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EPAPFR

EUROPEAN PLATFORM FOR THE ACCESS TO PERSONAL AND FAMILIAL RIGHTS

Partner report

On the questionnaire

Drafted by

ADDE asbl

(Association pour le droit des étrangers)

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INTRODUCTION

THE DRAFTING OF THE QUESTIONNAIRE IN BELGIUM

The questionnaire, originally written in English, was translated into French by a professional French translator for distribution in France and Belgium. The French (FIJI) and Belgian (ADDE) partners coordinated to modify the translator's version in order to increase the fluidity of the questionnaire for Francophones. Some formal changes were still made by ADDE to ensure that the questionnaire strictly adopted the legal vocabulary specific to the Belgian institutional context. The idea of a translation into Dutch, the second national language of Belgium, was rejected from the outset, given the limited presence in the Flemish region of ADDE, the body responsible for distributing the questionnaire in Belgium.

THE DISSEMINATION STRATEGY

In order to ensure the dissemination of the questionnaire, the Belgian technical committee set up within the framework of the EPAPFR project has chosen to organize two workshops. These were held in Brussels on the mornings of 5 and 26 April 2019. This choice to bring together the people called upon to complete the questionnaire was made because of the limitations of ADDE's professional network and the volume of the questionnaire. The Belgian Technical Committee considered it important to raise the network's interest in the EPAPR project in this way, to explain the meaning of the survey conducted by the partners in the different countries and to collect directly the participants' answers to a series of 40 questions selected by the Technical Committee.

During these workshops, the Belgian Central Authorities competent for the enforcement of Regulation 4/2009 of 18 December 2008 on maintenance obligations (hereinafter the "Maintenance Regulation"), Regulation 2201/2003 of 27 November 2003 (hereinafter the "Brussels IIbis" Regulation) and the Hague Convention of 25 October 1980 on International Child Abduction were invited to present their activities and to open discussions on issues relating to the matters they deal with.

The workshop of 5 April 2019 (below workshop No 1) was dedicated to the sections of the questionnaire dealing with matrimonial matters, the circulation of public documents and maintenance obligations. In the workshop of 26 April 2019 (below workshop 2), issues relating to parental authority, family mediation, unaccompanied foreign minors, kafala and international child abduction were discussed. During each workshop, the work also focused on the questions in the general part of the questionnaire.

After a theoretical reminder and a general discussion on the difficulties of applying the above-mentioned regulations, participants were invited, during the two sessions, to answer in sub-groups the 40 questions related to each of these themes as well as the general part of the questionnaire relating, for example, to the needs of professionals in private international law. Members of the technical committee were called upon to facilitate the sub-groups and then report their findings to all participants in order to elicit additional comments.

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Workshop participants were asked to answer the questionnaire in full. In addition to the workshops, the questionnaire was also sent by e-mail to 12 practitioners from the private or public sector who regularly collaborate with ADDE.

THE RESULTS

The workshops brought together 46 participants. Among these, 8 professionals were present at the two working mornings (including 5 regular members of the technical committee) so that the total attendance was 54 people (30 in workshop 1 and 24 in workshop 2). As regards the functions of the participants, the workshops brought together: 17 lawyers, 16 representatives of the associative world, 9 public officials and 4 academics.

The questionnaire was submitted to 58 practitioners in the ADDE network (46 workshop participants and 12 other partners). While direct exchanges during the workshops were rich and lively, the rate of questionnaires completed and returned to ADDE within the deadline (before 1 July 2019) is low: only 7 workshop participants and 5 other professionals responded to the questionnaire. The possibility was given to the persons asked to answer only certain sections of the questionnaire. Of the 12 questionnaires collected, 4 were fully completed while the others sometimes dealt with only two or three themes.

In the field of child abduction and international mediation, some questions were also answered at the international symposium on these topics organized in Brussels by the Universities of Louvain-la-Neuve and Saint-Louis on 9 and 10 May 2019, to which ADDE was invited. This symposium entitled "Parental abduction of children in transnational situations: the new frontiers of law –" brought together 16 Belgian or foreign professionals (3 judges, 8 university professors or doctoral students, 3 family mediators and 2 members of NGOs).

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1. GENERAL PART

General questions concerning knowledge of private international family law, assessment of needs in terms of training and access to justice in this legal field were discussed during the two workshops on 5 and 26 April 2019. These workshops brought together 30 and 24 people respectively. In addition, of the 12 people who responded to the questionnaire in writing, 8 answered all or part of these general questions. The findings presented in this section are the result of comments made by at least the majority of the people who spoke during the workshops or via the questionnaire.

MAIN RESULTS

I. KNOWLEDGE OF PRIVATE INTERNATIONAL LAW

THE GROWING IMPORTANCE OF PRIVATE INTERNATIONAL LAW

Survey participants increasingly report facing family PID issues, particularly in Brussels, a particularly cosmopolitan city. According to 2 lawyers, the management of Belgian migration policy also plays a major role in increasing the importance of private international law since family ties have become the essential preconditions for access to the right of residence. Private international law would also be involved in the access to other rights such as social rights such as the right to family allowances or the right to a pension.

From the discussions during the workshops and 7 questionnaires, the DIP issues most frequently addressed by the professionals solicited are those related to the conclusion of marriages and the establishment of a filiation link in Belgium, followed by the recognition of foreign acts - mainly marriage certificates, those establishing filiation links (birth certificate, recognition certificate,...) and foreign divorce judgments. Then there are questions relating to parental authority or maintenance obligations and, finally, international successions. An associative worker reports in a questionnaire particular difficulties concerning the recognition abroad of mediation agreements.

DIFFICULTIES IN ACCESSING FOREIGN RIGHTS

Unanimously, people attest the difficulty of access to foreign rights in certain cases and the lack of certainty as to the current and official nature of the legislation consulted. A lawyer notes that some of the foreign legislation used is clearly obsolete. This concerns less the rights of European States - more easily accessible via official sites - than the rights of third States. However, during Workshop 1, some practitioners pointed out that the legal information published on the e-justice portal (www.e-justice.europa.eu) by European States is not necessarily up to date.

The participants in workshop 1 and 6 of the respondents to the questionnaire indicate that, where necessary, they generally use the ADDE (an association specialized in private international law), embassies and consulates (where they agree to comply with their requests), specialized lawyers, or consult open-access databases on websites such as www.jafbase.fr, www.refworld.org, or www.lexadin.nl.

A lawyer reported in her questionnaire that judges generally require in proceedings that the parties produce the "official" foreign legislation applicable to the case. It shows that access to official legislation is not always easy, except in cases where it is published on the websites of foreign ministries or embassies. The problem would still be that translations are not always accessible and require additional costs.

With regard to the judiciary, some participants in the workshops reported that the network of liaison magistrates in The Hague is functioning well. Nevertheless, in general, these persons report the lack of means implemented by the authorities for access to foreign rights, which is nevertheless a fundamental condition for resolving situations of private international law. Some people present at Workshop No. 1 or who replied to the questionnaire also recall that, in the past, the Federal Public Service of Justice (the Belgian Ministry of Justice) had a legal library of foreign legislation that was kept up to date. It offered a service for sending legislation by e-mail, but unfortunately this service was discontinued several years ago.

Several participants in the workshops also consider that, faced with the problem of access to foreign laws, some judges tend to use, more than they should, legal mechanisms allowing them to deviate from the application of foreign law and to rely on the application of Belgian law. Some judges would also require lawyers to conduct extensive research to produce the applicable official legislation.

As for case law, it would seem that practitioners mainly consult Belgian case law in printed legal journals, such as the Revue pour le droit des étrangers (of ADDE), or specialized digital journals such as the University of Ghent journal (Rev@dipr.be), newsletters and databases of specialized associations (www.adde.be, www.agii.be)

In addition to this difficulty of access to foreign law, two lawyers testify to the difficulty of interpreting foreign law, particularly when it comes to rights arising from the common law tradition or foreign laws that deal with civil institutions unknown in our legal system. A foreign provision would sometimes be interpreted differently depending on the Belgian authority facing it. With regard to English law, a lawyer noted that the difficulty in its application is that the written law is not the main element on the basis of which decisions are taken. Experts should therefore be called upon to determine the entire applicable English law (e. g. case law research,..). Nevertheless, one of the lawyers highlights the accessibility, in her experience, of English judges who are happy to answer questions from foreign practitioners sent by e-mail.

Some of the people consulted also mentioned the difficulties linked to the articulation of the multiple sources of private international law (between European, international and national sources), the delimitation of their material and temporal scope, the interpretation of commonly used concepts such as habitual residence or parental authority (which may be interpreted differently from one country to another), or conflicts of nationality when two foreign nationalities are in competition.

LACK OF KNOWLEDGE OF THE AUTHORITIES AND DESIRE FOR SIMPLIFICATION

Several participants in the survey report a lack of information and training for administrative authorities (e.g. local authorities, those in charge of deciding on residence,...). A lawyer of an association notes, on the basis of his practice, that some administrations do not know enough about the rules of private international law, apply them poorly or, for ease of reference, apply Belgian law. However, these authorities would increasingly be confronted with situations requiring the application of private international law in the multicultural context of Belgium, and particularly Brussels. There is reportedly a structural lack of training and a lack of awareness of the importance of private international law issues for key actors, including a lawyer, judges and clerks, despite the fact that more and more cases have foreign elements. Judges would sometimes present an astonishing or divergent interpretation of some DIP concepts.

In this sense, a lawyer of an association sometimes observes a tendency among certain administrative authorities to want to simplify private international law situations in order to avoid the obligation to apply foreign law, or to punish too harshly the receipt of foreign acts and judgments. Finally, some practitioners question the hidden desire to use private international law as a brake on immigration.

IGNORANCE OF EUROPEAN COOPERATION MECHANISMS

The majority of those consulted during the workshops or through the questionnaires acknowledge that they do not have sufficient knowledge of the methods of cooperation set up by European regulations or international conventions. Many professionals are unaware of the precise tasks of Central Authorities, and a significant proportion are unaware of their existence, particularly that of the Central Authority established by the Food Regulations.

Information regarding the adoption and entry into force of new regulations is not received systematically, according to survey participants. A lawyer from the voluntary sector wondered whether there was a newsletter informing about new legislation in specific legal areas or whether there was an "alert" e-mail system sent when a regulation or case law was adopted in the selected areas.

NETWORKING NEED

From the discussions in the workshops and the 8 written questionnaires addressing this issue, there was a strong interest in creating a tool to centralize contacts abroad that would be useful in resolving DIP situations such as lawyers, mediators, magistrates or specialized associations. Professionals would also be very interested in the development of a new website or platform where they can find foreign positive law (the updating of which would be guaranteed) and related case law. They also sometimes imagine a place where professionals' research on the sources of rights in different countries could be shared. In addition, some stress the importance of having explanations on foreign law, for example in the form of doctrine or practical fact sheets prepared by national experts. Finally, several people would like to see the creation of a

platform or discussion forum for the exchange of good practices or legal advice on specific situations of international family law.

Workshop No. 1 was an opportunity to recall the existence, at the judicial level, of liaison judges. There are mixed views on this institution. According to some lawyers, it is not sufficiently known and used by the judiciary. Others, on the other hand, believe that this network works quite well and that a similar network should be organized between lawyers. Echoing this idea, a lawyer wondered whether such a network of liaison lawyers could not be organised within the various European Bars. A member of an association wondered whether an institutionalized forum would not be appropriate in order to allow access to different types of professionals, therefore also to lawyers in the associative or public sector. Finally, a representative of an association deplored the fact that the liaison magistrate was only accessible to judges, while a lawyer pointed out that there were also other international networks indirectly linked to international situations: international networks of mediators or lawyers in migration matters (for example, the EILN: European international law network).

II. TRAINING IN PRIVATE INTERNATIONAL LAW

NEED FOR PRACTICAL TRAINING FOR PROFESSIONALS

Lawyers are trained in DIP during their university studies but, according to 4 lawyers who replied to the questionnaire, this subject is not sufficiently emphasized in the academic curriculum and is often too much focused on theory alone, even if we can see a progression. In general, 7 respondents to the questionnaire felt that they were not sufficiently trained in DIP.

After university studies, to the knowledge of the lawyers and jurists consulted, there is no organised continuing training and few organisations offer DIP training. According to one lawyer, the updating of her knowledge is therefore essentially done by the daily practice of the subject and by following sporadic training courses organised by the bar, by university centres such as the EDEM (European Rights and Migration Team of the Catholic University of Louvain-la-Neuve) or by the ADDE, the only association in French-speaking Belgium, specialized in DIP. Five other respondents to the questionnaire also confirmed that they had received training mainly through conferences, workshops or training organised by ADDE. The latter organizes an annual basic training day in DIP and, depending on legislative developments, addresses DIP topics in its annual conference on current developments in foreigners' law. On the Dutch-speaking side, according to a lawyer from an association, there is a parastatal service that organises DIP training, the Agentschap Integratie en Inburgering, but mainly for local administrations.

The participants in the survey consider that these trainings are not sufficient overall and show a need for more sustainable training. They would like to see collective training, particularly based on practical case analysis, or "intervisions", interactive sessions bringing together professionals from the same sector so that they can exchange on their difficulties and good practices. A lawyer from an association believes that the European institutions should organise this kind of training/intervision, offering practitioners the opportunity to work on practical cases of European PIL.

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III. ACCESS TO LAW AND JUSTICE

NEED FOR CONCRETE ADVICE FOR INDIVIDUALS

According to one lawyer, if one of their first questions is whether they can act in Belgium, her clients then look first and foremost for the solution to their problem, regardless of other technical DIP issues such as applicable law. In this respect, in addition to the legal advice provided by lawyers, an associative worker would like to see the creation and use of tools such as practical sheets containing information on a given legal point in a simplified form become widespread. These sheets, which would be freely accessible to the public, would include, for example, concrete questions and answers such as: "Under what conditions can a foreigner marry in Belgium? "or "What documents must be filed? ».

LIMITED FREE LEGAL AID

While the vast majority of professionals surveyed are aware of the existence of free individual assistance services that agree to handle PID cases, this is not the case for all. When they can cite such services, practitioners first refer to private law associations and legal aid offices. The latter offer free of charge in Belgium first-line assistance (immediate legal advice), including DIP matters. They also offer second-line assistance (assistance from a lawyer in the context of a procedure), which is free of charge and subject to certain conditions linked to personal income or the legal field.

Some associations specialized in DIP or more generalist also advise individuals. In 5 questionnaires, ADDE, Droits Quotidiens asbl and Service Droit des Jeunes (SDJ asbl) are mentioned. It should be noted, according to the representative of one association, that there are few truly specialized associations. Moreover, given the increase in demand (in an increasingly international society), the lack of structural resources and the administrative burdens on these associations, the capacity of associations to receive requests and provide a quality service would tend to decrease significantly, even though these requests often concern fundamental rights.

LACK OF SPECIALIZED LAWYERS

All the people who attended the workshops and replied to the questionnaire report the difficulty of finding lawyers with genuine DIP expertise at the national level, especially when it comes to legal aid cases (pro deo). This branch of law seems unpopular in the legal profession, perhaps because of its complex approaches.

A lawyer explained that because cases involving private international law are often more complicated and therefore require more time, they are less well paid in the field of legal aid where state intervention is on a lump sum basis. For these reasons, another practitioner confides in accepting only a few PID cases per year.

The remuneration of these files would be insufficient for the work they require. This lawyer testifies to the similar practice of other firms that would also establish a maximum annual number of files taken in pro deo. Another participant in the survey also noted that the Legal Aid Act requires a demonstration of low income in order to be able to benefit free of charge from the services of a lawyer, except in proceedings concerning the residence of persons where a state of necessity is presumed. This proof would be difficult to provide when the client facing a DIP problem does not have a residence permit. However, an exemption would exist for minors who are automatically entitled to legal aid. Many social workers deplore the administrative complexity of the free legal aid system and, consequently, its discouraging nature for lawyers.

In view of these elements discussed during workshop n° 1, a lawyer who is a member of the Council of the Brussels Bar Association, suggested the idea of setting up a commission on private international law within the Brussels Bar and setting up a pole of lawyers specialised in DIP. The Council of the Order would have accepted his proposal in October 2019.

The need to use legal aid is therefore noted by the majority of practitioners consulted as a barrier to the resolution of international family situations. Moreover, if the search for a lawyer abroad is already complex, it would be even more so when it is part of legal aid. Foreign legal aid systems and their accessibility are poorly known and poorly coordinated with each other. A representative of the associative world recalled that Belgian law offers the possibility of second-line legal aid (free lawyer), under specific conditions, for persons who do not reside in Belgium but who need to initiate proceedings there. However, this possibility would be unknown to Belgian practitioners.

Another professional notes that the subject of the DIP is also poorly represented among notaries. This would be particularly noticeable in the case of dissolution of the matrimonial regime and international succession. It would be very difficult to find a specialized notary for these often very complex cases. This participant in workshop n° 1 tells us that in Brussels, in particular, cases of succession between Belgium and Morocco are not uncommon and that although the first advice from a notary is generally free, there is no legal aid in this area.

At the international level, the search for a DIP lawyer abroad also appears difficult. It is regrettable that there is no platform with such contact details and contacts with embassies would often be unsuccessful in this regard. The search for professionals abroad would mainly be carried out via the Internet or "word of mouth". But several participants in the workshops point out the lack of effectiveness of this approach and the difficulties of communication.

FEW ORGANIZATIONS SPECIALIZED IN PRIVATE INTERNATIONAL LAW

According to the written replies of 7 people, few specialized DIP structures exist and are known in Belgium. In addition to the (few) lawyers involved in legal aid and "fee-paying" lawyers, there are also those

mentioned as specialised DIP services directly accessible to citizens and professionals: ADDE in French-speaking Belgium, and the Central Authorities in matters of international child abduction and maintenance obligations.

A lawyer from an association points out that other public entities are accessible by public authorities to give an opinion on DIP issues. She cites: the "Droit des personnes" service of the Federal Public Service of Foreign Affairs (Ministry of Foreign Affairs) or the recent (2019) Central Authority on Civil Status which can be contacted by local administrations and Belgian consulates. In Dutch-speaking Belgium, there is also a specialised DIP service within the Agentschap Integratie en Inburgering.

SLOW DIP PROCEDURES

Overall, the survey shows that the lack of knowledge of DIP by administrative authorities, the complexity of the articulation of relevant legal instruments and the divergence in the interpretation of foreign laws slow down administrative or judicial proceedings. There is also, as one lawyer interviewed points out, a preliminary step that does not exist in domestic disputes, which is to rule on questions of international jurisdiction and applicable law. There would also be difficulties of access to justice in DIP cases due to the fact that acts required under Belgian judicial procedure to bring legal proceedings do not always exist abroad.

One lawyer also indicated that international cases are more often postponed by the courts than others because of their complexity. This practitioner also points out that his work is heavier in these cases because, in order to ensure good collaboration with judges, it is useful to prepare a fact sheet for the magistrate targeting in particular the provisions on international jurisdiction.

During Workshop 2, opinions were divided on the mastery by judges and registrars of European legislation on DIP. However, the majority of lawyers present admitted that the judicial world is increasingly aware of private international law issues, although judges have high expectations of lawyers, particularly with regard to the production of foreign law and its interpretation.

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2. MATRIMONIAL MATTERS

The part of the questionnaire relating to matrimonial matters was one of the topics dealt with during workshop No. 1 on 5 April 2019 (30 people). 3 questions selected by the technical committee were discussed during the group discussions, and then discussed as a group. At the same time, of the 12 respondents to the questionnaire, 6 answered questions relating to matrimonial matters.

MAIN RESULTS

LIMITED NUMBER OF CASES RELATED TO POLIGAMIC OR FORCED MARRIAGE

According to 4 respondents to the questionnaire, the polygamous marriage situations they face in their practice are few (on average 4 or 5 per year). For others, no polygamous marriage situations have been addressed in the past year. With regard to forced marriages, the professionals who participated in workshop 1 and those who replied to the questionnaire (6 people) are only rarely solicited for questions related to forced marriages. This theme would be found almost exclusively in the context of asylum applications in connection with a forced marriage celebrated abroad.

With regard to marriage annulments, according to the persons consulted in workshop No. 1 and those who replied to the questionnaire, they have little knowledge of marriage annulment for polygamy or because of the forced nature of consent. Although the effects are not the same, for reasons of pragmatism and time saving, both practitioners and persons concerned prefer to file a petition for divorce rather than a petition for marriage annulment. The annulment of marriage would be a more common procedure in the case of simulated marriages (contracted only with a view to a right of residence in Belgium) at the initiative of the public prosecutor.

RECOGNITION OF CERTAIN EFFECTS RESULTING FROM POLYGAMOUS MARRIAGE

Concerning the effects of polygamous marriages, an issue that was not discussed at Workshop No. 1, 5 professionals mentioned in writing that they were aware that a polygamous marriage could not be recognised in Belgium but that, however, some of its effects, such as filiation or the granting of a survivor's pension for the second wife, could be accepted in Belgium, in view of the restrictive application of the international public policy exception.

RELATIVE KNOWLEDGE OF MECHANISMS TO COMBAT FORCED MARRIAGES

Of the 6 persons who replied to this section of the questionnaire, 3 replied that they were aware of the public policies and regulations adopted by the Belgian authorities regarding forced marriage. They note the

existence of a national action plan, a specific provision in the Criminal Code (art. 391sexies) punishing forced marriages with imprisonment and a fine and provisions on international public policy that make it possible to exclude the application of foreign law that would not prevent the celebration of a forced marriage. These professionals are also aware of the possibility of bringing proceedings before the Belgian courts on the basis of the Brussels IIbis Regulation. A lawyer pointed out that although protective measures exist, there is often a lack of awareness of the assistance provided by the State, particularly because of the isolation of women victims of forced marriage. A fourth person, a member of an association, replied that he was not aware of any specific provision in Belgian law, while the last two professionals to have replied to this section of the questionnaire did not answer this question.

As mentioned by 4 people in their questionnaire, there are structures in Belgium that specialise in these issues. They mention the "Marriage and Migration" network, which brings together different associations, and the existence of a cell within the federal police. According to one community worker, the solutions generally proposed in this type of situation are the separation of the victim from his or her family and access to secret accommodation.

DIVORCE AND REPUDIATION

From the written questionnaires, it appears that practitioners handle more divorce cases than marriage annulment cases. About ten, on average, according to a member of an association, several dozen per year according to a lawyer. During workshop n° 1, a lawyer registered at the Brussels Bar specifies that 90% of the divorces for which she is consulted are international divorces.

Most of the interviewees, with the exception of one representative of the voluntary sector, confirmed that they were familiar with the legislative texts applicable to European divorces. One lawyer indicated, with regard to the applicable law option provided for in Regulation No. 1259/2010 of 20 December 2010 (Rome III), that it is very rare for her clients to make use of this possibility. In addition, a participant in Workshop No. 1 raised the question of the application of the Rome III Regulation to the possibilities provided for by French law to divorce before the notary.

According to one lawyer, when the person who comes forward is a victim of repudiation, the assistance she provides to the victim is based on listening, counselling or guidance, depending on her needs. At the legal level, the Belgian DIP allows to oppose the recognition of a repudiation under a specific article of the Code of Private International Law (article 57). Under this provision, the dissolution of the matrimonial bond qualified as repudiation cannot in principle be recognised, except in exceptional cases which it strictly defines. Recognition of repudiation is, in any event, excluded when one of the former spouses is Belgian, a national of a State which does not allow repudiation, or resided in Belgium or in another State which does not allow repudiation at the time of the breakdown.

According to the participants in the survey, European regulations would partly help to combat gender inequality, at least from the point of view of applicable law. However, this would be less true for the Brussels II bis Regulation, at least as far as repudiation is concerned, since this Regulation only applies in the event of a divorce pronounced in another European State and no country in Europe has the dissolution

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of marriage by repudiation. In Belgium, the question of the recognition of a repudiation would often arise in the context of the survivor's pension awarded to the deceased man's wife. This situation has been the subject of several decisions of the Labour Courts and the Constitutional Court, which would mean that the recognition of certain effects of repudiation is possible in certain situations.

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3. PARENTAL RESPONSIBILITY

Of the 12 written questionnaires collected in Belgium, 7 practitioners addressed the section on parental responsibility. In view of the number of questions asked in this section, it can be said that the number of responses is relatively low and that their content is rather limited. While workshop No. 2 on 26 April 2019 allowed the survey to be further developed, by asking the 24 practitioners present 12 questions from the section devoted to this subject, the discussions tended to focus on parental responsibility issues as they arise in child abduction situations (identified in the following section).

MAIN RESULTS

KNOWLEDGE OF THE CENTRAL AUTHORITY

Survey participants have little knowledge of the Central Authority responsible for parental authority. This is evident both from the written responses to the questionnaire and from the discussions in Workshop 2. In any case, its functions seem to be poorly understood. Two professionals expressly indicate that they do not clearly perceive its scope of action or the concrete assistance it can provide to persons, apart, perhaps, from facilitating the enforcement of judicial decisions adopted abroad. One of these professionals regrets that he did not find on the Internet an explanatory sheet on the tasks entrusted to the Central Authority by the Brussels IIbis Regulation and the Hague Convention of 19 October 1996.

FINANCIAL SUPPORT

The costs associated with settling international parental responsibility disputes can be high. One lawyer pointed out that in addition to lawyers' fees and court fees, there may be additional costs for mediation, enforcement of court decisions or translation. As in any matter, persons whose income falls below certain thresholds set by law may contact their borough's legal aid office to have it cover the expenses related to legal proceedings and legal fees. For proceedings abroad, the Central Authority would have a fund that it could mobilise at the request of the person who referred it if that person did not have sufficient financial resources. The rules delimiting the intervention of the Central Authority are set out in internal instructions to the Federal Public Service of Justice (Ministry of Justice). According to the Central Authority, the assessment of applications is quite flexible and applications for financial support are most often accepted. However, the problem would be that requests for intervention must be submitted for the signature of the Minister of Justice, which may take time. Within the Federal Public Service of Justice (Ministry of Justice to which the Central Authority is attached), there would be a discussion on the advisability of delegating competence to speed up the procedure.

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PROBLEMS OF ARTICULATION AND INTERPRETATION OF INTERNATIONAL INSTRUMENTS

According to the practitioners interviewed, the problems regarding the application of international instruments in relation to parental responsibility concern the articulation of the sources of law, in particular between the Brussels IIbis Regulation and the Hague Convention of 19 October 1996, as well as the interpretation to be given to certain legal concepts.

Two professionals point out the difficulties that would be encountered when it comes to delimiting the material and territorial scope of international texts. In particular, one of them refers to the system of extension of jurisdiction provided for in Article 12 of the Brussels IIbis Regulation, the practical application of which would not always be easy.

With regard to the interpretation of legal terms, several practitioners noted in writing or in workshop No. 2 the hesitations that can arise from the concepts of "custody" and "access" used by international instruments. The variety of legal concepts used in national legislation would leave room for discussion as to what these two concepts cover, although they are defined by the Hague Convention of 19 October 1996 or the Brussels II bis Regulation. In Belgium, the law no longer knows these concepts. They have been abandoned for several years in favour of the concepts of "right of accommodation" (main, accessory, alternating, exclusive) and "right to personal relations". A practitioner explains that the content of parental responsibility can be modulated by the judge who can set the educational decisions that can only be taken by one or both parents (article 374, §3 of the Civil Code). The same lawyer also notes, on the other hand, that without always having a right of access within the meaning of international texts, a parent may be granted a right of contact with the child and retains in principle a right to supervise the child's education (article 374, §4 of the Civil Code).

In workshop 2, based on parliamentary work, a participant summarised the content of custody rights within the meaning of European law when they are established under Belgian law, based on parliamentary work. In the most frequent cases where "alternate custody" is provided for between parents who have joint parental responsibility, the parent with whom the child is primarily registered in the population register should be considered as the holder of custody rights (explanatory memorandum of the draft law of 22 May 2014 amending various provisions to prevent international parental child abduction).

It should be noted that the notion of habitual residence, as used in the Brussels IIbis Regulation or the Hague Convention of 19 October 1996, does not raise any real difficulty in Belgium, according to two participants in the survey. The definition given by European case law would be practically identical to that known in Belgian domestic law and set out in Article 4 of the Code of Private International Law.

THE CHILD CANNOT BE A PARTY TO THE PROCEEDINGS

In Belgium, the child does not have a right to bring an action before the courts relating to questions of accommodation, rights to personal relations and parental authority (school and religious choices, etc.). Only parents, holders of parental authority or persons claiming a right of contact with the child could

initiate legal proceedings. If the responses of the survey participants differ on this point (6 people answered this question), it seems to be due to a problem in understanding the question asked. The Belgian Judicial Code seems to make it clear that the child cannot be a party in proceedings relating to parental responsibility (article 1004/1 of the Judicial Code).

HEARING OF THE CHILD IN BELGIAN LAW AND PRACTICE

Since the reform of family judicial law in 2013, Belgian law provides that every minor has the right to be heard by a judge in matters concerning him or her relating to parental authority, the right of accommodation and the right to personal relations. A minor under 12 years of age shall be heard at his or her request, at the request of the parties, the Public Prosecutor's Office or ex officio by the judge. The judge may refuse to hear the minor under 12 years of age unless he personally requests it or the request is made by the Public Prosecutor (Article 1004/1 of the Judicial Code).

According to two professionals present at Workshop 2, it is rather rare for judges to ask themselves to hear children before the age of 12. For children over 12 years of age, a form would now automatically be sent to the minor personally in order to inform him/her of his/her right to be heard (article 1004/2 of the Judicial Code).

In addition, a written response to the questionnaire indicates that prior to the 2013 reform, there was no threshold at which the child had the right to be heard. The law only referred to the age of discernment (as does article 12 of the International Convention on the Rights of the Child) and did not require the judge to hear the child, unless the minor expressly requested it. According to the same participant in the survey, the 2013 reform would be at the root of the development of a more harmonious practice regarding the hearing of children, because of the establishment of this legal age of discernment and, above all, because it put an end to the fragmentation of the courts' jurisdiction.

PROBLEMS FOR THE RECOGNITION AND EFFECTS OF KAFALA

The participants in the survey agree that kafala can be recognized in Belgium. In the event of recognition, it would be related to informal guardianship. As it is not considered an adoption, it does not create any filiation and would therefore not give rise to a right of residence for the child (makfoul). The Aliens Office (a public body in Belgium responsible for deciding on the issue of residence permits) would only grant a residence permit by regularisation (procedure for obtaining a limited right of residence in favour of the State) in exceptional circumstances. Two written replies to the survey regret this situation, since countries that are familiar with the kafala regime are unaware of the institution of adoption and it is therefore not possible to suggest to the kafils (person who takes the child in kafala) to establish another type of legal relationship with the makfuels that can be the subject of family reunion. In the same vein, participants in workshop No. 2 point to a gap in Belgian law that infringes on the rights of the child taken in Kafala. Another participant referred in writing to the lack of inter-State cooperation organised by Article 33 of the Hague Convention of 19 October 1996. According to him, if the authorities of the countries of residence of minors consulted (via the Central Authorities) with the Belgian State, before pronouncing kafalas in favour

of kafils residing in Belgium, the Belgian authorities could give their agreement to the kafala, in accordance with Article 33, and would issue residence permits to children if necessary.

During workshop 2, the discussion on the status of makfuels also focused on those who are already on Belgian territory without having a right of residence. According to a representative of the Aliens Office, this situation is reported to occur more and more frequently. These children would be qualified as unaccompanied foreign minors (MENA) by the Aliens Office, would benefit from the special protection regime provided for MENA and would be assigned a guardian as soon as they are reported. Another professional reported cases in which MENA status was not granted to makfoul because kafala had been judicially recognized in another European country. The absence of parental authority would have been contested in these situations and the children would have been left without any other possibility, in order to obtain a stay, than to request regularization (article 9bis of the law of 15 December 1980 on the stay of foreigners). Another lawyer is surprised by this situation and wonders whether it does not result from the fact that, in the countries under consideration, the kafala would have given rise to judicial decisions establishing full parental authority in respect of the kafil.

In cases where kafala has been recognized in Belgium, the question was also discussed at the workshop of how the mission of the kafil could be articulated with that of the tutor appointed by the Belgian authorities. It emerged from the discussion that this issue has not been addressed by the MENA law. Problems should arise in practice since, even if the tutor's main task is to represent MENA in residence procedures, he or she also has functions that juxtapose those of the kafil. A lawyer recalled that the kafil is responsible for ensuring the protection and education of the child (article 2 of Moroccan law No. 15-01 on the care of abandoned children), while the guardian has the same duties under the law on the guardianship of MENA (article 9 of the programme law (I) of 24 December 2002). Conflicting decisions would therefore be to be feared between the kafil and the guardian appointed in Belgium, for example as regards the choice of school or the medical care to be given to the child.

Three practitioners point out that the sources of free information on Kafala are very limited (only a fact sheet on the ADDE asbl website) and that it would be appropriate for other sources, including official explanations, to be accessible about the recognition of Kafala, its effects in Belgium and the possibilities of residence for makful.

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4. CHILD ABDUCTION

During Workshop No. 2 on 26 April 2019 (24 people), the presence, much appreciated, of the Central Authority for Child Abduction to catalyse exchanges on this subject. The Central Authority provided extensive theoretical and practical information on the conduct of proceedings under the Brussels IIbis Regulation and the Hague Convention of 25 October 1980 and answered, together with the other participants, the 7 questions in the questionnaire (apart from questions relating to mediation in the event of abduction). Answers to questions relating to child abduction were also collected in writing from 7 practitioners and at the international symposium organised in Brussels by the Universities of Louvain-la-Neuve and Saint-Louis on child abduction in May 2019.

MAIN RESULTS

KNOWLEDGE OF VICTIM SERVICES AND THE CENTRAL AUTHORITY

The people who participated in the written survey all know certain actors who can provide information or assistance to parents in the context of international child abduction. In addition to the Central Authority and lawyers, participants almost all cited the NGO Child Focus, whose reputation seems important and which would include a list of lawyers specialising in child abduction on its website. Two professionals also mentioned the role of consulates in resolving situations involving countries that are not parties to the Hague Convention of 25 October 1980. They would be empowered to intervene with the authorities of the State to which the child has been removed and with the abductor, under the supervision of the International Judicial Cooperation Service of the Federal Public Service for Foreign Affairs (Ministry of Foreign Affairs). As for the Central Authority for child abduction, family lawyers and associations seem relatively well aware of its existence, what can be asked of it and the free nature of its intervention. This is apparent from both the written questionnaires and the discussions that took place in Workshop 2.

MEANS OF PREVENTING INTERNATIONAL KIDNAPPINGS

In Workshop 2, part of the discussions on international child abduction focused on the means of prevention available. The judicial ban on leaving the territory with the child was mentioned. According to one lawyer, unless there are objective elements justifying the fear of wrongful displacement, the courts generally refuse to take such a measure. The recommendation made by another practitioner is rather to ask the judge, as soon as the first decision on parental responsibility is taken, for reciprocal authorization to leave the territory by warning the other parent within a specified period of time and providing a telephone number and the address to which the child travels abroad. If the terms of this decision are not respected, this would allow the parent to react more quickly upstream and downstream of the child's wrongful removal.

The Central Authority considers this to be a good practice but recalls that the prohibition to leave the territory may be justified in certain situations. If necessary, the prohibition could be communicated to the competent municipality (local authority) so that it refuses to issue a passport and, on the other hand, the

Federal Public Service for Foreign Affairs (Ministry of Foreign Affairs) could issue a report to the border police to prevent the child from leaving the country. It should be noted, according to the Central Authority, that a judicial decision is not necessary to notify the child's commune of residence in order for it to request the presence of both parents to issue a passport. In addition, the Federal Public Service for Foreign Affairs has already issued alerts without a decision prohibiting the child from leaving the country, even if, in this case, customs cannot prevent the child's departure.

However, these means of prevention would have limitations that were noted by the participants in Workshop 2. In many cases, children would have dual nationality and could thus obtain a passport from the embassy of the country of their other nationality. On the other hand, a report to the border police would be unnecessary if the travel is by road.

According to a written reply to the questionnaire, these means of prevention would be the subject of a new provision introduced into Belgian law (by the law of 22 May 2014 amending various provisions in order to prevent international parental abduction) but which has not yet entered into force. Under the future article 374/1 of the Civil Code, the parent with exclusive parental authority may request the judge to enter a statement on the child's identity document and passport that he or she is not authorized, without the consent of that parent, to cross a border outside the Schengen area. In the event of joint parental authority, the right to request this entry shall belong to the parent with whom the child is registered in the population registers. Finally, the judge may also order the entry of this reference at the request of the holder of access rights within the meaning of the Hague Convention (Article 5). The participant in the investigation notes that the interest of this provision is limited since it only concerns the movement of children that takes place after the intervention of a judge and outside the Schengen borders. However, the majority of kidnappings occur in neighbouring countries (as confirmed by the Central Authority in Workshop 2). However, this article would be a useful means of preventing abductions, as it suspends the presumption of authorization to leave the territory when the child is travelling with one of his or her parents (in case of joint parental authority). The participant also notes that the use of the concept of access rights - within the meaning of the Hague Convention - does not facilitate the understanding of this provision. According to this practitioner, the question arises as to whether the holder of parental authority with whom the child resides as an accessory will have, on an equal footing with the other parent, the right to have the mention of his consent recorded on the child's documents.

Another issue is to determine the responsibility of schools in the event of a risk of child abduction reported by a parent. In Workshop 2, the Central Authority discussed cases where one parent goes to school to remove the child from the other parent and leave the country with him or her. A lawyer confirms that many teachers question whether they have the right to refuse to hand over a child to a parent when parental authority is joint. Legally, it is not clear whether the school can refuse to give a child to a parent on a day when he or she is supposed to be staying with the other parent. According to the lawyer, it may be justified, in the light of the principle of joint parental authority, for the lawyers of certain parents to write to schools that they do not have the right to object to the surrender of a child even if they have been informed of a risk of abduction.

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REPRESENTATION BY THE KING'S PROSECUTOR

In Belgium, when a request for return is addressed to the authorities, it is the responsibility of the Public Prosecutor to represent the abducted parent and to refer the matter to the competent family court. Before that, the prosecutor systematically tries to reach an amicable settlement with the kidnapper. In Workshop 2, the Central Authority stressed the importance of this approach. Once aware of the legal - and possibly criminal - consequences of the child's wrongful removal, the abductor would often undertake to return with the child to the state of his or her habitual residence.

When the author refuses to cooperate, the King's Prosecutor must in principle submit the request to the return judge. However, the Central Authority explains that in some situations, the prosecutor raises a "conflict of interest" that prevents him from bringing the matter before the return judge. This would essentially be the case when he or she suspects that the return of the child will endanger the child or lead to a violation of his or her fundamental rights. If necessary, a lawyer must be appointed to submit the request for return instead of the public prosecutor, as Belgium has not made any reservation to the Hague Convention regarding the assumption of responsibility for the proceedings by the public authorities.

GOOD RELATIONS BETWEEN CENTRAL AUTHORITIES

The colloquium between Central Authorities for child abduction is very satisfactory for the Belgian Central Authority. In her view, there are no good and bad pupils among the Member States of the Hague Convention. There would certainly be disputes whose resolution is very problematic or which are not dealt with within a reasonable time, but this is generally due to the particularities of the case and not to the relationship between the public authorities. Taking the United Kingdom as an example, the Central Authority admits that relations with the United Kingdom are complicated by the fact that their legal system (common law) is difficult for continental Europeans to grasp. On the other hand, it underlines the quality of communications with the English Central Authority. When it receives a kidnapping file, the latter would systematically send back an acknowledgement of receipt accompanied by a practical sheet explaining the procedure, the modalities of the mediation and an information form to be completed. Regarding the treatment of child abduction by the United Kingdom, a practitioner present at Workshop 2 said she was positively impressed by the English pragmatism. Unlike in Belgium, English judges would not hesitate to contact (by e-mail or telephone) lawyers and magistrates in the other State.

Another good practice noted by the Central Authority and other practitioners is that of the Central Authorities of the requested States before which proceedings must be conducted by a lawyer to keep at their disposal a list of lawyers specialised in family law and classified according to their geographical location and the language they practice. On the other hand, some requesting States, such as Belgium, would immediately designate when referring the matter to the foreign Central Authority the legal provisions violated by the author of the parental abduction by means of a custom certificate. This would facilitate the work of the foreign authorities responsible for determining whether or not there is child abduction.

Concerning relations with States Parties to the Hague Convention, two professionals raised (one in writing, the other during Workshop No. 2) the problem of Japan. According to them, the Japanese authorities were not applying the Convention and systematically refused the return of abducted children to Japan. In the event of divorce, Japanese law would not allow joint parental authority and Japanese courts would not grant access or even contact rights to the parent who does not have parental authority (usually the father). One of the professionals adds that in the event of the mother's remarriage, the new husband would be granted an automatic right of adoption that cannot be contested by the biological/legal father.

FINANCIAL SUPPORT

The written replies to the questionnaire reveal that for all the procedures to be carried out in Belgium, parents can benefit from free legal aid, if they meet the conditions set by law. When proceedings are to be initiated abroad, the Central Authority explained in Workshop No. 2 that it has a fund to provide financial assistance, if the person is in need, to ensure the repatriation of a child, to enable a parent to exercise access rights and to allow a parent to attend a hearing. Where the requested State provides that the applicant must be represented by a lawyer and that all procedural costs cannot be covered by judicial assiance in the requested State, the Central Authority would also agree to cover the costs of the proceedings.

DIFFICULTIES IN LOCATING THE CHILD

In Workshop 2, the Central Authority explained that in some countries there is a lack of resources to find an abducted child. In particular, not all States would have a National Registry where children are registered. Moreover, the police would not be equally effective everywhere. In some States, investigations would be carried out in depth, in others less so, without depending on the financial capacities of the States. This would include a cultural issue: depending on the case, individuals collaborate more or less with the police.

PROCEDURAL DELAYS

Article 11 of the 1980 Hague Convention provides that return orders must in principle be adopted within 6 weeks. The Belgian Central Authority considers that the starting point of this period is the referral to the Central Authority. It also acknowledges that this deadline is very rarely respected, except in the case of amicable settlement, in particular because of the fact that it is necessary to wait for the parents to gather the necessary documents for the procedure. Some countries would also require translations, which would also delay the process. However, a written questionnaire points out the responsibility of the Belgian Central Authority for exceeding the deadline. Where Belgium is the requested State, the processing of the application by the Central Authority and the transmission of the file to the Crown Prosecutor would sometimes take several weeks on their own, so that the victim parent would sometimes be obliged to submit the application to the court himself.

A family mediator at the conference on child abduction held in Brussels in May 2019 also stated that compliance with the six-week deadline is exceptional regardless of the countries involved. He notes that

sometimes more than eight months elapse between the time the judge is seised and the time he renders his decision. This extremely long delay is explained in particular by the fact that return judges await the outcome of international family mediation processes before issuing their decision. As in Belgium, there would be cooperation agreements in Germany and the Netherlands linking returning judges to international family mediation bodies so that the former would only decide at the end of the mediation process. This practitioner doubts that this practice can be defended in the best interests of the child, especially since the abductor most effectively prevents any contact between the child and the abandoned parent.

ACQUITTAL FOR THE CHILD'S TRAVEL

According to the explanations given by the Central Authority in Workshop No. 2, attention should be paid to the possible consequences of the exception to return provided for in Article 13(1)(a) of the Hague Convention, according to which the requested State is not required to order return in cases where the abducted parent acquiesces to the unlawful removal after the removal. The Central Authority indicates that the mere fact that the victim visits his or her children in the requested State may potentially be interpreted as acquiescence. It should therefore be advisable in this case for the parent visiting the abducted child to write in an e-mail to the other parent that this does not mean that he accepts that the child lives in the requested State.

On the other hand, it would happen that, contrary to the Hague Convention, an action on parental responsibility would be received by the court of the requested State. In this case, the participation in the proceedings of the abducted parent may also, according to the Central Authority, be seen as acquiescence to the child's change of habitual residence. To avoid this, the victim parent should, at the outset of the proceedings, inform the court that his or her presence cannot be interpreted as acquiescence.

OJBECTION ON THE RETURN

Under the Hague Convention, the requested State may refuse to order the return of the child if the child objects and has reached an age and degree of maturity at which it is appropriate to take his or her views into account (Article 13, §2). Brussels IIbis Regulation (Article 11(2)) provides that the requested State must ensure that the child is heard in the return proceedings, unless it is inappropriate to seek his or her views having regard to his or her age and maturity.

The practical implementation of these provisions would vary greatly from one State to another. Some countries would have specific rules regarding the hearing of children, others would not. In Belgium, for example, a lawyer indicates in her written reply to the questionnaire that Belgian law requires children over the age of 12 to be interviewed. Below this age, it would be up to the court to decide whether it is appropriate to hear the child.

According to a university professor at the colloquium on parental abduction, there are no international guidelines to define the minimum age and maturity at which the child can be heard, how to hear the child

and the content of an objection. On the latter point, it would seem that a simple wish, preference or feeling is not enough. In addition, the objection should relate to the return to the country and not to the return to the other parent. According to the expert, however, this distinction is open to criticism, as it is often not within the child's reach. In addition, there would be different factors to consider: influences on the child, the imposition of a certain responsibility on the child, etc.

Two Belgian judges present at the colloquium explained the courts' unease with the duty to assess the desirability of hearing the child and the weight to be given to the child's views. According to them, this difficulty is at the root of a great disparity in Belgian judicial practice. The most important thing, according to one of these judges, is to realize that the child's autonomy can constitute abuse and that the child should not be held responsible for the parents' failure. The child should always be clearly informed that the judge's decision does not depend on his or her opinion. A third Belgian judge states that judges are obliged to report on the child's opinion but try not to justify the non-return on the child's objection for protection purposes. In the experience of the Central Authority, foreign judges who base the refusal of return on the child's objection also try to combine this ground with others so as not to place the burden of the decision on the child.

Finally, according to the research of another conference participant, protectionist reflexes lead, in some cases, to denial of the child's right to be involved in the proceedings. This practitioner explains, on the other hand, that the child's hearing is also an indication of the application of other exceptions: the serious risk in the event of return and the child's integration into his or her new environment. Her research leads her to believe that courts that practice interviewing children achieve a good balance. The child's opinion would generally be considered as a means of information on the situation.

From a statistical point of view, two Belgian researchers report that in 433 cases they analysed as part of their research (relating to the case law of 17 European Union Member States), the hearing of the child was considered in 74% of cases and actually took place during the procedure in 61% of cases where it was considered. They point out that in the case of a hearing, the child's views are generally taken into account to give substance to the best interests of the child and to support a means of non-return. An English university professor indicates that according to his research (covering the case law of three States Parties to the Hague Convention: England, Wales and New Zealand) the child's objection was taken into account by the courts in only 15% of cases, although he cannot say the proportion of cases where the child's objection was a decisive argument against return.

POSSIBILITY OF IMPOSING PENALTIES

In the context of workshop n° 2, practitioners discussed the practice of periodic penalty payments that the Belgian judge ruling on parental responsibility can order to enforce a right to accommodation (article 387ter of the Civil Code). The question arose as to whether a penalty payment could be ordered in a return order. According to two lawyers, a return order could, in theory, be subject to a penalty payment if the applicable law provides for this possibility. The Central Authority agrees with this view, but points out that

in practice, the return judge never imposes a penalty payment, in particular because of the difficulties involved in its enforcement.

DANGER OF CRIMINAL COMPLAINT

The abduction of a child is an offence under Belgian law (articles 431 and 432 of the Criminal Code). According to two practitioners (of the 7 people who answered this question), one of the first tips that can be given to victims of international child abduction is to immediately file a complaint with the police. The Central Authority considers that it is better to use criminal proceedings only as a last resort. Experience has shown him that criminal proceedings systematically tend to tighten up an already complicated family situation without any advantage being gained. In Workshop 2, the Central Authority presented a borderline case where a prison sentence would be imposed on the author of a parental abduction who refuses to say where the child is located. In such a situation, the author's imprisonment would have the effect of depriving the child of contact with the abducting parent when it is unknown to whom the child has been entrusted.

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5. MAINTENANCE OBLIGATIONS

Very few people replied to the part of the questionnaire relating to the topic of maintenance obligations : 4 representatives of the voluntary sector provided very brief answers to a few questions, mainly to indicate their lack of experience in the field. On the other hand, this theme was discussed during workshop n° 1 on April 5, 2019 (30 people) during which it was the subject of richer exchanges focusing mainly on the 5 questions selected by the technical committee. The exchanges between participants were attended by 3 representatives of the Belgian Central Authority in matters of food.

MAIN RESULTS

POOR KNOWLEDGE OF THE TASKS OF THE CENTRAL AUTHORITY

As a result of the discussions at Workshop 1, professionals have little knowledge of the existence or tasks of the Belgian Central Authority in matters relating to maintenance obligations. A lawyer attests that she has never consulted the Central Authority in her many collection cases. Many professionals tend, when faced with cases related to the recovery of maintenance obligations, to turn to SECAL (the maintenance debt service of the Federal Public Finance Service).

According to the Central Authority, going through its service saves time and money. Saving money, because persons who have received legal aid in the country where the decision was issued through the intervention of the Central Authority would automatically benefit, without examining their income, from legal aid in the country of enforcement. There would also be a time saving in referring the matter to the Central Authority, especially when the country of enforcement of the decision is not a neighbouring country. The Central Authority explains that it has certain means of investigation and that it also facilitates contacts and access to information when there are problems of language, translation or in the presence of different legal systems, for example in relations with countries that do not have the institution of the bailiff. However, the Central Authority testifies to the fact that there may, however, be a certain slowness depending on the Central Authority seized. Another participant in Workshop No. 1 also considered that the benefits of using Central Authorities depended on the State.

LEGAL AID AND PARTICULARITIES OF THE BELGIAN SYSTEM

The Central Authority insists on a practical problem concerning applications for legal aid (Article 44 of the Maintenance Regulation). In order to benefit from legal aid in the country of enforcement, she advises lawyers to ensure that the Belgian registry tick the box "legal aid" when completing the form, as this confirms that the applicant has received legal aid for the proceedings in Belgium. Since Belgian law distinguishes between legal aid (payment of lawyers' fees) and legal aid (payment of procedural and bailiff's fees), it would happen, in cases where the person concerned has only requested legal aid in Belgium, that the registrar does not mention the application for legal aid and that it is therefore not granted automatically (without examination of income) in the country of enforcement.

According to the explanations provided by the Central Authority at Workshop 1, the Belgian system would prevent direct access to legal aid. Unlike other countries, such as France, the Belgian Central Authority must mandate a lawyer to request legal aid, in particular in order to benefit from the services of a bailiff. The Central Authority also attests to the difficulty of finding lawyers specialised in DIP when it has to refer a case to a lawyer for legal aid.

A lawyer pointed out that it is not necessary to refer to the provisions of the Food Regulations in order to benefit from legal aid. Even if some people are unaware of it, it would indeed be possible to request legal aid via Directive 2002/8 of 27 January 2003 on improving access to justice, a Directive that applies to all civil matters. The Central Authority points out in this respect that some legal aid offices are not aware that they can accept this type of application and refer persons to the Central Authority if necessary.

LEGAL AID FOR CHILDREN UNDER 21 YEARS OF AGE

It seems that a significant number of practitioners present at Workshop No. 1 were not aware that a child under 21 years of age automatically receives legal aid if the Central Authority is seized in the context of the recovery of maintenance payments (Article 46 of the Maintenance Regulation).

The Central Authority recalls that in determining the age of the child, reference is normally made to the debt judgment which reflects the child's identity. A birth certificate should not be required: the Food Regulations list the documents that may be requested and the birth certificate is not included. A lawyer points out that in practice, birth certificates are often requested. The representative of an association points out the problem this poses for some children whose birth certificates are difficult or even impossible to obtain. The lawyer also points out that there are States that continue to demand powers of attorney, mandates signed before a notary.

A lawyer wonders when the age of 21 will be determined. According to the Central Authority, the age must be verified in Belgium at the time of recovery. The child should therefore be under 21 years of age throughout the proceedings in order to be eligible for legal aid. The central authority states that the matter has been submitted to the European Judicial Network for discussion. Opinions would have been issued, but the Central Authority recalls that the network is only a forum for discussion. The Central Authority says it is familiar with the practice of the various European States, but it states that apart from the Court of Justice of the European Union, no one can decide.

Beyond the age of 21, the child is covered by the traditional legal aid scheme. A practitioner explains that, contrary to the law in other countries, in Belgium, it is the parents who are the beneficiaries of maintenance and that it is therefore up to them to prove the absence of sufficient income.

DIFFICULTY IN OBTAINING INFORMATION ABOUT THE DEBTOR

In the opinion of several professionals, the main problem in the field of maintenance debt recovery seems to be the information on the debtor's creditworthiness. A social worker indicates that it is possible to

obtain information on the debtor's residence through a bailiff who consults the Belgian National Register. Concerning the financial situation, the bailiff would also be entitled to carry out searches, in particular via the database of the ONSS (Office National de la Sécurité Sociale). The Central Authority specifies that it does not have any means of additional information to that of a bailiff. Some professionals talk about using a detective. The Public Prosecutor's Office would also be called upon. In this case, the latter would contact the debtor to make a declaration on his honour as to his assets.

In other countries, there would be more effective ways of knowing the debtor's financial situation. A lawyer cites France where the Central Authority would be allowed to request information from the tax authorities. In Belgium, the Central Authority reports that the various Belgian ministerial departments are seeking to develop this type of communication.

PREFERENCE FOR BODIES OTHER THAN THE CENTRAL AUTHORITY

The lawyers present at Workshop 1 confide that they apply to a bailiff rather than to the Central Authority to enforce maintenance judgments. Bailiffs would have contacts abroad or would go through the Central Authority. However, practitioners agree that bailiff fees are particularly high in Belgium. They would be the highest in Europe. But when the debtor is in a neighbouring country, the bailiff would often already have contacts with local bailiffs, and it would therefore be more efficient to go directly through a bailiff rather than through the Central Authority. On the other hand, in relations with more distant countries, there would be greater interest in going through the Central Authority, given that the language barrier is generally higher and the procedural differences more significant.

The 2 professionals who replied to the questionnaire as well as the participants in workshop 1 also confirm that they should contact SECAL (the Belgian public service for the recovery of maintenance claims), which grants financial assistance to the maintenance creditor when the debtor defaults. These 2 practitioners are generally familiar with the type of conditions governing SECAL's intervention. They cite: conditions linked to income (when applying for advances), the creditor's domicile in Belgium, the existence of a court decision served or an authentic instrument fixing the amount of the obligation and the existence of unpaid debts for two months. The advantage of addressing SECAL would be that the person is free from all procedural matters. SECAL would not benefit from automatic legal aid. The Central Authority recalls that if the child is over 21 years of age, SECAL must also ask the beneficiary for a statement of income.

It is also reported by practitioners that when the debtor has assets in Belgium, they are more likely to go through the judge and not through the Central Authority.

The participants in Workshop 1 mentioned a probable lack of human resources on the part of the Central Authority, which would have an impact on the speed of processing cases. They believe that this lack of resources also affects other Central Authorities in Europe. The Belgian Central Authority explains that the time required to process a case depends on the contacts developed in the other country, the language, the staff attached to the foreign Central Authority and its effectiveness.

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PROCEDURE CHOSEN BY THE DEBTOR TO REDUCE THE AMOUNT OF MAINTENANCE

A person in charge of an association generally advises the debtor who cannot pay the amount of his or her maintenance obligation to initiate proceedings for review of the judicial decision. It also recalls that the debtor has the possibility of obtaining a tax deduction in respect of his maintenance obligation.

The procedure for reviewing the amount of maintenance payments through the Central Authority (Article 56 of the Maintenance Regulations) seems to be little known to participants. The Central Authority explains that when it receives such an application, it first initiates an amicable phase where the creditor is contacted to see if an agreement can be reached. While in Belgium this agreement must necessarily be confirmed by a court decision, this is not the case in other countries, according to the Central Authority. In some countries, such as Denmark, there is a body comparable to SECAL that can confirm the decision to reduce the amount of debt.

Some participants in Workshop 1 testify to the fact that the form to be filled in for a revision request is more complicated to fill in than the traditional form. However, the Belgian Central Authority would offer its assistance by telephone to complete the form.

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6. UNACCOMPANIED FOREIGN MINORS

The situation of unaccompanied foreign minors (MENA) was discussed at Workshop No. 2 on 26 April 2019 as part of the questions on parental authority. In addition, two questions from the MENA-specific section of the questionnaire were asked of participants. These questions did not inspire participants, whose remarks focused on the best interests of the child and the determination of the child's age. The latter topics were also addressed by the 5 people who submitted written questionnaires. This suggests that in MENA, the concerns of Belgian practitioners revolve mainly around these issues.

MAIN RESULTS

MEDICAL TESTS AGAINST ACTS TO DETERMINE THE AGE OF MENA

According to the written replies provided by 2 practitioners, there is no specific private international law provision for MENA (as claimed, without explanation, by a third participant). However, proof of the age of the MENAs would be adjusted in relation to the general principles of recognition of civil status in DIP. Indeed, according to these two lawyers, whose point was confirmed at Workshop No. 2, Belgian law allows the use of radiological examinations. The Belgian authorities would make extensive use of radiological tests to determine the age of MENAs, even when they are able to produce a birth certificate.

Present at workshop n° 2, an official of the Aliens Office (Belgian authority in charge of the MENA reporting and supervision procedure) explains that this practice is justified because many civil status documents filed by MENAs are false documents resulting from the corruption of foreign authorities and that, consequently, their fraudulent nature is difficult to detect (even by legalization). Some young people also have passports with a false date of birth based on fraudulent birth certificates. The representative of the Aliens Office contested the idea that the Office would apply a differentiated policy of accepting foreign documents according to their country of origin, but acknowledged that the examination of the reliability of documents took into account the administrative context of the country concerned, in particular whether the country had a national register.

The two lawyers who replied to the survey criticised the unreliability of bone tests and the lack of respect for the probative value of foreign authentic acts enshrined in the Code of Private International Law (Article 28). One of them indicated that when a document is provided by the young person, the Aliens Office should not be able to carry out a bone test without giving reasons, which allows it to doubt its probative value. In practice, however, the Aliens Office would use medical tests to reverse the probative value. Moreover, when bone tests confirm that the young person is a minor, the Aliens Office would continue to establish the child's date of birth on the basis of the tests rather than on the acts, a practice which has an impact on the duration of MENA care and which has been condemned by the Council of State.

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NO CONSIDERATION OF THE BEST INTERESTS OF THE CHILD

The specific residence procedure for MENA (excluding asylum) does not result from a transposition of European Union law. It is based on the notion of a "durable solution" that the Aliens Office must identify in each individual case. According to Belgian law, this durable solution is either the return to the country of origin, if there are guarantees of reception and adequate care depending on the age and degree of autonomy of the minor, or the MENA residence permit (article 61/14 of the law of 15 December 1980 on residence). A written questionnaire denounces the fact that if the parents still reside in the country of origin, the Belgian authorities systematically consider, in the name of the child's best interests, that the durable solution for the child is return to the country, without taking into account the real situation of the parents, which may be precisely contrary to the best interests (unwillingness to receive the child, material conditions of life, etc). During workshop 2, some participants confirmed the existence of this practice by criticising the Belgian authorities' interpretation of the provisions of the International Convention on the Rights of the Child. The Aliens Office would hide behind its duty to favour family unity in order to limit the granting of residence permits in the MENA countries.

On the other hand, in the field of family reunification, a lawyer explains that Belgian law provides, in accordance with international conventions, that the best interests of the child must be taken into account in all decisions even if the legal conditions for family reunification (income, housing, etc.) are not met. In practice, however, the authorities would not take into account the best interests of the child, which are never mentioned in the grounds for refusing applications for family reunification.

GOOD KNOWLEDGE OF THE LAW AND PROTECTION AGENCIES

The practitioners interviewed generally seem to be familiar with the legal framework for MENA. In the written replies, 4 participants took the time to list the laws and regulations applicable to them. Professionals seem to be equally familiar with the public or private agencies responsible for protecting MENA. The participants mentioned the Guardianship Service (authority attached to the Federal Public Service of Justice responsible for the identification of MENA and the appointment of guardians) as well as two non-profit organisations: the Youth Rights Service and the Minors in Exile platform. Two people also mentioned other associations: Mentor Escale, Maison Babel and Resalto.

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7. INTERNATIONAL PROTECTION

Seven survey participants responded in writing to the questions asked in this section (6 workers in the voluntary sector and 1 lawyer). The information collected below is based exclusively on these answers, as this subject was not discussed during the workshops.

MAIN RESULTS

LEGAL SUPPORT FOR REFUGEES

There are many services in Belgium, and particularly in Brussels, to which refugees can turn for free answers to their legal questions. However, two survey participants explained that it is mainly in the private sector that people with expertise in foreign law are found. However, the sector would face structural saturation due to increasing demand each year and the lack of financial support from public authorities. Moreover, throughout Belgium, only two publicly accessible bodies would have expertise in private international law: a private association (ADDE) and a parastatal authority (Agentschap Integratie en Inburgering). ADDE's Private International Law Department confirms that, due to a lack of sufficient subsidies, it is no longer able to provide quality monitoring, even for international family law cases involving vulnerable categories of persons such as asylum seekers or refugees.

PARTIAL ADMINISTRATIVE ASSISTANCE FOR REFUGEES

In accordance with Article 25 of the Geneva Convention, the Belgian authorities provide administrative assistance to recognised refugees. The General Commission for Refugees and Stateless Persons (CGRA) issues free of charge documents to replace civil status documents that they cannot obtain from their national authorities. According to a lawyer participating in the investigation, these replacement documents would be based on the refugee's statements and other documents in their file. The same lawyer describes the limits of the administrative assistance provided. First of all, the CGRA would not issue a certificate of celibacy as such. He would only submit a document called a "civil status statement" on which he would have the practice of pointing out that it is only an indication of the person's marital status and that it is up to the receiving authority to position itself on the person's celibacy. This ambiguity would mean that some registrars would not be satisfied with this document in the context of a marriage or paternity recognition procedure, for example. Secondly, the CGRA would only issue a marriage certificate when both spouses are staying in Belgium. Thus, a refugee would not receive the support of the CGRA when he or she had to prove the existence of his or her marriage in the context of a family reunification visa application. Finally, according to the lawyer, the CGRA would not consider itself competent to draft a document enabling a refugee to prove his filiation with regard to a child who has remained in the country, which would, inter alia, still hinder the exercise of the right to family reunification. To demonstrate his civil status in these cases, the refugee would only have legal action enabling him to obtain a supplementary civil status certificate judgment.

In addition, the lawyer and another representative of the voluntary sector denounce the fact that no administrative assistance is offered to beneficiaries of subsidiary protection. Even when it appears that the latter cannot apply to their national authorities because of their exile, Belgian law does not provide any facility for proving their civil status, contrary to what the French authorities do.

One of the participants in the survey points out that the idea is commonly accepted in Belgium that a refugee cannot apply to the authorities of his country (in particular to his consulate) to obtain civil status documents, otherwise his status will be called into question. However, this prohibition would not be expressly provided for by law and its relevance should be questioned when the refugee has not fled his national authorities but a risk of persecution caused by a non-state actor. This instruction could have the effect of unnecessarily depriving refugees of the most normal way to establish an element of their civil status.

PROBLEMS OF PROOF OF THE CIVIL STATUS OF REFUGEES, SUBSIDIARY PROTECTION, STATELESS PERSONS

A person in charge of an association notes that the Belgian Code of Private International Law makes it possible to take into consideration the specific problems of refugees, subsidiary protected persons or stateless persons with regard to proof of their civil status. Inspired by the provisions of multiple international conventions, articles 24 and 27 of the Code would grant, in any proceedings, to judges and administrations the power to rule on the existence and validity of a civil status without formal proof being provided by the person concerned. However, according to the survey participant, this possibility would be unknown to the administrative services. The latter would generally refer people to the courts to require additional civil status judgments, which is very time-consuming.

On the other hand, there are reportedly many legal problems in Belgium related to the information collected by the Aliens Office in the population registers on persons who have lodged an asylum application. A participant in the survey explained that the Aliens Office often only has statements from people to establish their names, whether they are married or have children. That is why, if in doubt, the Aliens Office would allow itself to complete the entry in the registers with the formula "declared", without this being provided for by law. In the face of this formula, many administrative authorities would refuse to give probative value to the statements. In addition, some jurisdictions would not accept foreign documents provided subsequently for the purpose of having this form withdrawn. They would demand that people ask the courts to confirm their identity or marriage.

HELP WITH INTERPRETING AND TRANSLATION

Before the asylum authorities, interpreting is provided for by law and is financially supported by the Belgian State. At the hearing of the asylum seeker, for example, he or his lawyer may require that a certified interpreter be present. Specific rules also exist for the translation of documents produced in the context of an asylum application. The law on residence in Belgium provides that if the documents are written in a language other than one of the three national languages (Dutch, French, German) or English, the applicant must contribute to providing a translation into one of these languages and that, in the absence of a

translation, he must comment on them during the personal interview, if necessary assisted by the interpreter present (art. 48/6 § 3 of the law of 15 December 1980).

With regard to support from the voluntary sector, two questionnaires explain that there are free interpretation services subsidised by the public authorities. In Brussels, the non-profit organisation SeTIS would offer this service to associations that have signed an agreement with it and on payment of an annual subscription.

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8. INTERNATIONAL MEDIATION

International family mediation was the subject of workshop No. 2 on 26 April 2019. The starting point for the discussion among those present was the 7 questions selected by the Technical Committee in the "Alternative Dispute Resolution" section of the questionnaire. The exchanges that took place reflect a certain lack of practical experience in this field and a relative knowledge of the possibilities of international mediation on the part of the participants. The rather summary answers provided by the 5 written questionnaires on this subject confirm this lack of knowledge. For the purposes of the survey, additional information was obtained at the International Symposium on Child Abduction organised in Brussels by the Universities of Louvain-la-Neuve and Saint-Louis in May 2019.

MAIN RESULTS

USEFULNESS OF INTERNATIONAL MEDIATION

All the participants in the survey seem to consider that international family mediation is an interesting tool offering a good alternative when conciliation through the intermediary of the lawyer has not been successful. 3 practitioners present at Workshop 2 mentioned studies showing that mediated agreements are more respected than court decisions on parental authority, as parents have been directly involved in decision-making. However, several professionals point out the limits of international mediation, mainly because of their cost and the distance between the parents. One lawyer considers that international mediation naturally has more interest in cases of conflict over parental authority than in child abduction situations. In the event of abduction, mediation would often appear to be an inadequate procedure, with the abduction indicating that the perpetrator is unwilling to cooperate with the other parent or to rely on public authorities to resolve the dispute. Two practitioners relativize this position by arguing that, in some cases, abduction results from a flight in a time of crisis, without the author's willingness to permanently sever ties with the other parent.

RARE USE OF MEDIATION IN CENTRAL AUTHORITY CASES FOR CHILD ABDUCTIONS

According to its comments from Workshop 2, the Central Authority for Child Abduction supports the use of international mediation in the context of abduction. However, it is rarely used in cases handled by the Central Authority, as it is very difficult to set up because of the distance, the cost of mediation, the fact that parents do not always speak the same language, the need to have agreements approved and the difficulty of determining the appropriate time in a procedure to initiate mediation. In some cases, the Central Authority notes, it is counterproductive to initiate mediation as soon as the child is abducted, while the parental conflict is still burning; conversely, more can sometimes be expected from mediation, once the return decision has been made. The Central Authority discusses internally the advantages of the presence of mediators at the time of the introductory hearing or at the time of the enforcement of the return order, as well as the possibility of legally regulating this presence. The presence of a mediator at these stages of the procedure could encourage parents to cooperate more.

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LIMITED KNOWLEDGE OF MEDIATION PROFESSIONALS

When looking for a family mediator, survey participants generally use the list of approved mediators published on the website of the Federal Mediation Commission of the Federal Public Service of Justice (Ministry of Justice). This list does not specify whether or not mediators act in the settlement of disputes of an international nature. The professionals interviewed do not know of any network of international mediators, with the exception of the Cross-Border Family Mediators network (founded by the Belgian NGO Child Focus), which some of them know. Two participants in workshop 2 point out that Child Focus offers a list of lawyers specialising in international mediation on its website.

PILOT PROJECT OF THE NGO CHILD FOCUS AND PRE-MEDIATION OFFICE

The NGO Child Focus, in consultation with the Belgian Central Authority, has launched a pilot project to encourage the use of mediation in international parental abductions. The mediation model used is that of the Cross-border Family Mediators network, which is based on co-mediation with a mediator in each country where the parents are located. The model takes into account the time limits imposed by the Hague Convention of 25 October 1980 on child abduction and proposes a mediation called "pressure cooker" which normally takes place over three days. The interviews are organised with the support of the lawyers. Under the project, mediation is offered to parents for a minimum contribution at three different times: when a case is opened with Child Focus (usually before return proceedings have been initiated), when a request for return is made to the Central Authority and at the time of the preliminary hearing before the family court in charge of the return application. Two Belgian courts (Ghent and Brussels) collaborate in the project and automatically submit the mediation offer to the parents concerned. According to the Central Authority, the success rate of mediation in the pilot project is extremely low (less than 5%). The evaluation of the project is expected to be published shortly.

In addition, there is a Pre-mediation Office, an independent component of Child Focus, which informs people about international family mediation and organises such mediation when parents so wish. The objective of the Office is to encourage parents to use international family mediation. Pre-mediation essentially consists of an interview to which parents are invited to be explained the benefits of mediation, how it works, and the limitations of the topics that can be addressed by parents in mediation.

UNCLEAR ON THE REASONS FOR THE STRENGTHENING OF MEDIATION IN BELGIAN LAW

Reforms have been undertaken in Belgium to strengthen the use of mediation in order to pacify family conflicts. Since the Act of 30 July 2013, the Judicial Code has provided that as soon as an application under the jurisdiction of the Family Court is submitted, the Registrar shall inform the parties of the possibility of mediation by giving them a copy of the relevant legal provisions, an information brochure concerning mediation, the list of approved family mediators in the judicial district, as well as information concerning information sessions, permanencies or other initiatives (article 1253ter/1 of the Judicial Code).

The Judicial Code was also amended by the Act of 18 June 2018 containing various provisions on civil law and provisions to promote alternative forms of dispute resolution. This law does not specifically address international mediation. The Judicial Code now provides that the court shall hear the parties to the introductory hearing on how they have tried to resolve the dispute amicably, in order to determine whether an amicable settlement is possible. At the request of the parties or if he considers it useful, the judge may order the case to be referred to the settlement chamber amicably. The Registrar then forwards the file to the Registrar of the Settlement Chamber by amicable agreement, who summons the parties to appear (Article 1253ter/2 Judicial Code). The Act of 18 June 2018 also introduced the possibility for the judge or the parties to request that the case be referred to the amicable settlement chamber throughout the proceedings. If a total or partial agreement is reached, it is immediately enforceable (article 1253ter/2 Judicial Code).

Three lawyers present at Workshops 2 denounce the fact that the possibility left to the judge to impose mediation has, above all, been introduced in order to address the problem of the backlog of cases. According to them, it often happens that the judge uses this power in order to discharge himself from a case, without really considering the interest of mediation in the present case. This practice would tend to strengthen family conflict while reducing the parties' confidence in the judicial system. On this point, however, a representative of an association points out in a written questionnaire that sociological reasons explain a drastic increase in the use of the judge to solve family problems. According to this survey participant, many individuals no longer seek to resolve their conflicts themselves before going to court, which may justify the imposition of family mediation.

According to a French expert present at the International Symposium on International Child Abduction, a similar debate is taking place in other European countries. This person explains that in Italy, the law previously required mediation before the judge's decision, but that in view of the questioning raised by this obligation, it has been removed. In France, a comparable obligation would be provided for by law, and the question of whether this obligation results from a real desire to encourage parents to settle their affairs first or rather from a lack of means of justice (backlog) would be debated. Another French practitioner present at the conference considers that both ideas are at the root of the reform. According to him, we are in a contradictory situation where mediation is supposed to provide support to the judge to inform his decision but, at the same time, judges do not have time for a detailed analysis of family situations.

DUTY TO PROMOTE MEDIATION FOR LAWYERS

The law of 18 June 2018 introduced in Belgium a duty to promote mediation for lawyers. The latter must inform the litigant of the possibility of mediation and, if he considers that an amicable resolution of the dispute is possible, he must try to promote it. A lawyer stated in writing that a recommendation of the French Bar Association of the Brussels Bar Association of 8 November 2005 already insisted on the lawyer's duty to conciliate and the obligation to give priority to the search for amicable solutions. To achieve this objective, several lawyers in her firm have, like her, received training in family mediation in order to be able to approach cases with a constructive approach that differs from the "procedural" approach.

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DELAY IN THE PROCEDURE FOR THE RETURN OF ABDUCTED CHILDREN DUE TO MEDIATION

A family mediator at the colloquium on child abduction points out that international mediation is one of the factors that makes the six-week time limit for the return of the child under Articles 11 of the Brussels IIbis Regulation and the Hague Convention of 25 October 1980 fictitious (On this point, see section 4 on child abduction in this report, "procedural delays").

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9. PUBLIC DOCUMENTS

The topic of the circulation of foreign public documents and, more specifically, the implementation of Regulation 2016/1191 of 6 July to promote the free movement of citizens by simplifying the conditions for the presentation of certain public documents, was discussed at Workshop No. 1 of 5 April 2019 (30 people). The Belgian Technical Committee used the questionnaire to launch the discussion on this subject, but the exchanges made it possible to gather information on other points. In writing, 4 professionals replied to this section of the questionnaire relating to the circulation of documents.

MAIN RESULTS

LACK OF PUBLICITY OF THE REGULATION

Our investigation revealed that Regulation 2016/1191 simplifying the conditions for the presentation of certain public documents has not been sufficiently publicised in Belgium. Apart from public services, the majority of practitioners interviewed were unaware of either its existence or its implementation. The municipal civil status services, for their part, received from the European Commission only a simple explanatory brochure on the Regulation. The main consequences of the lack of communication around the Regulation seem to be that people continue to request apostilles for civil status documents that are now exempt from it and that people do not use the possibility of requesting multilingual standard forms instead of translation.

DELAY IN THE IMPLEMENTATION OF THE REGULATION BY PUBLIC SERVICES

Despite the deadline provided for in the Regulation postponing its entry into force to February 2019, some public authorities seem to have lacked preparation for the implementation of the Regulation. A lawyer from an association explains that of the three major Brussels municipalities questioned on the subject, only one had already, in June 2019, requested access codes to the IMI system (Internal Market Information System) allowing administrative cooperation between Member States. In Workshop 1, the Central Authority for Maintenance Obligations testified to the existence of this problem by stating that its department had not yet used IMI to check the authenticity of documents in April. The consequence of this situation is important because, according to the Central Authority, a significant amount of false documents are filed in the files it processes.

SCOPE OF THE REGULATION

As the provisions of Regulation 2016/1191 have only been applicable since February 2019, the respondents did not make any comments on the scope of the Regulation, with the exception of one person who noted that the exemption from legalisation applying to "public documents" and their "certified true copies", one may wonder, in view of the autonomous interpretation to be given to these concepts, whether the exemption also concerns "extracts from civil status records", a concept which is not defined by the Regulation but which it nevertheless uses (in Article 8).

UNCERTAIN VALUE OF MULTILINGUAL STANDARD FORMS

A participant in the survey noted the uncertainty about the probative value to be given to the multilingual standard forms introduced by the Regulation. According to Article 8(1) of the Regulation, the multilingual standard form is only a translation aid without autonomous legal value. However, Article 6(1) of the Regulation provides that a translation cannot be required if the document is accompanied by a multilingual standard form, unless the receiving authority considers that the information on the standard form is insufficient to process the document. It is therefore questionable whether the public authorities have the power of appreciation, particularly as regards the authenticity of the translation.

UNCERTAINTY ABOUT THE EFFECTIVENESS OF ADMINISTRATIVE COOPERATION

The exemption of apostilles and the administrative cooperation mechanism set up by the Regulation were criticised during Workshop No 1. Professionals agree that there is a risk that administrations will not use IMI and that they will get used to no longer question the authenticity of European public acts. However, as the Central Authority for Maintenance Payments points out, documentary fraud remains a reality in Europe. It should therefore be asked whether the exemption from legalisation will not lead to an increase in the production of false documents in Europe. In addition, some participants in Workshop 1 wonder how communication between public authorities will be achieved through IMI and, in particular, how the language barrier will be overcome.

LACK OF INFORMATION ON THE CONTENT OF THE REGULATION

Of the 4 people who replied in writing to this section of the questionnaire, none consider that they are sufficiently informed about the content of the Regulation. One of them would like to receive more explanation via the website of the Federal Public Service of Justice (Ministry of Justice), while another considers that it would be necessary to be able to benefit from official instructions from the European Commission on the interpretation of the provisions of the Regulation, as is done in national law.

INTERNAL INVESTIGATION INTO THE AUTHENTICITY OF FOREIGN DOCUMENTS

The Belgian Consular Code provides (Article 34) for a system of investigation when there is doubt as to the conformity of a foreign document with the legislation of the country that issued it or as to the authenticity of the document or its content. Any public authority may use this investigative mechanism. The request is addressed to the competent consulate via the Federal Public Service for Foreign Affairs (Ministry of Foreign Affairs). One practitioner consulted reported that this procedure is rarely used. He also points out that since the law of 21 December 2013 on the Consular Code, the investigation has been subject to a fee. The individuals concerned by the documents submitted to the investigation must now advance a sum of 50€ which will only be refunded if the investigation confirms the validity of the documents. In this case, the costs of the investigation shall be borne by the public authority that requested it.

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VALIDITY OF NON-LEGALIZED DOCUMENTS

In Workshop 1, a discussion took place on the admissibility of unlegalised documents where legalisation is not possible or particularly difficult to achieve (e.g. for some beneficiaries of subsidiary protection or stateless persons). According to the participants, the administrative services generally refuse any document subject to the obligation of legalisation if it has not been legalised, regardless of the reasons why it has not been legalised. However, some civil registrars have reportedly accepted civil status documents produced by Somali nationals because of the impossibility, confirmed by the Federal Public Service for Foreign Affairs, of having documents from that country legalized. A study published by the ADDE asbl indicates that legalisation is not an absolute obligation and that if it is impossible to obtain legalisation, the authenticity of a document can be legally demonstrated by any legal means.