming and expensive proceedings that keep on being rejected by the authorities due to lack of jurisdiction. In the meanwhile, the child is in an insecure situation or, in extreme cases, hiding from the authorities together with his/her parents. *They do not realize that those affected, whether the parent abducting the child or the left-behind parent, could receive efficient help from the authorities*. For instance, a parent who does not want the child's return, only wishes to have regular access to him/her, has practically no one to turn to for assistance in Hungary. As if the operating procedure of the authorities would not allow them to provide assistance that is adequate to the case and responsive to the actual situation. A good example is a case when the authorities, although they knew that the parents had come to an agreement following the abduction, did not think to be authorized to inform thereof the competent authority of the other country. *As a result, the case, although in fact it had been resolved, moved to the judicial phase*. The parties affected often do not have any legal knowledge; they do not know when and how to contact the authorities, often fail to understand what is going on. In such cases, the authorities should show much *more flexibility and understanding*.

Such cases have a serious effect on the parties, and it is even more so in the case of the affected children. There are no institutions that would be truly suitable for assisting either the parents or the children. In this situation, it is somewhat infelicitous to conduct a judicial hearing of the child who has no idea what is happening around and with him/her. It would be much better to introduce in Hungary the internationally accepted practice where children may be interviewed, and the judge's questions may be asked only by a specially trained professional. In the past, it was the Kék Vonal Child Crisis Foundation that could simultaneously provide legal and child protection assistance, emotional support, and case monitoring. The staffers of the Híntalovon Foundation pointed out that, to their best knowledge, there is hardly any place where professionals dealing with abduction cases could receive professional and emotional support and professional supervision, although their work is very stressful and requires appropriate training and emotional stability. The professional supervision of professionals dealing with children and cases affecting children would be important in general; in these particular cases, the absence of

professional support may lead to emotional burn-out and insensitivity. Ultimately, it is the child who suffers.

In connection with the prevailing legal regulations, they stressed that the Hague Abduction Convention does not reflect the possibilities offered by the 21<sup>st</sup> century as regards access, disappearing national boundaries, or global job opportunities. The *application of return as a general rule* – mainly in Europe, after the Brussels II Regulation’s entry into force – allows *the courts to be particularly rigid in handling cases*, which does not allow for paying primary attention to the interest of the child. It is in violation of Article 3 of the United Nations Convention on the Rights of the Child. The Hague Conference on Private International Law has been trying, in vain, to mitigate the provisions of the Hague Abduction Convention (via using mediation as a general rule); in those countries where the acceptance and awareness of mediation procedures is low (e.g., in Hungary), these recommendations do not have the potential to efficiently transform judicial practices.

**6. The *Central European Mediation Institute*** (hereinafter the “CEMI”) was established to play an active role in spreading and developing mediation as an alternative dispute resolution method in Hungary. The Institute provides mediation services in business, family, and sports cases as well. The Institute’s main objective is to play a predominant role in educating, training mediators operating in Hungary, participate in the legislative process in the field of mediation, and to become the primary professional centre of mediation in Hungary.

The President of the CEMI also noted that *the number of abduction cases is on an upward trend*. The mediator profession has to be prepared for this in order to be able to offer mediation services in abduction cases that are accessible and affordable to parents.

The CEMI’s President stressed that amicable resolution should be given top priority in cross-border family law and, in particular, in abduction cases. Amicable resolution would mitigate and reduce the number of the adverse, long-term effects of such cases.

Currently, in Hungary, the *number of mediation procedures conducted in abduction cases is insignificant*. The reasons for this are complex; however, in the background of these cases, there are *deep and long-standing conflicts* which the parties are unable to settle amicably. The current state of mediation is a factor as well, as citizens still *distrust* this institution, they rather turn to an attorney instead. The CEMI knows but one mediator specialized in this type of cases. They have familiarized themselves with the European Parliament Mediator service but have not turned to it yet for information or assistance.

In abduction cases, many of the mediators commissioned by the CEMI *established contacts with the Ministry of Justice* and participated in mediation proceedings organized by the Ministry. The CEMI’s experience shows that these cases tend to have some child protection, guardianship, or court history. After the mediation procedure is concluded, they conduct follow-ups, during which they request feedback as to whether the mediation agreement has been duly complied with.

The CEMI’s President pointed out that *the reasons for abduction are very diverse*; a typical case is when the parents live in a mixed marriage, and one parent commits an act of domestic violence against the other or the child. The lack of legal knowledge is also a problem; it can be solved via awareness-raising and spreading information. The Ministry of Justice conducted a successful, in his opinion, European Union project which studied mediation applicable in abduction cases; several members of the CEMI held presentations within the project’s framework.

The CEMI is *working on developing an internal protocol and rules of procedure* which are to be accompanied with a special training program designed exclusively for mediators working in cross-border family law cases.

## **The findings of the inquiry**

### ***I. As regards my competence***



My tasks and competences and my rights to conduct inquiries for the purpose of performing my tasks are provided for in the Ombudsman Act. Pursuant to Section 18 (4) of the Ombudsman Act, the Commissioner for Fundamental Rights may conduct ex officio proceedings in order to have such improprieties terminated as are related to fundamental rights and which have arisen in the course of the activities of the authorities. Ex officio proceedings may be aimed at conducting an inquiry into improprieties affecting not precisely identifiable larger groups of natural persons or at conducting a comprehensive inquiry into the enforcement of a fundamental right.

Furthermore, Section 1 (2) (a) of the Ombudsman Act provides that, in the course of his activities, the Commissioner for Fundamental Rights shall pay special attention, especially by conducting proceedings ex officio, to the protection of the rights of children. Having regard to the fact that the existence of every condition of ex officio inquiries can be proved, I initiated a comprehensive inquiry on the parental child abduction cases in Hungary. It should also be stressed that, pursuant to Section 18 (1) of the Ombudsman Act, the scope of my inquiry covered all relevant authorities of local or national competence as well as organs performing public services.

It can be stated in connection with the framework of the inquiry that the Ombudsman Act provides an opportunity for the Ombudsman to examine a certain legal regulation in respect of the fundamental rights, and to specify measures relating to the deficiencies or errors in the laws' content. Based on the fact that in his practice, the Ombudsman also emphasises the importance of the preventive protection of fundamental rights; the commissioner stays within the framework of his mandate when during an ex officio procedure, for the very purpose of preventing concrete violations of the fundamental rights and complaints based on such violations, essentially to an inquiry conducted in respect of fundamental rights; he reviews certain elements of the relevant legal regulations, maps any concerns arising in this context and reports the same to the bodies responsible for legislation.

## ***II. Regarding the fundamental rights and the principles examined***

In the course of investigating the context of a social problem, the commissioner for fundamental rights performs his mandate autonomously, objectively and neutrally, only by listing and comparing arguments relating to fundamental rights. Since the establishment of the institution of the ombudsman, the commissioner for fundamental rights has consistently relied on and used as a standard the findings of matters of principle of the Constitutional Court in connection with the guarantees under the rule of law and the content of fundamental rights, and – in accordance with the special features of the legal protection provided by the ombudsman – he has applied the fundamental rights test aimed at establishing whether the limitation of a fundamental right is constitutional.

In connection with the findings of the ombudsman report I repeat that, after the Fourth Amendment of the Fundamental Law, the text of the relevant provisions of the Fundamental Law mostly remained identical to the provisions of the Constitution; it contains no provisions relating to constitutional requirements and fundamental rights that are contrary to the text of the previous constitution. In its Decision 22/2012. (V. 11.) AB, the Constitutional Court pointed out that “in cases where the content of certain specific provisions of the previous Constitution and the Fundamental Law are the same, it is not the acceptance of the legal principles appearing in previous decisions of the Constitutional Court that must be justified but their non-observance.” However, the Constitutional Court stressed in its Decision 13/2013. (VI. 17.) AB that, with regard to the legal provisions examined in the Decision in question, they had already acted on the basis of the Fourth Amendment of the Fundamental Law as regards the usability of the provisions of previous Decisions of the Constitutional Court. In connection with this, the Court declared as a principle that “the Constitutional Court may refer to or quote the content or the

text of its arguments and legal principles developed in its previous decisions to the extent and scope required for deciding any substantive constitutional question arising in the case at hand, specifying the repealed decision of the Constitutional Court. The reason for this is that the statement of reasons and the constitutional sources of the same must be available to and verifiable by all in a democratic state that is governed by the rule of law, and legal certainty requires that the bases of decision-making are transparent and traceable. Public argumentation is the essential basis of making a decision. The Constitutional Court always examines whether arguments presented in previous decisions can be used on a case-by-case basis, in the context of the specific case.”

If we compare the provisions of Article B (1) and Article XVI (1) with the text of Section 2 (1) and 67 (1) of the Act XX of 1949 on the Constitution of the Republic of Hungary, it can be established that the text of the Fundamental Law did not introduce any changes regarding the principle of the rule of law and children’s rights – which are the subject-matter of this inquiry – that would justify the rejection of the previous practice of the Constitutional Court or a major reevaluation of the content of such practice. Accordingly, in the course of formulating my theoretical findings and interpreting fundamental rights and constitutional principles, I regard the findings and conclusions presented in the decisions (and the relevant statements of reasons) of the Constitutional Court made both before and after the entry into force of the Fundamental Law as authoritative.

### ***III. International outlook: the Dutch regulation and practice***

Within the framework of this investigation, the Director of the International Child Abduction Centre was also requested to provide information. The International Child Abduction Centre is an independent national foundation that was established in January 2006, in Hilversum. The legal advisors of the Centre have specialised in the Hague Abduction Convention and the Brussel II Regulation. They provide support together with legal advice, information and supervision for parents, professionals and for those who are involved with parental child abduction, or the threat of such. During their work they contact with the Dutch central authority, the Ministry of Foreign Affairs and the legal aid board of the Netherlands.

The Director informed me about the numbers of abduction cases reported to the Centre (from and to the Netherlands): 114 cases in 2010, 164 cases in 2011, 175 cases in 2012, 174 cases in 2013, 170 cases in 2014 and 142 cases in 2015.

According to the Articles 1:251 and 1:253a of the Dutch Civil Code, the parents who had joint authority over their minor children during their marriage, will keep having joint authority over these children after the dissolution of their marriage. When the parents jointly exercise authority over a child and there is a dispute in this regard between them, then this dispute may be laid before the District Court upon the request of one or both of the parents. The court shall settle the dispute by taking a decision in the best interests of the child. The Centre’s website informs the parents about an obligation to provide information about the whereabouts and the duration of the holiday if a parent travels abroad with the child. If no consent is granted to travel abroad, then the parent who needs permission could commence judicial proceedings. Several institutions of the public administration keep in touch with the Centre: the Centre, the Royal Netherlands Marechaussee and the Ministry of Security and Justice together published an authorization form for travelling abroad with a minor.<sup>6</sup>

In the Netherlands, the cross-border mediation is integrated in the handling of abduction cases. It means that the cross-border mediation is offered to the parents in every cases. The

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<sup>6</sup> See: <https://www.government.nl/binaries/government/documents/forms/2016/06/17/consent-letter-for-minors-travelling-abroad/authorisation-form-version-25-7-2017.pdf>

Mediation Bureau of the Centre is founded in joint consultation with the Ministry of Security and Justice and the Council for the Judiciary in 2009. The Bureau can recommend and organise cross-border mediations. Every session is guided by two specialised cross-border mediators, one lawyer-mediator and one mediator with a behaviorist background.

According to the Director's experiences, the main reasons of abduction are that the parents are not aware that they cannot move to another country without the permission of the other parent, the lack of communication and the problems arising from mixed relationships.

#### ***IV. On the merits of the case***

##### **1. The statistics related to parental child abduction cases**

As both the findings of the Ombudsman's practice and the requested state organs' and civil society organizations' responses unanimously confirm, *the number of abduction cases has been steadily and significantly increasing* in recent years. As more and more Hungarian nationals seek employment abroad, there are more and more cases when both parents have Hungarian citizenship.

From the aspects of the revision of regulations, establishment of adequate judicial practices, and optimal utilization of resources, it is of importance, taking into account the already significant latency as well, whether the data and facts necessary for ex-post impact assessment, planning, and execution are available. In their responses, *the requested government offices indicated that they do not have any case statistics at their disposal from which data related to abduction cases could be obtained.* The Ministry's response explained that the central authority does not keep a record of *the rate of abduction cases with child protection history.* I also have to point out that the provisions of the Criminal Code do not expressly mention abduction as a criminal offence, thus it is not included in criminal statistics, either; the requested police departments could not provide any statistics regarding the number of such cases, only indicated that they were aware of five cases only in the course of the last five years.

##### **2. The deficiencies of the current legal regulation related to parental abduction cases**

**2.1** Based on the responses received, it may be concluded that *the regulation of the procedure conducted in abduction cases raises problems and controversies* that the bodies responsible for implementing the law, including, in particular, the central authority and, occasionally, the courts, cannot eliminate on their own when conducting their practices. The Ministry of Justice and several requested organs share the view that *the implementing regulation of the Hague Abduction Convention*, in its present form, is hampered by severe deficiencies, cannot keep up with the fundamental changes that have occurred since its signing, and does not cover the tasks deriving from the Brussels II Regulation, either. It gives cause for concern that the implementing regulation gives an inadequate definition of the central authority's competence, expanded –in practice– with several new tasks, and it contains no appropriate, clear provisions as regards the cooperation between the central authority, the Hungarian courts, and other authorities. All in all, the implementing regulation of the Hague Abduction Convention, in its current form, is not suitable anymore for ensuring the proper implementation of the Convention and the Brussels II Regulation.

As it is already pointed out in the report, in abduction proceedings, the CDCP decides on ordering or refusing the return of the child within the frameworks of an expedited non-contentious court procedure. Pursuant to Article 11 (2) of the Hague Abduction Convention and Article 11 (3) of the Brussels II Regulation, the court shall make a decision *within six weeks* after the application was submitted. I have to point out that the principle of due process corresponding to the best interests of the child would be best served if the obligation of expedited ruling would be ensured during second instance proceedings as well; however, the implementing regulation of the Hague Abduction Convention does not contain any provisions

related thereto. It means that, as of 1 January 2018, the general deadlines stipulated in Act CXXX of 2016 on the new Code of Civil Procedure shall be observed, which renders it impossible to make a decision within the six-week time limit. Therefore, shorter deadlines adjusted to the procedure's objective should be legally ensured in second instance proceedings as well.

*Based on the above, I hereby conclude that, considering the deficiencies of the implementing rules, the current legal situation causes an anomaly related to the principle of the rule of law and the requirement of legal certainty, and threatens with the practical violation of the principle of due process corresponding to the best interests of the child.*

I concur with the Minister of Justice that the revision of the current regulation of the domestic implementation of the Hague Abduction Convention and the Brussels II Regulation is justified and timely; the experiences necessary therefor are available.

I also have to note that *the Curia's jurisprudence-analysing working group, in its summary report dated 10 June 2013*, formulated several legislative recommendations regarding the implementing regulation of the Hague Abduction Convention. It recommended the detailed and exact regulation, *at the appropriate source-of-law level, i.e., in an law, of the non-contentious procedure for return of the child*, specifying the objective and the nature of the procedure, and the conditions of the burden of proof. It initiated to establish the possibility to take interim measures, provide for the scope and tools of evidence, regulate or shorten, if feasible, second instance deadlines (for appeals, defences, decisions) in accordance with the procedure's nature (in these cases, the introduction of special provisions, different from those of the CCP, is justified). The working group also found it necessary to enable the courts to take *special procedural coercive measures* (determining the place of residence, deposit of travel documents) and ensure their enforcement.

**2.2** Pursuant to Section 24 (1) of the Guardianship Decree, if there is a dispute between the parents, either parent may request the guardianship authority to decide on *determining the child's residence abroad for long-term stay*, provided that the child moves abroad alone or with one parent for the purpose of studies or work, or *determining the child's residence for the purpose of settlement*, provided that the child moves abroad together with one parent with the intent to settle down there. Section 24 (2) of the Guardianship Decree stipulates that the parent requesting the determination of the residence abroad shall *enclose with the petition all documents*, on the basis of which the court may establish that *the child's livelihood and education are ensured abroad*. Such documents include the *home study report issued by the foreign authority*, the school attendance certificate, the parent's income certificate. It is important that, in such cases, it is the guardianship authority's responsibility to obtain, upon the parent's request, the home study report from the foreign authority. If the parent has not started working yet, the guardianship authority may accept, instead of an income certificate, the *parent's statement* on his/her expected income.

The government offices' responses pointed out that obtaining the home study stipulated in Section 24 (2) of the Guardianship Decree unreasonably slows down the procedure aimed at determining the child's residence abroad. It may prompt *a parent, unwilling to wait for the guardianship authority's decision, to wrongfully remove the child*. This risk could be avoided through ensuring the enclosure of other documents containing the substantive elements of the home study.

According to Section 24 (2), the requesting parent has to enclose a *school attendance certificate*, from which it may be established that the continuing education of the child abroad is ensured. However, it may lead to problems, even misunderstandings, since requesting a home study and, in particular, a school attendance certificate already assumes that *the child already does have a home abroad and does attend a school in the given country*, which, in itself, constitutes abduction.

*Based on the above, I hereby conclude that the current legal situation, resulting from the provisions of Section 24 (2) of the Guardianship Decree, causes an anomaly related to the principle of the rule of law and the requirement of legal certainty, and threatens with the practical violation of the principle of due process corresponding to the best interests of the child.*

I would like to note that guardianship authorities proceeding in cases related to the determination of the child's residence abroad for long-term residence or for the purpose of settlement may come across the phenomenon of abduction. These cases, being special and complex, may require increased professional competence; in addition to training sessions and professional protocols, it may be worth considering to transfer these cases to designated guardianship offices, e.g., to district guardianship offices operating in county seats.

### **3. The significance of using mediation in handling and preventing parental child abduction cases**

It is important to stress *the significance of using family law mediation* in handling and preventing abduction cases. As a result of ever-increasing international mobility, family law disputes do not remain within national borders, either, which *facilitates the development of cross-border family law mediation*. The European Union promotes the use of mediation in family litigation at multiple levels of EU legislation.

Mediation in abduction cases may be effective prior to the child's removal (in handling conflict situations), after abduction has been committed (in facilitating voluntary return), and in facilitating the implementation of the decision on return (in order to ensure long-term access). It is a specific form of cross-border mediation, *often conducted in parallel with the expedited court proceedings*, and it requires enhanced cooperation with the authorities, e.g., in mapping the criminal liability of the parent having committed abduction.

Due to the *special nature of mediation* in abduction cases, the proceeding family law mediator has to meet specific requirements. The interdisciplinary work of special mediators includes, among others, the tackling of challenges presented by cultural and language differences, and cooperation in the interest of ensuring long-term access; they also have to be in possession of the necessary psycho-social and legal knowledge.

In Hungary, the basis for using mediation was created by Act LV of 2002 on Mediation which differentiates between mediators on the Roster of Mediators maintained by the Ministry of Justice and court mediators. In cases of abduction, in accordance with the prevailing legal regulations, mediation may be used in the proceedings conducted by both the central authority and the court. The central authority may encourage parents to use mediation (even prior to the court proceedings) through *info-materials* published by the Ministry. In the course of court proceedings, mediation may be introduced at the parents' joint request or upon the court's initiative.

*The requested bodies unanimously confirmed that the parties concerned resort to mediation in a very limited number of cases.* According to the respondents, it may be explained by the deep and long-standing conflicts between the parents, the rejection of compromise solutions, and the lack of familiarity with mediation. However, they could not have recommended mediators specialized in this field even if requested.

One of the representative findings of the inquiry was that all the requested bodies deemed mediation an important and yet, its efficiency and legal acceptability notwithstanding, scarcely used tool. It is beyond any doubt that only providing the possibility alone is not enough – the institution of mediation *should be actively promoted* in Hungary, and mediation should be given top priority in abduction cases. In this context, the *role of legal representatives* has to be emphasized as they also have to be familiar with all legal remedies available to their clients in such situation. I have to note that both the European Union and the institutions working in the field of international children's rights protection unanimously support the wide-ranging use of mediation.

The absence of available professionals may give cause for concern: in Hungary, for the time being, there is only one mediator specialized in abduction cases whose activities are known but to a few. Since there are no training courses specializing mediators in abduction, they have to undertake cases without case-specific knowledge. I am convinced that, in many cases, the further

deterioration of conflict situations, eventually resulting in abduction, could be prevented or, after the child's abduction, a mutually acceptable solution could be reached.

*Based on the above, I have concluded that the principle of due process corresponding to the best interests of the child would be best served if, in addition to providing the legal grounds, the parties concerned, prompted by relevant incentives and wide-ranging information, could avail themselves of mediation services.*

#### **4. Providing information in the decisions on the determining the child's place of residence abroad**

Providing comprehensive information to the parents is instrumental in preventing potential situations leading to abduction. Many of the requested bodies expressed their view that lack of legal knowledge plays a key role in abduction cases.

Section 4:180 (2) of the Civil Code states that, unless otherwise provided for by the court or the guardian authority in the child's interest, the rights of access *apply also to travelling with the child to foreign destinations for prearranged durations*. Accordingly, pursuant to Section 24 (5) of the Guardianship Decree, in cases when the child is taken abroad with the purpose of long-term stay, the guardianship authority shall, in its resolution, inform the legal representative of the child that he/she may, inter alia, *request the modification of the contact arrangements*. By virtue of Section 29/A of the Guardianship Decree, in access-related cases, the resolution adopted on contact arrangements *has to rule, among others, on taking the child to foreign destinations for prearranged durations*.

Based on the reports of the requested government offices, it may be established that the decisions of the first and second instance guardianship authorities on contact arrangements *contain only information that must be included under the Guardianship Decree, they fail to draw attention to the rules pertaining to abduction*. According to the Csongrád County Government Office's Government Commissioner, *court decisions on parental custody should inform the parents on the rules pertaining to the limitations imposed on staying abroad and the regulation aimed at preventing abduction*. The Head of the Hajdú-Bihar County Government Office added that, in the course of inquiring into decisions on contact arrangements, he established that, although the first instance guardianship authorities proceeded in accordance with the relevant legal regulations, *their practices were diverse at the county level*. As the majority of guardianship authorities failed to provide information, with the exception of mandatory elements specified by the law, on taking the child abroad for prearranged durations, the Government Office adopted some measures aimed at consolidating their practices, so that all decisions on contact arrangements *contained information* relevant to this topic.

*Based on the above, I have concluded that the principle of due process corresponding to the best interests of the child would be best served by the uniform practice of providing awareness-raising information on abduction in the course of guardianship proceedings.*

The Minister of Justice added that the dissemination of information on abduction would be well served if the *decisions on parental custody* also contained information on the conditions under which parents may take their child abroad. The decisions, unlike printed or online info-materials, are *accessible to every parent concerned*, so acquiring the necessary information would not require any additional steps on their part.

In its response, the CDCP confirmed that it is important for the child to spend enough time *during the relatively long contact period of the summer break* with the other parent, who may be a foreign national, and his/her extended family, so that the child's identity could develop, and he/she could get steadily rooted in the culture of a country less known to him/her. The court rarely rules that the parent may not take the child abroad during his/her contact period, although it is often requested in parental custody proceedings in the case of children born from mixed marriages.

Pursuant to the Ombudsman Act, I may not inquire into the proceedings and rulings of the courts and may not make recommendations pertaining to judicial practices. However, in my opinion, the fact that the parent entitled to access is a foreign national in itself may not provide

grounds for the court to forbid him/her, as a preventive measure, out of caution, to take the child abroad. In order to prevent potential conflicts, misunderstandings, and legal disputes deriving therefrom, it may be expedient *to clarify*, in the ruling or when approving the agreement, the exact circumstances and period of contacts under and during which the child might be taken abroad, the method of the child's handover and return, and the potential costs.

From the aspect of the rights of the child, I deem it important that the courts and guardianship authorities, when passing resolutions, should give detailed information on the preconditions, potential consequences, and legal background of taking the child abroad for the purpose of long-term stay or settlement. Through providing relevant information to the parents, the judicial authorities could efficiently contribute to preventing actions leading to abduction. Thus, publishing the decisions of the courts and the guardianship authorities would solve the issues of providing information to and calling for the attention of those concerned.

## **5. Training sessions, professional protocols on the regulations related to parental child abduction**

**5.1** The complaints submitted to my Office in connection with abduction contain reports on delays in the competent guardianship authorities' proceedings and decision-making, and the deficiencies of the professional skills and qualifications of those handling such cases.

The staff members of the Ministry of Justice dealing with international private law issues have participated in several domestic and international conferences and training sessions since 2010. In his response, the Minister emphasized that they are ready to hold training sessions in order to provide the necessary information to the authorities concerned.

In November 2015, the judges of the CDCP, having exclusive jurisdiction in abduction cases in Hungary, held briefings to the judges of the Family Law Group on family law cases with international aspects; requests from abroad are dealt with by the Hungarian liaison judge of the Hague Conference on Private International Law. Hungarian judges regularly participate in various training sessions, and several Hungarian judges have delivered presentations on abduction cases not only in Hungary but also abroad.

I have to note that, in its summary report dated 10 June 2013, the Curia's jurisprudence-analysing working group pointed out that it is necessary to organize special training sessions, also covering the psychological aspects of interviewing children, for *lawyers (judges, attorneys) participating* in proceedings related to the return of children wrongfully removed to Hungary.

The Bács-Kiskun County Police Headquarters reported that, on 20 November 2014, on the occasion of children's rights day, the Crime Prevention Unit and the County Government Office jointly organized a professional conference entitled "Signal Lights for Migrant Children"; following the event, the Kék Vonal Child Crisis Foundations handed over its publication entitled "Prevention and damage control in cases of international child abduction" to the county's police and border authority departments.

According to the requested government offices, none of their staff members participated in professional education or training on the subject of abduction. The Government Offices of Baranya and Pest Counties emphasized that, due to the ever-increasing number of guardianship cases with international aspects, *it would be necessary to get acquainted with the relevant legal materials and their application within the frameworks of conferences and training sessions*. The Csongrád County Government Office noted that, irrespective of the relatively small number of cases, handling abduction cases requires high professional skill levels since, in addition to the domestic provisions, knowledge of the international regulations also has to be up-to-date. The case officers of the guardianship authority lack the necessary experience, *solving cases requires thorough research, which significantly slows down official proceedings*.

*Based on the above, I have concluded that it is in breach of the principle of due process corresponding to the best interests of the child that most professionals concerned have rare and limited access to professional education and training on the topic of preventing abduction, while the number of such cases is continuously increasing, and cooperation is fragmented due to the lack of information.*

**5.2** Handling abduction cases presents a serious challenge to every professional. While their background may be different, these cases have in common that the case officers have to deal with complex issues with international aspects that have a devastating effect on all parties concerned, in particular, on the child or children concerned. It is easy to see that, in addition to clear and unambiguous legal regulations, up-to-date and accessible professional guidelines, protocols, and manuals that help professional work are also of key importance. However, based on the responses the government offices gave to my requests, it may be concluded that the guardianship authorities themselves do not have any professional protocol for internal use as regards the prevention of abduction. *In my opinion, the publication of such info-materials would well serve the principle of due process corresponding to the best interests of the child.*

In the light of the responses received, it would be reasonable to prepare, for professionals dealing with children, a uniform professional protocol *on situations potentially leading to abduction and their prevention*, as well as to publish an updated prevention manual.

In my report, I stressed that providing *topical and awareness-raising information* on abduction in decisions issued by the courts and the guardianship authorities may have a serious impact. Furthermore, in addition to providing factual information focusing on legal regulations and consequences, it is high time to prepare an *educational, easy to understand online handbook* (possibly with an illustrated guide and/or video linked thereto) for potentially affected persons, couples, parents and future parents studying, working, or moving abroad. A press and media campaign could also be organized on this basis. To this end, in my view, we do have an adequate, Hungarian professional background, and an international, EU toolkit that is efficiently adaptable to our Hungarian reality.

## **My recommendations**

In order to prevent the recurrence of the fundamental-rights-related anomalies described in my report, and with the involvement of the competent civil society organizations,

- 1) pursuant to Section 37 of the Ombudsman Act, *I recommend the Minister of Justice to consider*, with a view to the conclusions drawn in my report, and in accordance with the international children's rights standards and the relevant EU regulations, the comprehensive revision of the provisions of Justice Minister Decree 7/1988. (VIII. 1.) on the implementation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, promulgated by Law-decree 14 of 1986;
- 2) pursuant to Section 37 of the Ombudsman Act, *I recommend the Minister of Human Capacities to consider*, in order to prevent potential abduction cases, the review and revision of the provisions of Section 24 (2) of the Guardianship Decree, specifying the scope of documents to be submitted by the parent requesting the determination of the child's residence abroad;
- 3) pursuant to Section 31 of the Ombudsman Act, *I request* the Minister of Human Capacities to review, in professional cooperation with the Minister of Justice, all professional and educational materials on preventing cases potentially leading to abduction and, in particular, related to parental custody and access, and to take the



necessary measures to provide professionals working in the child protection system with updated professional info-materials;

- 4) pursuant to Section 31 of the Ombudsman Act, I *request* the Heads of the county and metropolitan government offices to
  - a) ensure that the guardianship authorities under their supervision, in the course of their proceedings, provide, uniformly and consistently, awareness-raising information on the regulations related to abduction in all their decisions on determining the child's place of residence abroad;
  - b) take the necessary measures, with the involvement of the competent experts of the Ministry of Justice, to ensure that the staff members of the county and district guardianship offices under their supervision, in order to properly handle and prevent situations threatening with abduction, have continuous access to knowledge and up-to-date information on the regulations related to abduction.