

**Eötvös Loránd University**  
**Doctoral School of Law**

**Children's rights, private law and criminological perspectives of parental  
child abduction**

Thesis of doctoral dissertation

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## The objectives of the doctoral dissertation

In 2021, 2.3 million people immigrated to the European Union from non-EU countries and 1.4 million people previously residing in one EU Member State migrated to another Member State. In the same year almost a quarter of children were born to mothers who were not born in their country of residence.<sup>1</sup> These figures illustrate that as the right to free movement of EU citizens expands, the number of transnational families is also increasing. Consequently, family disputes cannot remain within national borders. What happens if the parent moves back to their home country with the child without the other parent's consent after their separation? In 2015, nearly 3000 children worldwide were involved in parental child abduction.<sup>2</sup>

My dissertation deals with parental child abduction, which occurs when a child is removed from or retained outside of their country of habitual residence, and the removal or retention violates another parent's custody rights. The child often suffers very significant effects, often very many years after the abduction when removed abruptly, separated from the left-behind parent.<sup>3</sup> There is an interplay between children's rights and international private law, EU law, criminal law in the field of parental child abduction cases.

The children's rights and related social issues are quite diverse and complex, needing a multidisciplinary approach to evaluate at theoretical and practical levels.<sup>4</sup> Consequently, the phenomenon of parental child abduction cannot be integrated into a single discipline, but requires the joint use of different disciplines. It led me to focus on three aspects of child abduction: children's rights, private law and criminology.

Parental child abduction is a particular issue in the field of international children's rights, as the United Nations Convention on the Rights of the Child (hereafter referred to as UN CRC) declares the protection against the illicit transfer and non-return of children abroad in a separate article (Article 11). In addition, other children's rights, such as the best interests of the child (Article 3), the right not to be separated from parents (Article 9) and right to be heard (Article 12) are also relevant.

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<sup>1</sup> <https://ec.europa.eu/eurostat/web/interactive-publications/demography-2023>  
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<sup>2</sup> Nigel Lowe és Victoria Stephens, „A statistical analysis of applications made in 2015 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction — Global report”, 2017, 9.,

<sup>3</sup> Marilyn Freeman, „Parental Child Abduction: The Long-Term Effects - A research summary”, *International Family Law, Policy and Practice* 2, sz. 2 (2014): 28–30.

<sup>4</sup> Lux Ágnes, „A gyermekek jogai”, in *Internetes Jogtudományi Enciklopédia*, szerk. Jakab András és mtsai. (Budapest: Pázmány Péter Katolikus Egyetem, Jog- és Allamtudományi Kar, 2018), bek. 17.

The private law aspect of child abduction is the most often discussed. Parental child abduction is basically a legal instrument of private international law, but it is closely linked to civil law through the regulation of parental responsibility rights. Mediation is the most common way to keep private law disputes out of court and is also relevant in abduction cases. Accordingly, I examined when and under what circumstances the child is involved, both in court proceedings and in mediation. In the hope of presenting a nuanced picture of the European practice, Hungary and the Netherlands were compared.

Contrary to international trends, the criminological aspects of parental child abduction have been little discussed in Hungary. The review of the criminalization of abduction, the intersection between domestic violence and abduction, and the media representation of abduction in Hungary could lessen this gap.

The primary aim of this dissertation is to find answers to these main research questions in a multidisciplinary approach:

- 1. What characterizes the principles of children's rights related to parental child abduction?*
- 2. How are children involved in parental child abduction cases with particular reference to the Hungarian and Dutch practice?*
- 3. The dissertation also seeks to answer the question of the criminological relevance of parental child abduction.*

## **The structure of the doctoral dissertation**

The first chapter of the dissertation presents the legal framework of abduction cases which can be interpreted in three, international, EU and national levels. The Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereafter referred to as Hague Abduction Convention) created the concept and the legal instrument of private international law for parental child abduction. It is one of the most successful legal instruments of the Hague Conference on Private International Law, with its 103 Contracting Parties.<sup>5</sup> Between EU Member States (with the exception of Denmark) the Brussels II bis Regulation<sup>6</sup>

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<sup>5</sup> <https://www.hcch.net/en/instruments/conventions/status-table/?cid=24>  
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<sup>6</sup> Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast)

provides additional rules which have priority over the Convention. In this chapter, it has also been given a major emphasis to the Hungarian legislation and previous studies.

In Chapter II analyzes the principles of children's rights related to parental child abduction, namely the best interests of the child, the right not to be separated from parents and right to be heard.

The third chapter aims to examine the private law aspect of parental abduction through the child's involvement. I applied the classification of the Permanent Bureau of the Hague Conference on Private International Law ("Involvement of the child in Hague return proceedings and family law proceedings" and "The voice of the child in mediation")<sup>7</sup>, this chapter can be divided into two thematic units. I am convinced that the Dutch-Hungarian comparison is able to shed light on the European case-handling. A post-socialist and a welfare state have different historical background of recognition of children's rights and their social composition has also significant differences. My empirical research is based on interviews with three *bijzondere curators* and I conducted interviews with four Dutch and four Hungarian judges.

Chapter IV reviews the criminological aspect of parental child abduction. First, taking a comparative approach, I focus on the legal terms used in the European criminal codes relevant to abduction. Then I examine the cases in which the criminalization of abduction can be considered effective and analyze the deterrent effect of legal sanctions. I review the role of criminalization in civil proceedings and, in particular, the interpretation of the grave risk of harm defence of the Hague Abduction Convention. As allegations of domestic violence have been often raised in abduction cases, I outline the legislative responses that victims could get. At the end of this chapter, I give an overview about online media reports on Hungarian abduction cases.

### **The methodology of the doctoral dissertation**

Due to the multidisciplinary approach, my research methods also developed accordingly. The presentation of the legal framework of abduction cases necessarily led to the application of the descriptive method.

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<sup>7</sup> Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction - Mediation (Hague: Hague Conference on Private International Law, 2012), 66.

Since I worked at the Office of the Commissioner for Fundamental Rights of Hungary, in 2018 I was involved in the preparation of a comprehensive investigation<sup>8</sup> into the parental child abduction cases in Hungary.

In 2018 I worked as a national country expert VOICE project, co-funded by the EU. Its legal research was conducted by the Universities of Antwerp and Genoa, and it was aimed at investigating whether and how judges consider the best interests of the child in judicial proceedings following an abduction and whether judges hear the children in this regard. National country experts from seventeen countries collected case law, cases decided between 2005 and 2017.<sup>9</sup> The VOICE research survey inspired my own research at the Pest Central District Court.

As a visiting researcher at Radboud University in 2019-2020, I also had the opportunity to conduct empirical research. I prepared focused interviews<sup>10</sup> with three *bijzondere curators* in order to get a more detailed insight into this Dutch institution. The interviews were held in Heerenveen, in The Hague and in Leiderdorp in 2019.

Although the use of empirical research methods in the field of legal studies is increasing<sup>11</sup>, interviewing of judges is a relatively new method.<sup>12</sup> The aim of my research was to find out how the children's right to be heard implemented during the Hungarian and Dutch return procedure. Since the child-hearings are not public and not all judicial considerations are revealed in the judgments, I decided to apply interviewing of judges as a research method. Semi-structured interviewing fits well in the interpretivist research approach<sup>13</sup>, and this technique also allowed for having the personal approaches and considerations of the judges. I conducted interviews with four judges at the Pest Central District Court and with four judges at District Court of the Hague (*Rechtbank Den Haag*) in 2019.

During my stay in the Netherlands, I had the opportunity to visit the International Child Abduction Center (*Centrum Internationale Kinderontvoering*) in Hilversum and to consult with

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<sup>8</sup> Report of the Commissioner for Fundamental Rights on case AJB-1299/2018  
<https://www.ajbh.hu/documents/14315/131278/The+investigation+of+the+Commissioner+into+parental+child+abductions.pdf/c2a2b754-7e84-a166-4ce3-81a8290f3666?version=1.0&t=1560929564745>  
Downloaded on 20 July 2024

<sup>9</sup> Laura Carpaneto és mtsai., „The Voice of the Child in International Child Abduction Proceedings in Europe : Work Stream Two : Case Law Results” (Brussels: European Union, 2019), 4.

<sup>10</sup> Robert K. Merton, Marjorie Fiske, és Patricia L. Kendall, „A fókuszált interjú”, in Településkutatás II., szerk. Letenyei László (TeTT könyvek, 2006), 443–66.

<sup>11</sup> Urszula Jaremba és Elaine Mak, „Interviewing Judges in the Transnational Context”, *Recht en Methode in onderzoek en onderwijs*, 2014, 2.

<sup>12</sup> Urszula Jaremba és Elaine Mak, 1.

<sup>13</sup> Urszula Jaremba és Elaine Mak, 8.

the spokesperson of the Public Prosecution Office in Amsterdam, as well as with Dutch lawyers and researchers working with child abduction cases.

In my comparative criminal law analysis, I examined how the abduction (as defined in Article 3 of the Hague Abduction Convention) is listed in European criminal codes. Currently, there is no uniform criminal law definition of parental child abduction. The means by which criminal charges can be brought against the abducting parent and whether and to what extent the left-behind parent has an influence on the initiation of criminal proceedings will depend on the relevant legal system and the circumstances of the case.<sup>14</sup>

The media representation of abduction cases was analyzed by content analysis using the theory of social representations<sup>15</sup> formulated by Serge Moscovici. My research focused on the narratives which are used to describe the phenomenon of parental child abduction in online media reports. 58 results (media reports) were found in my research sample using ten search terms.

### **The results of the doctoral dissertation**

- 1) Neither the Hague Abduction Convention, nor the Brussels IIbis Regulation contains explicit reference to the best interests of the child. However, it is usually understood as sending the child back as soon as possible would restore the *status quo ante* and it could be assumed to be in the best interests of the child. According to the European Court of Human Rights, the Convention is intended to promote the best interests of the child and often refers to this principle. By contrast, the Court of Justice of the European Union has made very few references. The principle of the best interests of the child is not homogeneously spread among the EU Member States, as it has been also confirmed by my own research at the Pest Central District Court. As I see it, the violation of the right not to be separated from parents (Article 9 of the UN CRC) could be arisen in two cases. If the court orders the return of the child to a country where parental child abduction is severely (with imprisonment) punished, the abducting parent has two choices. The first choice is returning to that country with the child and being imprisoned for abducting. Or, the second choice is not returning and therefore avoiding these serious criminal consequences, but leaving the child alone with the left-behind parent. This shows that

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<sup>14</sup> Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction - Mediation, 35.

<sup>15</sup> Serge Moscovici, *La psychanalyse: son image et son public* (Paris: Presses universitaires de France, 1976).

in countries where parental child abduction is severely (with imprisonment) punished, the return order might cause a separation.

- 2) The Hague Abduction Convention has only one provision which refers to the child's opinion. In my view, Article 13 (2) should have a broader understanding, as part of the children's right to participate. Regardless of its criticism, it is a huge step forward to implement the children's right to be heard. When the Convention was drafted, there was no international document on children's rights available to serve as a reference to articulate the children's right to be heard. The right to be heard has been clearly recognized in the Brussels IIbis Regulation, as Member States shall provide the child who is capable of forming his or her own views with a genuine and effective opportunity to express his or her views. The Regulation should, however, leave the question of who will hear the child and how the child is heard to be determined by national law and procedure of the Member States.
- 3) For a very long time, the Hungarian judges did not or rarely hear children in family law cases. It was generally thought that hearing of the child – if necessary – was a task of the psychologists. Even today, the judges' opinions differ as to whether a child should be heard directly or by an expert. However, the Hungarian case law shows that – similarly to the European practice – the hearing of children by judges is typical in parental child abduction cases. This was also confirmed by the interviews conducted with Hungarian judges. As there is no age barrier for hearing of children in abduction cases, the Hungarian judges have multifaceted tasks. There is a demand for special training and for an assisting person, but the current form of *guardian ad litem* is not being used.
- 4) In the Netherlands the court appoints a *bijzondere curator*<sup>16</sup> for children three years of age or older. The *bijzondere curator* hears and accompanies the child, and explains the court's decision if required. If supported by the *bijzondere curator*, children six years of age or older are heard by one of the judges of the full court as well. By contrast, children twelve years of age or older are heard in other family law cases. The interviews

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<sup>16</sup> The translation of „*bijzondere curator*” is „*special guardian*”. In order to avoid any misunderstanding, I decided to use the expression in the original, Dutch language.

conducted with Dutch judges confirmed that the *bijzondere curator* greatly helps assessing the child's maturity and understanding the child. All judges expressed the difference between the hearing by a *bijzondere curator* and by a judge in the same way: time and expertise. In my view, inter-professional cooperation in abduction cases is recommended in Hungary as well, especially for distinguishing between the *voice* of the child and the *choice* of the child. It should also be noted that the six-week time limit set by the Brussels IIbis Regulation must be respected as the number of professionals involved in the procedure increases.

- 5) The Hague Abduction Convention and the Brussels IIbis Regulation recognize the growing importance of mediation, but currently, there is no uniform practice in the EU Member States. Having regard to the characteristics of mediation in abduction cases, mediation needs to be conducted by specifically trained family law mediators. However, there is also a lack of a central point of reference. Although the involvement of children in mediation is increasing, the means by which a child's voice may be introduced are also controversial issues. Neither the Hague Abduction Convention, nor the Brussels IIbis Regulation refers to the hearing of the child in mediation, but the latter clarifies the child's right to be provided with an opportunity to express his or her views in proceedings to which he or she is subject.
  
- 6) In Hungary, the applicability of mediation has been an important issue in the discussions for many years, however, it is still not frequently used. This is partly due to the low level of awareness of the mediation process and of mediation culture. Having regard to the encouraging measures on mediation of the Brussels IIbis Regulation, it is questionable how they will affect its application. Currently, anyone who meets the basic requirements of the Mediation Act<sup>17</sup> could mediate in parental child abduction cases. At the same time the explanatory notes of the Act on international judicial cooperation in matters of parental responsibility<sup>18</sup> emphasize that the central authority provides to the parents a list of mediators who have *appropriate expertise*. In my opinion, this *appropriate expertise* required in abduction cases should be clarified as soon as possible, and the

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<sup>17</sup> Act LV of 2002 on mediation

<sup>18</sup> Act LX refers to the hearing of the child in mediation II of 2021 on international judicial cooperation in matters of parental responsibility



quality of mediation trainings should be reviewed. This Act do not mention anything about child-hearing in mediation and there is no protocol for it in Hungary.

7) In the Netherlands, mediation is always organized by the Mediation Bureau of the International Child Abduction Center (*Centrum Internationale Kinderontvoering*) located in Hilversum. The Dutch model, so-called *pressure cooker model* refers to the mediation integrated into the schedule of the court proceeding, and to the mediation programme using three 3-hour sessions in the course of two days. In my view, the scheduled organization of mediation in Hungary is an example to be followed. The sessions are co-mediated by two mediators specialized to tackle cross-border cases, preferably a lawyer and a psychologist. On the first day of the mediation, the child is interviewed by a third mediator, a child psychologist. The child must be three years of age or older and both parents must consent to the hearing.

8) The criminological relevance of the phenomenon of parental child abduction is based on the comparative criminal law analysis. Currently, there is no uniform criminal law definition of child abduction in Europe. The types of punishment envisaged and the age of children involved in the offences vary widely. Thus, the act of the abducting parent may be legal in one country, while thousands of kilometers away it can lead to imprisonment for several years. The criminalization of abduction can be considered effective in searching for missing children, but Rhona Schuz argued<sup>19</sup> that the civil and criminal sanctions are not likely deter many potential abductors.

Accusation of domestic violence is often used as the basis of the grave risk of harm defence in child abduction cases. If the court rejects this exception and orders the return of the child to a country where parental child abduction is punished, the abducting parent as a *victim of domestic violence* may become a *perpetrator of a crime*.

The criminological relevance of child abduction cases is also highlighted by the characteristics of media representation. The online media reports on abduction include excessive violence and the “there is only one mother” as a recurrent narrative tries to convince the public. The media exaggerates the nationality aspect of cases, and the act of child abduction often gets a nationalistic interpretation. Informing the public raises various questions over the children’s rights to privacy.

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<sup>19</sup> Rhona Schuz, *The Hague Child Abduction Convention: a critical analysis*, Studies in private international law, Volume 13 (Oxford: Hart Publishing, 2013), 99.

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