

Can Parental Abductions Be Avoided ?

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Introduction:

Definition

The appropriation of a child by a parents (mother or father but also by any other family member), parental kidnapping or parental abduction: these are the different terms used to describe the removal of a child by one of his/her parents, effectively depriving him or her of part of his/her past and emotional ties.

The Conventions use a broad definition to discuss all forms of child abduction: forced removal from its habitual place of residence. The relationship status of the parents, i.e. whether they are married, living together or separated or whether they are divorced or widowed, is not taken into account.

A large majority of all parental abductions can be resolved within a period of one week. The traumatic effects of an abduction, however, stay both with the child who has been kidnapped as well as with the parents themselves.

Parental Abduction: Minor Offence or Serious Transgression ?

The media like to talk about abduction as a criminal act – abduction, that is, with the intention of abusing, selling or even killing the child. Parental abduction, on the other hand, seems in the eyes of many not really to be a crime as such, since the child is, “at least, staying with one of his/her own parents”.

Nevertheless, we are dealing with an act which ignores the rights of the child, as defined in the Hague Convention of 1980 on the Civil Aspects of International Child Abduction as well as in the European Convention of 1980 on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children – and **which is punishable by imprisonment. In addition, it is also an act which is in violation of the Convention on the Rights of the Child (Art. 11).**

A large proportion of the population still ignores the existence of this phenomenon which tends to take on ever bigger proportions in every country, due to, among other things, people’s extreme mobility as well as the marriage and subsequent break-up of people of different nationality. The fragile status of couples today is already a well-established fact. The growth curve for divorces rises not only steadily but steeply and the growth rate of separations/divorces between so-called mixed couples (of two cultures or religions) is far bigger than that between nationals.

Numerous studies have demonstrated the serious effects of a parental abduction on both the child and the parent who has been left behind, deprived of his/her child and often kept in the dark about where the girl or boy has been taken and how he/she is living. More recently, this condition has become known as Parental Alienation Syndrome (PAS) or SAP in French (Syndrome d’Alienation Parental). According to this, the child will suffer from affective

frustration, “unable to imagine why his/her parent, who loves him/her, does not come and get him/her” (Clawar & Rivlin, p. 115).

According to the literature devoted to this subject, a child in this situation can experience the following problems:

- Worry about his/her safety,
- Fear of being abducted again or abandoned,
- Feelings of guilt or shame,
- Aggressive feelings, reduced tolerance,
- **Confusion as to his/her proper identity if there has been a change of name,**
- **Conflict of loyalty regarding both parents, especially if the child identifies with the parent who has kidnapped him/her,**
- Problems, such as depression, anxiety, anomie (a state where expectations about the behaviour of others are confused or missing), bedwetting, thumb-sucking,
- **Psychological regression, withdrawal and extreme fear**
- **Inability to integrate into his/her new environment, either at home or at school.**

And, as if all of this was not enough for a child, he or she may also have to cope with the unvoiced issues, lies, physical and psychological violence surrounding him/her. It is extremely important to stay vigilant of the tendency of couples in conflict to accuse their ex-partner of sexual abuse towards the child and to remember how will this affect the child in his/her new environment? There are also cases of hastily arranged marriages for pre-adolescents to prevent their return to the country from which they were abducted. And, finally, let us not forget the numerous cases of female or male circumcision (excision) employed as a symbol when a child is made a member of the new community.

The parent who has been left behind must live with the intentional silence imposed by the family of the partner who has taken away the child. He/she must also live with the lax attitude of the authorities who let time pass, invoke Art. 13b of the Hague Convention, frequently claiming that children needed to adjust to their new environment, that to leave them there would be in their best interest and that the obligation to return them would seriously affect their development. The deprived parent has to continue, torn between the hope of seeing the child again and the resignation of having to go on living without the child until, as an adult, he or she may decide to find the absent parent. In Switzerland, for example, the police and the social services, the magistrates in charge of handling these difficult cases, often argue that these are family affairs, i.e. private matters. Thus, the parent is quite often alone in his/her battle.

Are There Situations Which Constitute an Abduction Risk ? Threat - Risk - Danger: The three Attention Levels !

According to studies conducted on this subject, the following situations constitute a risk:

- It is usually the fathers who abduct their children. This preponderance is probably due to the legislation which, at least in some countries, almost always awards custody to the mother when a couple separates. This very much depends on the country of origin of the abducting parent, however: There is, for example, a huge difference between Latin America and Maghreb.
- This phenomenon affects more inter-cultural or so-called “mixed” couples.

- Mothers (often) first embark on legal proceedings, then abduct the child when they do not receive a satisfactory result in court, while fathers tend to abduct their children in the course of the actual proceedings.
- The age of the abducting parent is usually between 28-40. However, it is not unusual for a very young parent to feel encouraged to abduct his/her child. Even older fathers (over the age of 50) have been known to become kidnappers.
- The likelihood of an abduction increases if the employment of the potential abductor is placed at risk by the decision of a judge to attribute the conjugal residence to the mother (or the father).
- The age of the kidnapped child varies between 3 and 10 years. However, a tendency towards kidnapping older children and removing them to a foreign country has also been confirmed.
- The sex of the child has no effect on the likelihood of an abduction. In certain communities, the maturity of a male child will cause the parent who has been stripped of his parental authority to remove him to a place where he can receive a special education. This phenomenon predominantly affects Muslims who live by the Chariia, i.e. the religious laws of the Islam.
- Children are most frequently abducted from their legal place of residence. The abductor may employ any means of transportation to accomplish his crime.
- It is during weekend visits and school holidays that the majority of abductions take place, usually during the first year following a couple's separation.
- In general, no force or violence is used in the abduction of the child. On the other hand, there have been cases of dead children found tied to a tree or of seriously wounded women found tied-up in a cellar.
- An abduction may be a recurrence or it may have been preceded by threats.
- The parent who has been robbed of his/her child distrusts the ex-partner and **suspects him/her of child abuse.**
- One parent will have difficulties to integrate into their social environment (sociopathic behaviour).
- One parent maintains strong emotional ties which may even be reserved exclusively for his/her country of origin.
- One parent refuses to recognise the rights of the other.

The five last risk factors listed above indicate, according to some of the authors of relevant studies on the subject, a disturbing prognosis for the abducted child.

Do Major Risk Factors Exist in Certain Situations or in Connection With Certain Countries ?

After remembering that any parent from any country can become the perpetrator in a child abduction in the case of a break-up of a relationship, it is also a good idea to remember at this point that in a number of cultures, the break-up of a relationship between a couple is an attack on a man's ability to maintain his family in accordance with the objectives of the community (religious or others). This "failure" sets apart the kidnapper's whole family circle. The abduction (appropriation) of the child is thus seen as reparation to regain the respect of the community.

It has to be noted that in Islamic countries, a child born into a mixed family, or a child who has a father who is a Muslim, belongs to the Muslim religion and, therefore, to the father by law. The risk that a child is abducted into such a country, increases to near certainty in cases

where there is conflict between the couple; chances are slim that the child will be returned to the country from which he/she was taken.

Even worse, if a non-Muslim woman does not succeed in coming to an agreement with her ex-partner with regard to visiting her child, she will not have the right to travel to the Islamic country without the explicit authorization of the child's father!

This is applicable in Egypt, Jordan, Saudi-Arabia, Iran, Algeria, Kuwait, Libya, Morocco, Syria, Tunisia, Yemen, Bahrain, Oman, Qatar, Sudan, The United Arab Emirates, Pakistan, Malaysia, Indonesia, Afghanistan and Bangladesh. This rule also applies in all small core communities.

A very recent tendency, e.g. in Germany, is to retain the child of a former bi-national couple by changing his/her last name. Germany is one of the Western countries that most often makes use of Art. 13b) of the Hague Convention as a defence.

How Can these Tragedies be Prevented ?

- By filing a criminal complaint against a suspected kidnapping by the other parent. The police will evaluate whether to summon the potential abductor to make clear to him/her the gravity of the act in question as well as the risks he/she will be facing if he/she carries out his/her threats. As has already been stated above, however, this course is not followed very often, since it is considered an internal family affair rather than a criminal matter worth following up.
- If children are in a position to understand, talk to them about their situation, i.e. the separation, by using words appropriate for their respective ages and without trying to put down your ex-partner.
- Explain the measures you have taken for their protection against a possible abduction by the other parent. Teach them that it is their fundamental right to be loved by both parents and that they are allowed to love them both equally, even if the parents do not love each other anymore - and, moreover, that they, i.e. the children, are in no way responsible for the separation. Talk to the children in clear terms, without oversimplification, and respond also to questions provoked by the other parent; but do not try to respond to a question in several instalments.
- Teach your children very early to remember their name, address and telephone number, including the international calling code for your country. This can save them if they are lost but equally if they feel an abduction might be imminent. Also teach them to use public transport, the telephone (fixed network as well as mobiles), help them try out several different routes to return home, be precise as to who to call for help in a public place.
- Arrange the access visits, together with the judge and/or your solicitor who could order preventative measures, such as
 - Access visits to take place in a protected place;
 - Injunction to prevent the parent who does not have custody from leaving the territory with a child;
 - Obligation to deposit the official documents of the visiting parent with an official organ, which has not proven to be a very effective measure, since kidnapers have usually thought to equip themselves with several passport;

more important is to safeguard the identity documents of the child and to ensure that the child is removed from the passport of the potential kidnapper;
- In extreme cases, suppress visitation rights altogether. Contrary to the advice of many lawyers and magistrates, this measure has many precedents.

- If your child has dual citizenship, inform the embassy or the consulate of the other country that the other parent does not have custody of your child and demand that no identity documents be issued for your child and see to it that any existing registration is cancelled. While this measure, although absolutely necessary, may not be very effective, it will provide you with an official contact for the future repatriation of your child.

And, from the governments and Authorities

- ✓ **Parental abduction as well as the retention of a child in another country ought to be recognized as a crime in every country.** In a large majority of all countries in the world today this is not yet the case. There are even countries where this practice is recognized by the community as a tradition. Thus, you would have no chance of succeeding, even after ten years of legal battle, in achieving the execution of your Swiss judgement (pronouncement of a decision in chambers of national proceedings for the conformity of the basis for a foreign decision). The principles of jurisdictional reciprocity (mirror orders) are still far too inconsistent and terribly cost- and time-intensive.
- ✓ Once it has been recognized that a crime has been committed, the countries should agree on establishing joint extradition proceedings with regard to the abducting parent.
- ✓ The tribunals will have to justify their decisions more clearly: Too often a parental abduction can be the reaction of a parent who feels he/she has been treated unfairly in a judgement.
- ✓ Visitation rights outside a child's habitual country of residence should only be allowed in cases where the other country has agreed to honour the validity of the judgement recognized in the country where it was issued.
- ✓ It is imperative to put together a family dossier containing all the relevant information concerning the child as well as the other parent, his/her family, friends in the country where you live as well as in your ex-partner's country. Such a dossier could prove to be invaluable in case an abduction takes place. It should contain the following:
 1. **An official document certifying who has parental authority and custody of the child;**
 2. **Recent photographs of the child and his/her potential kidnapper as well as of members of his/her social environment who might be willing to provide practical or financial assistance;**
 3. **The personal and professional data of the ex-partner and of the above-mentioned associates;**
 4. **The vehicle registration numbers of the persons mentioned above;**
 5. **A list of places where the other parent might be able to find shelter, e.g. with one of the people mentioned above and**

6. Information about the person who lives with the ex-partner as well as about the relatives of this potential accomplice.

- ✓ Judges, lawyers, journalists the social services and the police must be made aware of the issue and its implications until they **fully** realize that a parental abduction is and must remain a crime and that they must undertake everything possible to ensure that the child can continue to benefit from both parents.
- ✓ *In Muslim countries, for example, where custody is, by law, assigned to the father, mediation is often the only way to safeguard the right of the child to continue to see both parents.*
- ✓ When the police receives a report that threats have been made by a parent with regard to removing a child, they must be taken seriously. The local police ought to collaborate with the border police and the airports to ensure that the child will not be able to leave the country unnoticed if the threats are carried out. It must be remembered, however, that the police cannot intervene based on mere suspicion; they do not have the authority to act until the act has been committed! This is another area of the law which should be changed, since it is has now been established that the majority of all parental kidnappings could be prevented with due vigilance.
- ✓ The media ought to investigate the issues involved and intensify their efforts to collect in-depth information, in order to raise public awareness that a parental abduction is just as serious as a so-called criminal abduction. The U.N. Committee on the Rights of the Child considers the effects of a parental abduction to be on a par with those of sexual abuse.

A single child saved because of preventative measures is worth all the trouble of putting them into place!

What is the Extent of Parental Abductions World-Wide?

It remains difficult to obtain official statistical data for all countries. However, one can get an idea of the extent of this phenomenon, which has been on the increase since the 1970s, by studying the numbers provided by the various organizations which have been fighting this plague and by the authorities of certain countries.

World-wide, tens of thousands of children become the victims of a parental kidnapping. Every minute, an abduction takes place somewhere in the world !

A few examples:

Belgium:	17 new cases every month since January 2000 and 12 cases concerning Belgian children reported by foreign authorities where action was only taken after a kidnapping complaint was filed
U.S.:	Over 360'000 abductions per year between states as well as internationally
Canada:	400/year (inter-state incidents are strongly under-estimated)
United Kingdom:	Since 1995, cases of parental abductions have increased by 50% and are now exceeding 1'500/year
France:	Officially, no more than 1'000/year. Real estimates exceed 2'000/year
Germany:	The central authority in charge reports a growing number of abductions. Just like in the U.K., over 1'500 cases/year are estimated to exist
Switzerland:	The number of parental abductions has doubled over the past 18 years (official figures of the Ministry of Justice): 67 cases in 1999 and 69 cases in 2000 involving the Hague Convention. The associations which occupy themselves with this problem report much higher figures, however: between 150 and 400, even as many as 700 parental kidnappings per year.

So What Can be Done to Fight this Problem ?

There are as many remedies as there are difficulties encountered in a parental kidnapping. These range from preventative measures on the part of the intercultural couple to ensure that the child is not made a hostage in the case of a break-up of the relationship, to political and legal decisions. Here are a few examples:

- Establishing a cross-border arbitration body for family affairs of international character, a court free of cultural or national bias. By conforming to the Convention for the Rights of the Child (Art. 11), bi-lateral agreements could become possible.
- Recognizing the illegal removal and retention of children as a crime with appropriate punishment, including the extradition of the kidnapping parent.

- Changing the law to ensure that complaints filed about threats or the suspicion of an imminent abduction are taken seriously and that the proper measures are taken to prevent the actual act from being carried out.

For Muslim Countries:

A legal code has to be established which is applicable to and compatible with Muslim and Non-Muslim systems and which can resolve conflicts that can appear at the dissolution of a marriage. Such a code could reduce the differences arising from distinct cultural conceptions, albeit at the cost of enormous compromise.

Dr. Sami ALDEEB of the Swiss Institute of Comparative Law (Lausanne) has issued a brochure with proposals based on his excellent knowledge of the laws of the Koran. This foresees, for example, the freezing of certain penal measures if an abducting parent agrees to return the minor to his/her country of residence. It is often the fear of a prison sentence that causes an abductor to eventually return the child.

For All Countries:

The inclusion of a right of option in the marriage contract. The couple would thus agree at the outset which law should be applicable to settle any future conflicts, i.e. if it should be the law of the wife's or of the husband's country. This would prohibit the other jurisdiction, i.e. the one not stipulated in the marriage contract, to make any rulings and would prevent situations of contradictory judgements from both countries, with each country justifying its decision.

Encouraging countries to ratify and adhere to the Hague Convention. The procedure of recognizing new members is controlled by the existing member countries which decide on the merits of a new applicant.

Establish, **apply** and evaluate bilateral conventions with countries harbouring children who have been abducted. Encourage countries to systematically order the return of children to their habitual domicile, in order to reduce the tendency of abducting parents to demand a civil order in their favour in their own country.

Talk to people, inform them about parental abduction and raise their awareness of the issues involved, for far too many people are still ignoring the existence of this problem.

Create a protected place for children who are threatened by a parental abduction or who were kidnapped and then repatriated. These children live in a state of permanent stress. It might be beneficial to put them in touch with former abductees, in a group specifically created to accommodate them.

Set up and apply a system of communication and information between various police divisions; ensure that border police become as committed to investigating children passengers in vehicles as they are to discovering smuggled merchandise.

Reform the law regarding parental authority, e.g. in the way France planned to do it from June 2001, i.e. awarding shared rights and duties to both parents equally as was the situation during their marriage. This should happen before the relationship degenerates during the legal separation procedure.

Inspired by a federal legal project in the United States which envisages the prohibition to include a child below the age of 14 in the passport of one of the parents without permission by the other parent.

*Translated from french into english by D.A. mother of a kidnapped girl, out of Switzerland.
The girl has fortunately been sent back.*

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