

INTERNATIONAL CHILD ABDUCTION. THE NEW CHALLENGES.
WORKSHOP ONE (2nd session).

Hearing of children, gender violence, family crisis and manipulation of children.

Case 2. Reporter: José Luis Utrera. Family Judge in Málaga (Spain).

WORKSHOP SCRIPT:

I) HEARING OF CHILDREN.

1.- Hearing of children in return procedures is a key element in the configuration of judgments (art. 11.2 Regulation 2201/2003). Therefore, the hearing of the child must take place whenever possible and when for reasons of age there can be an exchange of relevant information for the judgment to be announced and for the well-being of the child.

2.- The hearing of the child must have a two-fold aim:

a) To know of his/her wishes, intentions and aspirations in the aspects of his/her life that may change owing to the judgment.

b) The child must also be allowed to receive objective information on the family dispute, on the court case, and all possible repercussions that in his/her life the judgment announced may have, taking into consideration his/her age and his/her involvement in the family dispute.

3.- The hearing of the child must be carried out in the least stressful manner for the child and using the best possible technique. In this sense the recommendation is:

a) To plan the court procedure with enough time, choosing the date and the time that may least change the child's life: coordination with the school, for the child not to have to wait at the court premises, avoid unnecessary "victimisation", etc.

b) Application of a welcome protocol for the child to understand where he/she is: explain to him/her why he/she was called, where he/she is, who the people in the room are, what the aim of the interview is, etc. There must also be a "goodbye" protocol whose aim must be for the child not to feel guilty, and the recommendation is to finish the interview with "neutral" subjects (hobbies, sports, etc.) in a positive manner, praising his/her cooperation.

c) At the court there must be a section adapted for such a procedure to take place appropriately fitted out with children's furniture, audio-video recording/reproduction systems, one-way mirrors, etc.

d) The intervention of a professional (psychologist, child educator, social worker) to take part in the hearing with the Judge, during the whole procedure or at the initial (welcome protocol) and final stages (goodbye protocol).

4.- The view of the child expressed at the hearing must not be admitted on its own by the Judge as a decisive element for a decision on the return or non-return of the child. It must be assessed by the Judge taking into consideration the context in which it takes place: Degree of maturity of the child and expression consistency, degree of conflict between the adults and, above all, always ruling out any possible manipulation of the child.

5.- As for the documentation of the hearing of the child and notwithstanding any particular requirement in national laws, a good practice could be recording in audio-visual medium, to avoid possible repetition on appeal and for the Court of the country of origin to better understand, for the purposes of article 11, paragraphs 4 and 6, and the following ones in Regulation 2201/2007.

6.- There should be a **practical guide** on the interview of child international abduction cases because, despite the particular characteristics of each case, there are enough common elements to unify the way this court procedure must be carried out with the highest quality possible.

II) GENDER VIOLENCE.

Gender violence is a phenomenon that in recent years has had most influence in the field of family disputes.

Violence suffered by women in relationships with partners has been a cause for concern in the European Union for many years. Examples of this concern are the Daphne programme which works for building minimum European legislation on this matter, Resolution A-44/86 of the European Parliament on Aggressions against Women, Resolution A-0349/94 on the violations of the freedoms and fundamental rights of women and Resolution A4-0250/97 which approved a European Campaign of Zero Tolerance to Violence against Women. Other Recommendations and Programmes of the European Commission and several Resolutions of the Council of Europe on this matter must be mentioned. Finally, some countries, such as Spain, have enacted specific laws for the comprehensive treatment of gender violence suffered by women.

Therefore, gender violence or domestic violence would predictably appear in procedures for the return of children, subsuming these situations in article 13.1b) of the 1980 HC. Its allegation is based on experience, often verified, that violence against women in family relationships affects the woman and the children in the family.

This matter is highly sensitive, although in my opinion as judges and in a procedure for return, an allegation of gender violence requires:

- To be proven. It is not always easy to forget about the “social pressure” related to this matter.
- To assess if this is a serious case of violence or not, repeated or occasional, as the expression gender or domestic violence is often used to refer to other very different cases.
- It must be proven that this violence has affected the child and that the return to the aggressor would place him/her at physical or psychological risk.
- These matters cannot be easily assessed without the help of a psychologist or similar professional, so an expert opinion will almost always be required, and this report must comply with the speed required in procedures for the return of children.

III) MANIPULATION OF CHILDREN.

Moving children away from their place of residence for the child to be away from the other parent is often a way of expressing the intention of the parent making the move to prevent the relationship of the child and the other parent. This shows pathological behaviour which is called in different ways as follows: Malicious mother syndrome, Parental alienation syndrome (PAS), parental interference, relationship intolerance, etc.

Whatever the name there is a common denominator: The aim is to replace the real needs of the child with the intention of the “manipulative” adult. To attain this aim, geographical distance is very important as contact with one of the parents has been “de facto” broken, the child may find it impossible to verify the reality presented by the alienating parent and discover that it is false.

Under the term “manipulation” other very different cases may be included which psychologists or similar professionals associate with the following behaviour: not to inform, hide the truth, distort the reality, omit information, lie, inform without need of the legal reality, give a “version” of what is happening and not to facilitate contact with the other parent (even over the telephone).

Manipulation of children occurs relatively often in return procedures. There is clear opposition of the child to his/her return and there is allegation of this “false intention” by the required parent as an unavoidable obstacle for the return to take place based on article 13.1 b) of the 1980 HC.

Manipulation of children must be linked to the problem of speed in the return procedure. The slower the return the more possibilities there are to manipulate the child. This manipulation is often intensified when it is

known that the return procedure was filed, whereby relationship intolerance that until then had never existed, appears.

Therefore, to deal with this pathology appropriately the court procedure must be accelerated and precautionary measures should be taken at the beginning of the return procedure to avoid the intensification or consolidation of manipulation by the required parent.

We must verify and assess if we are dealing with a manipulated child also in relation to the technique used for the hearing, as mentioned in paragraph I) above, and the possible cooperation in this court procedure of a psychologist or similar professional.