

*The President
of the European Parliament*

STATEMENT BY LORD PLUMB, PRESIDENT OF THE EUROPEAN PARLIAMENT,
AT THE PRESS CONFERENCE TO REVIEW THE FIRST YEAR
OF THE STRASBOURG AGREEMENTS ON KIDNAPPED CHILDREN.
BRUSSELS, EP PRESS ROOM - THURSDAY 18th FEBRUARY 1988, 11.00 hrs

Welcome. Present: Mrs LIZIN, MEP, with her newly-confirmed Parliamentary immunity, Mrs VAYSSADE, MEP, European Mediator, Ms SUGIER, President of the Solidarity Collective of Mothers of Kidnapped Children and Mr ALLAER, French mediator for kidnapped children. *M. Ward - 20th Br. mothers.*

One year ago today, half a dozen women known as the 'Mothers of Algiers' took a detour on their march from Paris to Geneva to come to meet me in Strasbourg. This march was undertaken to publicise the plight of their children, kidnapped, in contravention of legal Court Orders, by their ex-husbands, and taken to live in Algeria.

The 'Mothers of Algiers' aimed to put pressure on governments, then meeting at the Human Rights Commission of the UN in Geneva, to sign agreements similar to the Conventions of Luxembourg and The Hague on the rights of children.

I saw these women in my office late at night exactly a year ago. It was an emotional and extraordinary night because we had, together, hours earlier, managed to persuade the Algerian authorities to fly the children, together with the fathers, to Strasbourg to meet them. In many cases, this was their first meeting for up to five years. During that night, the mothers concluded individual agreements with their ex-husbands under the watchful eye of Mrs LIZIN (here) and of the Algerian Consul General.

Being separated from one's children is a personal tragedy that many of us are lucky enough not to have felt. I don't mind telling you that the small part I played in bringing mother together with child is more significant to me than a hundred inter-institutional agreements on comitology, or budget discipline.

That night, I believe, we saw the European Parliament exercise its power on behalf of people - ordinary people.

Those agreements: 'the Strasbourg agreements' were private promises between the mothers and the fathers, guaranteeing the regularity of trans-frontier visits. All the mothers asked for was the basic right of periodic access to their children.

Alas, the Agreements have only been partially successful in practice. You have in your dossiers a full description of particular cases, and how they have stood that vital test of time: the two subsequent holiday periods, in July and December of last year.

I recently received a letter from Margaret Ward, the Scottish mother. I saw her with her two children around her in my room in Strasbourg exactly one year ago. I remember the happiness and relief of that particular occasion. I am sorry to report that her ex-husband was unable to allow the children to spend their last Christmas vacation with her in Jersey, despite the entreaties of the Algerian authorities. She had to go to Algeria to see them, and was then only permitted to see them in a hotel. At that time I gave my assurance, and I quote, "as an English Gentleman and as President of the European Parliament" to the husband of Mrs Ward that the children would be returned at the end of the holiday. Unfortunately, on that occasion it was to no avail. But I can give that assurance again, and will certainly do so for the summer holiday.

We have to do all we can to try and bring these children to be with their mothers for the next vacation in July.

Let me say that throughout the year we have had constant and dependable cooperation from the Algerian authorities. It is not for want of their action that the Strasbourg agreements are not functioning as they should, and I here pay my tribute to the positive work of the Algerian ambassador, without whose help we would not have even got to the stage of the agreements.

I invite Mrs LIZIN to say a few words.



KIDNAPPING AND CHILD ABDUCTION

ABDUCTION TO AND FROM THE UNITED KINGDOM - THE LORD CHANCELLOR'S

ROLE

PART 1 - INTRODUCTION

1. The Child Abduction and Custody Act 1985 came into force on 1 August 1986. The Act enabled the United Kingdom to ratify the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and the European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children. Part I and Schedule I of the Act are concerned with the Hague Convention and Part II and Schedule 2 with the European Convention.
2. In addition to the United Kingdom, one or both of the Conventions have now been ratified by eleven other countries (S I's 1986 No II59 and 1987 No 163.). These countries, full details of which are set out in annex A, are Australia, Austria, Belgium, Canada, Cyprus, France, Hungary, Luxembourg, Portugal, Spain and Switzerland. There are a number of other countries who have indicated that they intend to ratify one or both of the Conventions within the next eighteen months. They include West Germany, Greece, Italy, the Netherlands, Norway, Sweden and USA.
3. The two Conventions provide that each country which ratifies them must establish a central authority, or central authorities if the country consists of more than one territorial unit, which are to be responsible for the administration of the Conventions. The 1985 Act provides for the establishment of two central authorities in the United Kingdom; for Scotland this is the Secretary of State for Scotland and for England, Wales and Northern Ireland this is the Lord Chancellor. However, for practical purposes, abductions to and from Scotland are dealt with by:-

Scottish Courts Administration
26/27 Royal Terrace
Edinburgh EH7 5AH
(telephone no - 031 556 0755)

for Northern Ireland by:-

Northern Ireland Court Service
Windsor House
9/15 Bedford Street
Belfast BT 7LT
(telephone no - 0232 228594)

for England and Wales by:-

Lord Chancellor's Department
Trevelyan House
30 Great Peter Street
London SW1P 2BY
(telephone no - 01 210 8500)

The Lord Chancellor's Department in London also acts as supreme central authority for the United Kingdom, to whom overseas central authorities are entitled to send all applications concerning children abducted to the United Kingdom. However, it will only directly deal itself with the cases involving children abducted to England or Wales.

4. Since the 1985 Act and Conventions came into force in the United Kingdom on 1 August 1986, the Lord Chancellor's Department has become a focal point for persons requiring information, advice and assistance on child abduction. The Department has received details of around 150 cases concerning children who have been abducted or are in danger of being abducted, both to and from the UK. As many of these involve children abducted to non Convention countries the Lord Chancellor's Department can take no practical steps to help secure the return of those children. The only other Government Department that may be able to provide some assistance in those cases is the Consular Department of the Foreign and Commonwealth Office at Clive House, Petty France, London SW1 9HD.

5. the child abduction cases the Lord Chancellor's Department does deal with can be broken into two categories:-

incoming applications - children abducted to the UK;
outgoing applications - children abducted from the UK.

Solicitors in this country are more likely to become involved in outgoing applications under the 1985 Act. The reason for this is that incoming applications are, in the main, sent directly to the Lord Chancellor's Department, as the central authority, rather than to an individual solicitor. These applications are then dealt with by the small panel of child abduction solicitors that has been set up by the Department. However, it is possible that solicitors in this country could be instructed by the abductor of the child.

6. The following notes set out the procedures that have evolved for dealing with incoming and outgoing applications. But, they only deal with the procedures that are used in England and Wales, although, Scotland and Northern Ireland do follow similar procedures.

PART 2 - PROCEDURE FOR OUTGOING APPLICATIONS

1. Normally, the Lord Chancellor's Department first hears of a child abduction case when it receives a telephone call from a solicitor who either has a client with them or has just seen a client whose child has been abducted overseas. In many of these cases the solicitors involved have only limited knowledge of the Child Abduction and Custody Act 1985 and European and Hague Conventions. Before determining whether the circumstances of their client's case fall within one or other of the Conventions, it is first necessary to explain what the Conventions attempt to do and the remedies that may be available to their client under the Conventions.

Initial questions that are asked.

2. There are three essential questions that must be asked prior to determining whether an application can be made. The first of these is to which country has the child been taken to? Clearly, for the Conventions to apply the child must have been taken to a country in which one or both of the Conventions is in force, otherwise no action can be taken. However, it is important that the client establishes the grounds on which they believe the child has been taken to that Convention country. For example, the fact that a child had been abducted by boat to Calais would not be a sufficient ground on which to make an application to France unless one had further evidence that the child was likely to still be in France. It would be an abuse of the system if the central authority was to embark on a fishing trip whereby, an application was sent to every other central authority in Europe. In this respect Interpol may be able to assist by, at least, establishing the country to which the child has been taken.
3. The second question is what is the age of the child? An English court order will apply to a child up to the age of eighteen, but the Conventions only apply to a child aged under sixteen. The Conventions will cease to apply on a child's sixteenth birthday, even if an application was made before that date.
4. The third question that must be asked is the date on which the child was abducted? Many of the enquiries received so far by the Lord Chancellor's Department have concerned children abducted before 1 August 1986, the date on which the Child Abduction and Custody Act 1985 came into force. The Hague Convention is quite specific in that it will only apply to children abducted after the date on which that Convention came into force between the country from which they were taken and the country they were taken to. The dates applicable to the UK are set out in annex A. With most countries so far this date is 1 August 1986, but for example, in the case of Australia, the date is 1 January 1987.

5. The European Convention is less precise on this point and will depend on each countries interpretation of the Convention. The Lord Chancellor's Department's view is that the Convention should be interpreted as widely as possible. In the absence of any Article to the contrary in the Convention, the Department's view is that the Convention can act retrospectively and apply to children abducted before the date on which the Convention came into force between the country the child was taken from, and the country they were taken to. This view is not shared by all other countries. Some countries are not prepared to apply the Convention either to children abducted before the Convention came into force or to recognise and enforce custody orders made before that date. However, this is a matter of interpretation which, in the end, is for the courts to decide.
6. A final point that must be made, before setting out the criteria which an application must meet, is that it is not compulsory under the Conventions for applications under them to be made through one of the UK central authorities. An applicant in this country is perfectly entitled to apply directly to an overseas central authority, although, some overseas central authorities may be reluctant to accept these applications unless they have first been processed by a UK central authority. Applicants are also entitled to apply directly to an overseas court, although, if they do so, they may not be entitled to receive the same legal aid as they would be entitled to if they applied through a central authority.

Applications that can be made under the Conventions

7. Essentially there are five different types of application that can be made under the Conventions, two under the Hague and three under the European.
8. The first of these applications is an application under the Hague Convention for the return of a child who has been wrongfully removed from the UK. Any person who has rights of custody over a child aged under sixteen, who has been taken overseas or has been retained overseas in breach of those rights of custody, can apply for the child to be returned. The two essential points that must be established by the applicant is that they had rights of custody over the child and that at the time of the removal they were exercising those rights. If the applicant has a court order giving them custody of the child the application is fairly clear cut, however, there are many other situations where this is not the case. For example, an English custody order normally provides that a child shall not leave the jurisdiction without either the written consent of the other parent (the non-custodial parent) or leave of the court. If the custodial parent takes the child overseas without consent or leave the removal is clearly unlawful. The non-custodial parent did have the right to help determine the child's place of residence which can exist as a separate right of custody under the Convention. Technically, that parent has the right to apply under the Convention for the child to be returned, but if an overseas court were to return the child they

would effectively be making a decision as to custody, as they would taking the child away from the custodial parent and returning it to the non-custodial parent. In these circumstances an overseas court may well find grounds for not returning the child. A parent may be better advised to apply for rights of access to be organised or secured for them by the overseas court.

9. The second application that can be made under the Hague Convention is for the securing or organising of rights of access to a child who has been taken overseas in breach of the applicant's rights of access.
10. The first type of application that can be made under the European Convention is for the return of a child who has been improperly removed from the UK. Like the Hague Convention, a person who has rights of custody over a child aged under sixteen who has been taken overseas or retained overseas in breach of those rights, can apply for the child to be returned to the UK. The main difference between the Hague and European Conventions is that under the Hague Convention the applicant does not need to have a custody order, although, as explained above, having such an order is an advantage. On the other hand, an application cannot be made under the European Convention unless the applicant has an enforceable court order in their favour giving them rights of custody over the child. Under the European Convention the application is for that custody order to be recognised by the overseas court and enforced by means of returning the child to the UK.
- II. The situation frequently arises where the child has been abducted to a country in which only the European Convention is in force, but the applicant does not have a court order giving them custody. This situation is covered by the European Convention. Article 12 provides that if at the time of the removal there is no enforceable decision relating to the custody of the child the Convention will apply to any subsequent decision relating to the child's custody if it, also, declares the removal of the child to be unlawful.
12. Provision has been made in the new Rules of Court to enable courts in this country to be able to make a declaration that the child was removed unlawfully. If a custody order, which is made after the date of which the child is taken, does not contain such a declaration, it is most unlikely that an overseas court will recognise and enforce that order. However, even if a declaration is obtained, it is still possible that the court order will not be recognised and enforced in some countries. For example, Spain has made a reservation to the Convention that it is not bound to recognise custody orders that are made after the date of the removal.
13. The second type of application that can be made under the European Convention is for court order to be recognised overseas, but not enforced. This application is different to the first type of application in that the child has not yet been improperly removed. For example, this application would cover the situations where there is a

risk that the child may be abducted or there is a risk that if the child is allowed to go abroad on an access visit they will not be returned. By having the custody order recognised in advance it will effectively prevent fresh custody proceedings being brought in that country should the child be abducted there or not returned after an access visit.

14. The third type of application that can be made under the European Convention is for the recognition and enforcement of rights of access to a child. This application is very similar to an application for rights of access under the Hague Convention. In most cases the applicant will be requesting the recognition and enforcement of a court order under which they were given rights of access, however, it is still possible to make an application for rights of access if no court decision as to access has been made yet.

Action to be taken by solicitors after a child has been abducted

15. The normal procedure when a child has been, or is about to be, abducted is to have that child made a Ward of Court as quickly as possible. If the child has not left the country yet, the wardship proceedings may help prevent this happening, but if the child has already left the country, the fact that the child is a Ward of Court will not directly bring about its return to the United Kingdom.
16. If the child has been taken to a Convention country and at the time of the removal there is a custody order in force relating to that child, then, wardship proceedings will not directly assist an application under the Conventions. If there is no custody order in force, then, wardship proceedings may assist an application under the Hague Convention by providing evidence that the child was removed wrongfully, but they will only assist an application under the European Convention if an order is made in those proceedings giving interim care and control to the applicant together with a declaration that the removal was unlawful.

Action taken by the Lord Chancellor's Department after an enquiry has been received

17. If it is clear that an application can be made under one or both of the Conventions a Questionnaire Form together with Notes for Guidance to the 1985 Act and Conventions is sent to the solicitor. The Questionnaire, which is not an official form, is designed to be a practical aid to the making of an application under the Conventions. The Questionnaire can be completed by either the solicitor or the applicant, but the letter of authorisation, which is enclosed with the Questionnaire, must be signed by the applicant. (annexes B, C, D)

This letter, which may be required under the Hague Convention and is required under the European Convention, authorises the central authority of the country to which the child has been taken, or their designated representative, to act on behalf of the applicant.

18. The applications that are sent by the Lord Chancellor's Department to overseas central authorities are in a similar form to the Questionnaire. However, the Questionnaire was designed to encourage an applicant, particularly when they are acting in person, to provide more information than may be necessary for the application. Clearly, it is easier for the Lord Chancellor's Department to decide what is not relevant to the application.
19. It is important that the Questionnaire is completed as fully as possible, and in particular, it is important that as much information as possible is given about the supposed whereabouts of the abducted child. Even with the best will in the world, the police in the country to which the child has been taken are not going to spend endless time and resources trying to locate a child if they have no idea where it is in the country.
20. As well as returning the completed Questionnaire and signed letter of authorisation there are a number of other documents that are required. The first of these is a certified copy of any custody or access order that has been made. (office copy of the order sealed with the seal of court that made the order.) If the solicitor or the applicant does not already hold a certified copy, a copy can be obtained free of charge from the court that made the order.
21. The second document is evidence that the abductor of the child was served with the document which instituted the proceedings in which the custody order was made. (eg. if the custody order was made in divorce proceedings, a copy of the signed acknowledgement of service will suffice.) The reason this document is required is that it is a defence to proceedings under the European Convention that the defendant had no notice of the proceedings. Clearly, in many cases it will not have been possible to serve notice on the defendant, however, if service is not possible because the defendant has concealed his whereabouts, then this defence will not be available to him.
22. The third document, that may be helpful, is an affidavit sworn by the applicant in support of his application in cases where it is not clear that the applicant had rights of custody over the child and was exercising those rights at the time of the removal, or to refute any suggestion that the applicant acquiesced to the removal.
23. The information contained in the Questionnaire is transcribed onto a Request for Return form. This together with any accompanying documents are, after translation, sent to the appropriate central authority. From this moment onwards the success of the application and the speed with which it is dealt with is dependent on the action taken by the appropriate authorities in the country to which the child has been taken. The role of the Lord Chancellor's Department from this moment onwards is limited.

24. The procedures used in the other ratifying countries vary. In some countries the central authority itself has the power to decide on applications under the Conventions or to institute proceedings before the court. But in many countries the central authority passes the application on to a designated representative. This will normally be the office of the nearest Prosecuting Magistrate to where the child has been taken. It is then for the Prosecuting Magistrate to take the appropriate steps, if necessary, by instituting judicial proceedings.

How is the application paid for?

25. The Hague Convention provides that an applicant is not required to make any payment towards the costs of any proceedings brought on their behalf in the country to which the child has been taken and, in particular, those arising from the participation of legal counsel. However, some countries have made a reservation to the Convention that they are not bound to assume any costs that are not covered by their own national system of legal aid and advice. In some countries legal aid is very limited and in others there is no legal aid system at all. Technically, an applicant in this country could be required to make a contribution towards their legal costs, but in practice this may not be such a problem for two reasons. An applicant in this country cannot be required to make any contribution towards the legal costs until after proceedings under the Convention have been concluded. At the end of the proceedings it may be impractical for the overseas central authority to recover any contribution. The second reason is that in countries such as France the legal work is undertaken by a Government employee or official, the Prosecuting Magistrate, and therefore, no additional legal costs may have been incurred.
26. Under the Hague Convention an applicant is required to meet the actual cost of repatriating the child to the UK. However, but it is possible under the Convention for the overseas court to make an order that the person who removed the child reimburse the applicant for any necessary expenses incurred by them, including airfares and any contribution they could be required to make, as outlined in the above paragraph.
27. The European Convention is quite specific that, save for the cost of repatriation of the child, a contracting country will not claim any payment from the applicant.
28. In many cases it is possible for an application to be made under both Conventions. However, as an applicant under the European Convention cannot be required to make any contribution in these circumstances the application will unless the applicant or their solicitor objects, be made under this Convention rather than the Hague.

PART III - PROCEDURE FOR INCOMING APPLICATIONS

1. Overseas central authorities are entitled to send all applications involving children abducted to the UK to the Lord Chancellor's Department in London but, if they concern children abducted to Scotland or Northern Ireland, they will be passed on to the Scottish Courts Administration or the Northern Ireland Court Service. If the application concerns a child abducted to England or Wales the application will, first of all, be scrutinised by the Department to check that it meets the criteria of the Convention it is made under. These are the same criteria that are used when making outgoing applications.
2. If it is clear that the application meets the conditions laid down by the Convention it is made under and that it is accompanied by the correct documentation, for example, a certified copy of a custody order, the next step that is taken is to instruct a solicitor to act for the overseas applicant. Although the solicitor is instructed by the Lord Chancellor's Department, the solicitor is acting for the applicant rather than the Department. Therefore, it is more important that the solicitor keeps the overseas applicant appraised of what is taking place than the Department.
3. The solicitor who is instructed to act for the overseas applicant will in most cases be chosen from the Lord Chancellor's Department's small panel of child abduction solicitors. However, occasionally the overseas applicant will already have a solicitor acting for them in this country, in which case, that solicitor may be approached first of all. The solicitor is telephoned in advance of sending the papers to them to find out whether they are available to act. By notifying them in advance it enables them to have obtained emergency legal aid by the time the application reaches them so that they can start to act immediately.

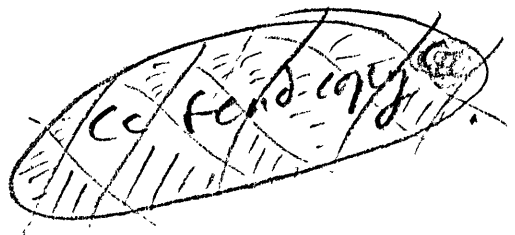
Legal Aid

4. Overseas applicants are entitled to receive legal aid in this country under the Conventions. The Legal Aid (General) (Amendment) (No 2) Regulations 1986 (S I 1986 No 1186) provide that a person whose application has been submitted to the central authority in England and Wales and on whose behalf a solicitor has been instructed to act shall be entitled to receive legal aid. Effectively, the Regulations remove the means and merits tests for applications under the Convention. In addition, an applicant cannot be required to make any contribution.
5. The above regulations only cover the situation where an applicant applies through the central authority for England and Wales. If an applicant were to instruct a solicitor in this country directly, their application would be subject to the normal means and merits tests.

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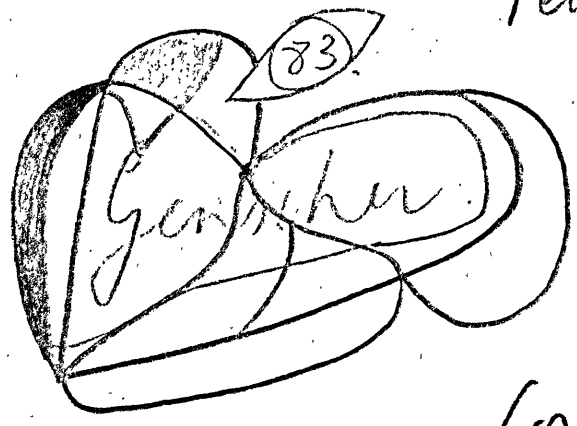
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Commission

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European Commission
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