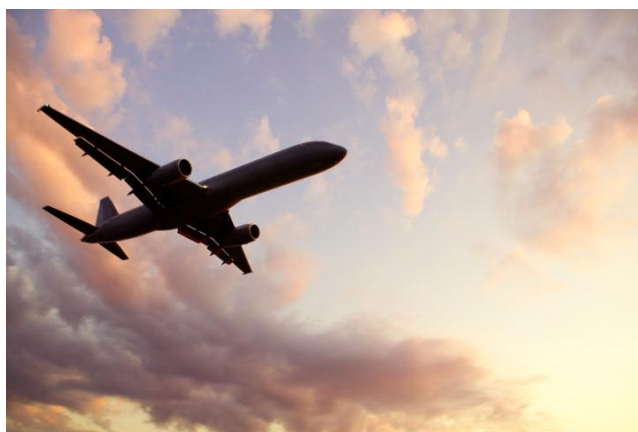


## The Tensions Surrounding Parental Child Abduction and Its Harmful Effects

By Therese Wallin, July 2011



For many couples with children, the mere thought of the other biological parent, or a close relative, abducting the child is a distant abhorrent thought. Yet, an increasing number of parents find themselves struggling through such situations.

According to new numbers released by the Foreign and Commonwealth Office (FCO) in June 2011, cases of parental child abduction are increasing. As many cases are never reported, it is feared that the actual number might be even higher. This has led the Government to embark on an information campaign, together with the parenting website Mumsnet and the Fatherhood Institute. The campaign is hoped to have a preventive effect.

FCO Minister Jeremy Browne, has said that the measures are hoped to provide concerned parents fearing that their child is at risk of abduction with information. The availability of such resources may prevent a possible abduction from materialising.<sup>1</sup> Although the general perception is that it is the father of the child who tends to be the abductor in a majority of

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<sup>1</sup> Campaign launched to help tackle international parental child abduction, Foreign & Commonwealth Office News, 29 June 2011, available at: <http://www.fco.gov.uk/en/news/latest-news/?view=News&id=622876482>

cases, Sharon Cooke, Advise Line Manager for Reunite International Child Abduction Centre, clarifies that the evidence in fact indicates that mothers are the most common abductors.<sup>2</sup>

The response to the increased amount of information available has been overwhelmingly positive. For instance, Sharon Cooke has welcomed the campaign highlighting the incidents and signs that can be associated with a potential abduction. These include a breakdown of the parents' relationship, as well as an increased interest in going on holiday with the child and obtaining their identity documents, such as a passport.<sup>3</sup> On a similar note, Jeremy Browne pointed to the fact that many children are abducted around school holidays as these periods often represent an opportunity for children to travel and visit a parent's home country, where they may subsequently be kept.

Regrettably, in many instances there will be no warning signs,<sup>4</sup> but the presence of conflict between the child's parents, particularly in the form of domestic violence, is a prominent risk-factor for parental child abduction.<sup>5</sup>

The abductor often invokes allegations of abuse, whether physical or psychological, as reasons for the abduction. The recent United Kingdom Supreme Court case of *Re E (Children) (FC)*, illustrates the form that such allegations may take.<sup>6</sup> The case itself concerned the two children of a British mother and a Norwegian father who, now divorced, lived in Norway. The mother had taken the children to live in England without the father's consent; he subsequently sought for their return.

The mother opposed any return, claiming that she had suffered psychological abuse and that she, and the children, were frightened by her ex-husband's violent manner. Through her claim she invoked article 13(b) of the Hague Convention on the Civil Aspect of

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<sup>3</sup> Campaign launched to help tackle international parental child abduction, Foreign & Commonwealth Office News, 29 June 2011, available at: <http://www.fco.gov.uk/en/news/latest-news/?view=News&id=622876482>

<sup>4</sup> Campaign launched to help tackle international parental child abduction, Foreign & Commonwealth Office News, 29 June 2011, available at: <http://www.fco.gov.uk/en/news/latest-news/?view=News&id=622876482>

<sup>5</sup> Janet Chiancone, *Parental Abduction: A Review of the Literature*, US Department of Justice, Office of Juvenile Justice and Delinquency Prevention 2000, available at <http://www.ncjrs.gov/pdffiles1/ojdp/190074.pdf>

<sup>6</sup> [2011] UKSC 27

International Child Abduction 1980. The provision sets out that a requested state can oppose the return of a child to the subject's home country where psychological or physical harm is involved. The father denied the allegations but was prepared to make arrangements for the mother to be able to return to Norway. Additionally, the Supreme Court found there to be adequate support mechanisms and protection for the mother in Norway. With any obstacles for the children's return addressed, the Court considered that it was in the children's best interest to return to Norway. This also enabled the children to have access to both parents.<sup>7</sup>

The 1980 Hague Convention is the principal legal instrument for international child abduction, to which the UK is a party. However, many countries which children are taken to are not parties to this international legal instrument. This further complicates an already sensitive matter. Indeed, the numbers released by the FCO reveal that there has been a rise in British children abducted to such non-signatory countries.<sup>8</sup> In such instances, negotiating the return of children to the UK can be extremely complex as the requesting state is precluded from resorting to any international agreement. It is here that prevention is particularly crucial.<sup>9</sup>

At the time when the 1980 Hague Convention came into force, a minority of relationships were of an international character. Hence, the typical case may have concerned a child's non-primary caretaker abducting the subject. Today, a common case involves a relationship breakdown between parents of a bicultural origin. The relationship collapse may subsequently result in one of the parents leaving the country with the child to return to their country of origin.<sup>10</sup> Any emotional or financial ties that the abductor may have to a foreign country are factors that increase such a risk.<sup>11</sup>

International legal instruments stipulate that return proceedings of an abducted child are conducted with the child's best interests as a paramount consideration. Consequently,

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<sup>7</sup> *Re E (Children) (FC)*, paras 39-49

<sup>8</sup> Campaign launched to help tackle international parental child abduction, Foreign & Commonwealth Office News, 29 June 2011, available at: <http://www.fco.gov.uk/en/news/latest-news/?view=News&id=622876482>

<sup>9</sup> Campaign launched to help tackle international parental child abduction, Foreign & Commonwealth Office News, 29 June 2011, available at: <http://www.fco.gov.uk/en/news/latest-news/?view=News&id=622876482>

<sup>10</sup> *Neulinger & Shuruk v. Switzerland*, para 6

<sup>11</sup> Janet Chiancone, *Parental Abduction: A Review of the Literature*, US Department of Justice, Office of Juvenile Justice and Delinquency Prevention 2000, available at <http://www.ncjrs.gov/pdffiles1/ojdp/190074.pdf>

return proceedings under the 1980 Hague Convention are of a summary nature, which effectively denotes that they are to be conducted swiftly. An underlying reason for this format is ensuring that the abducting parent does not obtain an unfair advantage over the left-behind parent. It is also an acknowledgement that on the whole, children benefit from returning to the environment where they are settled.

Recently, the judgement of the European Court of Human Rights in *Neulinger & Shuruk v. Switzerland*<sup>12</sup>, gave rise to speculations about a possible change in the nature of such proceedings. In the above mentioned case, the Supreme Court addressed the matter in order to clarify the stance of international law. The Court ruled that whilst existing return proceedings are to remain they should not be conducted in an arbitrary manner. Rather, the national courts are to examine each case on its own merits and to make a decision on whether to return a child based on the child's individual circumstances.<sup>13</sup> Such an approach seems reasonable in light of the fact that factors will vary in each case.

There is unfortunately a tendency to not consider it an urgent matter to return children who have been abducted by a parent. There is a false perception that they are not suffering; yet the affected children can find the situation traumatic. This is particularly true if any form of force is involved.

Individual children will suffer in different ways and to a varying degree. Reactions may vary depending on the circumstances of the abduction, their new living situation and the duration of the abduction. Children may display symptoms including grief and anger towards the left-behind parent, unstoppable crying as well as eating and sleep disturbances, amongst other possible symptoms.

The left-behind parent may also react badly, having to cope with a range of hardships. Some will experience financial strains searching for their child and the emotional strains of

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<sup>12</sup> Application No. 41615/07

<sup>13</sup> *Neulinger & Shuruk v. Switzerland*, para 26

the abduction may not fade after reunification as there may be a constant fear of re-abduction.<sup>14</sup>

Although the information campaign is a step in the right direction, more drastic measures are needed to put a halt to the increasing trend of parental child abduction. It is regrettable that not all countries have taken on the obligations outlined by the available international legal framework.

The paramount issue is of course the permanent harmful effects on the child, who may, on top of the above, also fall behind in their education, and lose touch with the left-behind parent as well as other family members and friends.

Perhaps it would be useful for the authorities to be vested with measures that make it more difficult for a parent to leave a country with a child without having obtained the permission of the other parent. In order not to make travelling with children more cumbersome generally, such measures should be targeted at families where conflicts over children have been identified.

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<sup>14</sup> Janet Chiancone, *Parental Abduction: A Review of the Literature*, US Department of Justice, Office of Juvenile Justice and Delinquency Prevention 2000, available at <http://www.ncjrs.gov/pdffiles1/ojjdp/190074.pdf>, pages 4-6