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EPAPFR

EUROPEAN PLATFORM FOR THE ACCESS TO PERSONAL AND FAMILIAL RIGHTS

Partner Report
on the questionnaire

Drafted by
University of Verona

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1. INTRODUCTION

– *Drafting the Italian version of the questionnaire*

As agreed among Partners, the questionnaire was drafted in English and then translated by each partner in its own language in order to facilitate its circulation and filling out in each of the targeted countries. In particular, the translation in Italian language aimed at maintaining the same structure of the final common version of the questionnaire, while introducing minor adjustments that were deemed useful to better adapt its contents to the specificities of the domestic legal order and the categories of practitioners assumed as potential respondents.

– *Dissemination strategy*

The University of Verona chose to conduct the questionnaire on an online basis via *LimeSurvey*, which is available among the institutional resources of the University. It could be accessed from late April to late June 2019.
The dissemination strategy relied upon a number of pre-existing contacts established thanks to the cooperation with lawyers/attorneys, judges, legal practitioners, civil status registrars and social workers in the context of previous events and other projects on EU and international family law. Requests for dissemination were sent to associations of lawyers/attorneys and civil status registrars: in particular, personalised emails were sent to key contacts (e.g. president, chairs) within their institutions with the request to redistribute the questionnaire through internal channels. In addition, individual requests to fill in the questionnaire were sent to the members of the Technical Committee established by the University of Verona within the present project, as well as other practitioners, members of the judiciary and academics.

– *Response rate*

The collected responses were 222. However, the response rate in the thematic sections is relatively low compared to the overall number, which may result from the possibility given to respondents of filling in the entire questionnaire or only the thematic sections with which they were more familiar in the light of their professional background.
Also, it should be stressed that the analysis carried out in the following paragraphs takes into account the number of responses received for each single question.

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2. GENERAL PART

The section concerning the participant's background and their experience and training needs was the most answered part of the questionnaire. This was actually expected, as the questions in this section dealt with general cross-cutting issues and personal knowledge/familiarity with private international law instruments in family matters. Also, for the purposes of the project, this result should be welcomed given that it can provide a reliable picture in order to understand the general difficulties that different categories of practitioners are faced with when approaching a cross-border family dispute.

2.1. MAIN FINDINGS

– *Participant background*

When asked to specify their **studies and professional qualifications**, the vast majority of respondents indicated a legal background (law degree and further post-graduate qualifications such as professional master's programmes/Ph.D., then qualification to practice as a lawyer and also as a mediator in some cases). The second most frequent answer was the professional qualification as civil status register (in this case, the respective studies of the respondents were more mixed: some of them at university level – e.g. in political sciences, philosophy, economics – and others at secondary school level). The third most frequent category of respondents was social workers, with a degree in social work studies. The remaining respondents provided a mix of qualifications (one also regarding voluntary service) and studies, at times without specifying their area/field (e.g. some of them only indicated the level of their studies).

As to the current position stated by the respondents:

- 32 answered "civil servant or employee of government agency";
- 29 answered "lawyer/attorney";
- 3 answered "employee of NGO or private entity/organisation";
- 3 answered "judge".

Those whose current position was "civil servant" or "employee of NGO" were further asked to clarify their role in the respective organisation: the vast majority answered "civil status registrar", 4 referred to their roles in associations of lawyers/attorneys or mediators, and 2 answered "social worker".

Regarding the State where they habitually work/perform their professional activity, all respondents stated "**Italy**". The geographical scope of their activity was located in Italy for almost all respondents (57), while only 2 referred to "EU Member States" and only 4 to "third States".

When asked to describe the type of activities performed in their work (38 answers in total)

- respondents having a legal background (19) generally referred to counselling in family matters (e.g. separation/divorce, parental responsibility, adoption, maintenance, succession) and/or civil matters, and more rarely also in matters regarding asylum seekers and migrants. The percentage of cross-border cases in their legal practice was variable: for the majority of them amounted to around 20% of the total cases (for 3 respondents it was 40%, but for one of them was only 3%);

- respondents who qualified as civil status registrars (13) referred to demographic services and those relating to the civil status and the citizenship of a person (e.g. birth, marriage, death). In this area, the reported percentage of cross-border cases varies from 20% (from the majority of respondents) to 40% (one respondent);
- respondents who qualified as social workers (3) referred to services to people in the context of e.g. family breakdown, domestic violence, adoption, migration. They did not report the percentage of cross-border cases;
- 2 respondents referred to voluntary services in favour of migrants, children and families;
- one respondent declared to provide legal advice to the Unit "Immigration and Integration policies" established within the Ministry of Labour.

The entities/organisations for which respondents declared to work were mainly financed by public funding (25 out of 37 respondents), and more rarely by private funding (5 respondents) or donations (4 respondents). No respondent, however, referred of funding specifically devoted to the activities in the field of private international law in family matters.

The categories of persons benefitting from the professional activities performed by the respondents were other practitioners (12 out of 65 respondents), social workers (11 respondents) and, in the majority of cases, individuals (42 respondents). In the latter cases, no substantial gender differences emerged (at times, a relative majority of women) and the nationality of the individuals was usually Italian, and more rarely, of other EU Member States or third States (Morocco, Tunisia, Algeria, Albania).

The majority of respondents referred to perform their activity free of charge (31 out of 49), while 18 of them require a payment that can vary: for civil status registers, it is related to stamp duties and administrative fees, while lawyers/attorneys charge professional fees established according to the Ministerial Decree n. 55/2014.

– *Knowledge of private international law in family matters*

The first question regarding the **use of the private international law instruments in family matters** received mostly positive answers (29 out of 35), which indicated more than 5 cases per year or, at least, between one and 5 cases per year. When asked to list some recurring issues in their respective practice, those most referred to were, on the one hand, cross-border separations/divorces and parental responsibility proceedings (including adoptions and child abductions), and, on the other hand, the recognition of family status and the related update of civil status records (e.g. right to a name, birth, death or marriage certificates). This may well derive from the categories of practitioners that were counted among the main respondents of the questionnaire, namely lawyers/attorneys and public officers such as civil status registrars.

In relation to the **sources of information** employed when coming across a cross-border family dispute, 30 out of 57 respondents answered "free-access websites", while 16 referred to "subscriptions to specialised law journals" and the remaining 11 generally referred to opinions asked to foreign lawyers, training courses and specialized books. In the free comment area, respondents also recalled contacts with other legal practitioners, associations, civil status registrars or Italian Consulates; training courses, specialised books and other publications. A similar question specifically addressed the sources of information for foreign laws in family matters: in this regard, the majority of the 54 respondents confirmed that they were required

to access a given foreign law (9 respondents in more than 5 cases per year, and 22 in at least one to 5 cases per year), and listed official websites, specialised publications (journals/books), contacts with practitioners, associations or Consulates, among the main sources of information. The recurring difficulties, however, resided in the absence of official translations of the foreign law, and more generally of databases of case law and legislation.

The question concerning **difficulties/errors encountered in the application** of private international law instruments in **situations involving migrants** received an answer from only 19 respondents: 9 of them in the affirmative, and 10 in the negative. When asked to exemplify, the respondents mostly referred to civil status issues (especially in relation to the identity) and a general lack of familiarity, on behalf of counsels and judicial authorities, with the relevant legal tools.

Lastly, it is interesting to point out that the general question on the **level of knowledge/familiarity** with private international law instruments in family matters received an equal number of positive and negative answers (20 each), so that it is not possible to infer a predominant trend in this regard.

– *Initial and continuous training*

From the question on **initial training** on private international law in family matters addressed to future legal practitioners/counsels/judges, it stems that in Italy this kind of training is essentially optional and is perceived from the majority of respondents (19 out of 31) as insufficient to properly deal with the complexity of the subject matter.

Similarly, **continuous training** addressed to legal practitioners/counsels/judges is mainly provided on an optional basis. In general, however, multidisciplinary training (i.e. legal, psychological, etc.) appears to be rarely organised (only 10 out of 33 respondents answered in the affirmative), and almost all respondents were also unaware of training opportunities specifically targeted to foreign practitioners (29 out of 36 did not know of such courses).

The main categories of **training providers** were identified in other lawyers/attorneys specialised in cross-border family matters, specialised lawyers'/attorneys' associations, academics, judges. With regard to the category of civil status registrars, the association ANUSCA (*Associazione Nazionale degli Ufficiali di Stato Civile e d'Anagrafe*) was specifically recalled to this end.

27 out of 42 respondents were also in favour of providing a specific training on private international law to **social service workers**. When asked to further comment, they stressed that this professional category is often the first to be called upon to deal with cross-border family issues, with the consequence that it is of the utmost importance that they possess a sufficient knowledge to properly direct and counsel the beneficiaries.

Regarding their **own experience** with specialised training on private international law in family matters, almost all respondents deemed useful to attend them (31 out of 34) and also confirmed to have already participated in similar initiatives (27 out of 33). In addition, the majority of them stated to have had the opportunity to make use of the skills/expertise acquired during the training in their practice. The examples provided in this regard included matrimonial matters (separation/divorce, same-sex partnerships), parental responsibility issues (also related to adoption, child abduction and surrogacy) and maintenance obligations.

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Instead, the (few) negative aspects of the attended training mostly referred to their brief duration, and sometimes too limited scope, as well as to the lack of practice-oriented activities. The vast majority of the respondents positively evaluated the **possibility of attending further specialised training courses/seminars** (28 out of 30), and indicated a number of topics and training needs that they would deem useful to better perform their professional activity: for example, topics such as custody of migrant children, family reunification of unaccompanied minors, international adoption, and private comparative law in matters of civil status, and needs such as analysis and discussion of case studies, analysis of foreign case law, existence of databases of foreign case law and legislation. The respondents also indicated the participation in training sessions and the organization of working groups among the most favoured means of training (in some cases, stressing the importance of a multidisciplinary approach through the participation of different categories of practitioners, and the attendance of foreign experts).
As to the possibility to collect **information from practitioners established in other Member States**, the majority of the respondents were unaware of specific means in order to do so. Among the few answers, one referred to the international network IAFL (International Academy of Family Lawyers), and others to personal contacts, through the internet or Central Authorities. In relation to this issue, all respondents would welcome the creation of a network, within the European judicial area, comprising practitioners with different backgrounds, in order to exchange information and good practices.

– *Access to law and justice*

The question on the presence in Italy of **specialised practitioners** in the field of private international law in family matters received mixed answers (7 in the affirmative, 9 in the negative, and 14 respondents did not know). This outcome points to difficulties in identifying experts in this area of practice. The result may also be linked to the absence of a specific register/official list of lawyers/attorneys specialised in cross-border family litigation (15 respondents gave a negative answer about the existence of such register, while only 2 gave a positive answer).
The majority of respondents was unaware of tools available to beneficiaries and/or practitioners aimed at **getting access to specialised practitioners established abroad** (Member State or third State). One respondent, however, did refer to the international networks of experts/lawyers such as IAFL, Reunite International and LEPCA (Lawyers in Europe on Parental Child Abduction). Nevertheless, when asked to report their own experience in availing themselves of the assistance of a counsel established abroad, respondents listed several Member States (mostly Germany, UK, France, Ireland, Spain), as well as third States (mostly USA, Brazil, Colombia, Norway), and did not mention any particular obstacle in these cases (except one respondent, who did stress the high costs associated with this and the lack of a network). A lower level of practical experience was reported with regard to the access to public/private entities or social services established abroad. The few examples provided in the comments referred to Consulates/Embassies, ISS (International Social Service), CFAB (Children and Families Across Borders), which were mainly contacted through e-mail or telephone.
Moving to questions related to **legal aid**, respondents confirmed the possibility to benefit from it in cases concerning cross-border family matters (14 answers in the affirmative, none in the negative and 12 respondents did not know). This was also supported by the mainly positive

answers as to whether lawyers/attorneys working in this field accept cases involving recipients of legal aid, and as to the number of legal aid cases in which they had counselled (9 positive answers – more than 5 per year/less than 5 per year – and only 4 negative answers), irrespective of the complexity of the given factual circumstances.
Respondents generally did not know whether migrants who were not yet granted a residence permit may be the recipients of legal aid (18 answers in this sense, as opposed to 5 in the affirmative and 2 in the negative).
Similarly, they were generally unaware of special rules governing legal aid in favour of children (but a higher number of positive answers was given – 10 – as opposed to the previous question; 2 of them referred to unaccompanied minors, and the request from the special guardian in the interest of the child). In cases where children were the recipients of legal aid, they nonetheless believed that also the income of persons other than the child was to be considered according to the national legislation (3 respondents specified that they were the family members living with the child).
Regarding legal aid in cross-border disputes, almost all respondents did not know whether special rules apply in these cases (20 out of 24 of them), nor did they know whether translations costs could be covered by legal aid (22 respondents did not know, 4 gave a negative answer and only one gave a positive answer). All respondents, however, concurred that legal aid does not result in a substantial delay of the enforcement of foreign decisions in the European judicial area.
From the question regarding the existence in Italy of **entities/organisations** specialised in private international law in family matters, it stems that there is a variety of entities of different nature (public, non-profit, and other kinds), but none of the respondents provided further details in this regard. In addition, the vast majority of respondents stated that they do not cooperate with non-profit entities specialised in this field (21 out of 24).
As to a **general outlook on cross-border family litigation**, the majority of respondents believed that there still are obstacles in an effective access to justice in this field, and that these proceedings are generally slower than domestic ones. When asked to specify the average length of this kind of proceedings, respondents mostly answered two years (and 6 months for child abduction cases), even though it would usually depend on the complexity of the case.
Also, respondents generally answered in the affirmative as to whether precedence is given to the EU citizenship in cases involving persons with double nationality, one of an EU Member State and one of a third State (10 positive answers, 2 negative answers, and 4 “not always”).
Less positive answers were given to the question regarding the application *ex officio* of private international law rules by the competent judicial authority (only 4, and also one negative answer and 8 “not always”).
Lastly, no respondent reported to have requested a judicial authority to refer a preliminary ruling to the EU Court of Justice in the context of a cross-border family dispute.

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3. MATRIMONIAL MATTERS

The section on matrimonial matters received a generally low number of responses. In particular, the answers were fewer in the parts on polygamy and forced marriages compared to the others on separation, divorce, repudiation, principle of equality between women and men. This may be explained by the rarer incidence of the former two categories of cases in the respondents' practice.

3.1. MAIN FINDINGS

– *Polygamy*

Only 8 respondents reported to have dealt with **issues related to polygamous marriages** in their practice, but none of them specified the actual number of cases (in total or per year). Furthermore, no respondent was aware of any entity/practitioner that could qualify as expert in this regard.
From a general perspective, almost all respondents agreed that a polygamous marriage celebrated abroad **cannot be recognised** in Italy (20 negative answers and 3 did not know), but were uncertain as to whether such a marriage would fall within the **scope of application of Regulations 2201/2003 and 1259/2010** (2 answered in the affirmative, 7 in the negative, and 11 did not know). Only one respondent referred to have applied the Regulation 2201/2003 for the purposes of a request of annulment of a polygamous marriage, but did not provide further details.

– *Forced marriages*

The question regarding the existence in Italy of **public policies** specifically supporting the fight against forced marriages (and possible specific funds) received few answers, and respondents generally did not know about them. Among the 3 positive answers, one recalled a draft law, without providing its details. Mixed answers were also given to the question on the existence in Italy of **specific pieces of legislation or case law** concerning forced marriages (4 respondents in the affirmative, 3 in the negative, and 7 did not know). Similarly, respondents were generally unaware of possible obstacles to the protection of victims of forced marriages in Italy.
As to their **own experience** in cases involving forced marriages, no respondent claimed to have dealt with similar situations. One of them did refer to ASGI (*Associazione per gli Studi Giuridici sull'Immigrazione*) as a possible source of specialised support in these cases. Also, only one respondent reported to have applied the Regulation 2201/2003 for the purposes of a request of annulment of a forced marriage celebrated abroad but did not provide further details.

– *Separation, divorce, repudiation, principle of equality between women and men*

The majority of respondents reported to have dealt with **cross-border separation/divorce cases** in their practice (11 out of 18).
With specific regard to **repudiation**, its non-recognition as a ground for divorce has been recalled by almost all respondents when answering the question on the possible remedies to protect women who faced similar situations. Indeed, all respondents agreed that repudiation

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cannot be recognised in Italy (only one did not know about this). Respondents were, however, generally unaware as to whether repudiation may fall within the scope of application of Regulations 2201/2003 and 1259/2010 (one answered in the affirmative, 4 in the negative, and 14 did not know). Lastly, no respondent gave examples of entities/organisations that could provide a more efficient support to women facing repudiation.

In relation to the **principle of equality between women and men** in the access to separation/divorce, very few respondents answered to the question as to whether Regulations 2201/2003 and 1259/2010 may constitute efficient tools to safeguard this principle (2 in the affirmative, and one did not know).

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4. PARENTAL RESPONSIBILITY

The section on parental responsibility received a generally low number of responses, especially in the section regarding kafala, which still proves to be a legal tool with which there is only little familiarity.

4.1. MAIN FINDINGS

– *Contact points*

Only 2 respondents showed to be aware of the existence of **contact points** for parental responsibility (hereinafter, PR) cross-border disputes even though they did not provide any further detail on their specific functions (3 respondents answered in the negative and 15 did not know). One of them stated that the services provided are **free of charge**, while the other gave the opposite answer. It follows that it is not possible to infer a general trend on this matter and there is a limited awareness regarding the role of these entities.

– *Services and actors involved in PR cross-border disputes*

Regarding the information provided to parents involved in PR cross-border disputes, the majority of the respondents stated that information about **parents' rights and obligations** and about the **procedure** are generally given by lawyers/attorneys, even though some others indicated also the Ministry of Justice or the Consulate. A similar outcome emerged in relation to **legal counselling** provided to parents in PR cross-border cases, unanimously reported to be given by lawyers/attorneys, who are also the only ones entitled to **represent** parents in PR cross-border disputes. 5 out of 9 respondents declared that there is no need of additional opportunities in order to obtain information or legal counselling.
In relation to the costs associated to PR cross-border proceedings, none of the respondents specifically indicated which are the main **category of expenses** (providing of information, counselling, legal representation), even though all of them agreed that they can be rather significant and vary according to the fees charged by the legal counsel. Nonetheless, as to the professional fees, 8 out of 17 respondents concurred on the possibility to recourse to **free of charge services** or obtain **legal aid** in PR cross-border litigation (the remainder did not know about this possibility).
As to other **authorities/professionals** who may be **involved in PR cross-border disputes**, 9 respondents indicated jurisdictional authorities, 9 public prosecutors, 9 social services, 7 psychologists, 6 police enforcements authorities, 5 immigration authorities and 2 civil status registrars. None of the respondents indicated notaries.
Central Authorities were reported as **cross-border cooperation entities**, even though not all respondents were satisfied with their services. Likewise, the majority of the respondents (7 out of 8) deemed unsatisfactory the level of the **services provided by national authorities or entities** in PR cross-border disputes (in particular, the resources granted to social and legal services were considered insufficient and also the lack of official databases containing foreign laws archives on family matters was underlined). Therefore, 6 of the above-mentioned respondents require a higher level of the services involved in PR cross-border proceedings. As

to the **length of judicial proceedings**, on the contrary, only 3 out of 9 respondents lamented significative delays (4 gave a negative answer and 5 did not know).

- *Children's rights in cross-border PR disputes*

  9 out of 15 respondents stated that children have **access to justice** in Italy (6 did not know), even though none of them specified under which conditions. In addition, 8 out of 14 respondents answered that the **right of the child to be heard** is guaranteed, whereas 2 of them lamented that this right is not fully respected, although none of them provided any further detail.
  Regarding the **information** and **legal counselling** provided to children involved in PR cross-border disputes, the majority of the respondents stated that this information is generally given by lawyers/attorneys but can be also provided by guardians or social services.
  In relation to the **representation** of children in PR cross-border disputes and the **costs** associated to it, respondents agreed that representation is guaranteed, even though only one specified that the appointment of a special guardian by the juvenile court is needed to this aim and this is the case only when a conflict of interests between parents and child occurs. None of the respondents specifically indicated which are the main **category of expenses** (providing of information, counselling, legal representation).
  There was a general agreement that the **Regulation 2201/2003** strengthened the rights of children involved in PR cross-border litigation (especially thanks to the habitual residence of the child as main ground of jurisdiction and automatic recognition of decisions).

- *Practical difficulties in PR cross-border disputes*

  8 out of 14 respondents reported to deal with cases of cross-border PR cases and 3 of them declare to have encountered **practical difficulties** in the application of the Regulation 2201/2003, especially due to the limited knowledge by legal practitioners and the lack of specialized family lawyers/attorneys.

- *National law*

  All respondents (9) stated that the **definition of "parental responsibility"** provided by Italian legal order reflects the one contained in Regulation 2201/2003, without giving any other detail.
  A higher degree of uncertainty was registered with regard to the existence of national definitions of **"custody"** (8 respondents), **"rights of access"** (9 respondents) and **"protective measures"** (8 respondents), in relation to which mixed answers were given. In this regard, it should be pointed out that the Italian Civil Code does not provide for a proper definition of such notions, but, more generally, regulates on general level the exercise of PR.
  On a more general basis, all respondents agreed that also the Italian Civil Code, as the Regulation 2201/2003, contains the expression of "parental responsibility".
  Besides the parents, jointly or separately, respondents clarified (9 answers) that **parental responsibility holders** can also be public entities or other subjects, within or outside the family, appointed by the court. When the parental responsibility is held by the parents, the Italian legal order provides for joint custody (only in exceptional cases, when the joint custody does not reflect the best interests of the child, the court can grant the sole custody to one of the parents).

6 out of 8 respondents reported that in the Italian legal order it is possible to recourse to family mediation with in PR cross-border cases (2 respondents did not know).
When asked about the existence of **specialized courts in family matters**, 7 out of 10 respondents gave a positive answer and 3 gave a negative answer. Even though none of the respondents provided further details, the positive answers could be interpreted as referring to the juvenile courts (that, in the Italian legal order, have nonetheless a very limited jurisdiction concurrent with the jurisdiction of the civil courts).
Finally, 5 out of 9 respondents responded in the affirmative as to the existence of **proposals for a reform concerning PR** matters in the Italian legal order, although no clarification on the supposed content was provided (4 did not know).

– *Good practices*

Only one respondent suggested that **out-of-court settlements** should be encouraged.

– *Kafala*

Only 2 out of 9 respondents reported to have dealt with cases concerning **kafala**. One of them was aware of **databases or other supporting tools** (such as websites) regarding this topic, even though no further detail was given. On the contrary, 7 out of 9 deemed necessary additional supporting tools, but again they did not provide any clarification about the specific kind of tool.
3 out of 8 respondents agreed that kafala is recognised in the Italian legal order, whereas 2 answered in the negative and 3 did not know. However, according to 5 participants the Italian legal order qualifies kafala as custody and 2 responded as guardianship. None of the respondents reported to be aware of cases where Art. 33 of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (regarding cross-border placement of children) was applied in relation to kafala. Likewise, none of the respondents reported to have asked the assistance of the Central Authority in cases regarding kafala.
When asked about the main obstacles to an adequate protection of a child under kafala, 3 respondents indicated the difficulty to enter the Italian territory and the non-assimilation of the kafala to a full adoption.
A low number of responses was also registered in relation to the question whether the Italian legal order, concerning kafala cases, was compliant with the 1996 Hague Convention and the 1950 European Convention on Human Rights. The majority of the respondents (5 out of 8) declared not to have a specific opinion on that; only 2 answered in the positive and one in the negative, without however providing a proper motivation. A similar outcome was found on the question whether progress was made in the Italian legal order in relation to the protection of children under kafala: again, most of the respondents (6 out of 8) did not have a specific opinion, whereas one answered in the positive and one in the negative, without further explaining neither the supposed improvement nor the remaining problems.

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5. CHILD ABDUCTION

The section on child abduction received a lower number of responses compared to section on parental responsibility. It can be inferred that, among practitioners dealing with family cross-border cases regarding children, international child abduction is still an area of limited expertise.

5.1. MAIN FINDINGS

– *Contact points*

Only 3 respondents showed to be aware of the existence of **contact points** for international parental child abduction (hereinafter, IPCA) disputes even though they did not provide any further detail on their specific functions (one respondent answered in the negative and 7 did not know). 3 of them stated that the services provided are **free of charge**, while none gave the opposite answer and 6 did not know. It follows there is a limited awareness regarding the role of these entities.

– *Services and actors involved in IPCA cross-border disputes*

Regarding the information provided to parental responsibility holders involved in IPCA disputes, the majority of the respondents stated that information about **parents' rights and obligations** and about the **procedure** are generally given by lawyers/attorneys, even though some others indicated also the Central Authority. An identical outcome emerged in relation to **legal counselling** provided to parental responsibility holders involved in IPCA cases; lawyers/attorneys are unanimously reported to be the only subjects entitled to **represent** parents in IPCA disputes.

In relation to the costs associated to IPCA proceedings, none of the respondents specifically indicated which are the main **category of expenses** (providing of information, counselling, legal representation) even though it was underlined by 3 respondents that they can vary according to the fees charged by the legal counsel. Nonetheless, as to the professional fees, 3 out 9 respondents concurred on the possibility to recourse to **free of charge services** or obtain **legal aid** in IPCA litigation (the remainder did not know about this possibility).

As to other **authorities/professionals** who may be **involved in IPCA cross-border disputes**, 8 respondents indicated jurisdictional authorities, 8 embassies and consulates, 7 public prosecutors, 7 indicated police enforcements authorities, 5 immigration authorities, 4 social services, 3 indicated psychologists. None of the respondents indicated civil status registrars or notaries.

Central Authorities and police enforcements authorities were reported by one respondent each as **cross-border cooperation entities**, even though not all respondents (4 out of 6) were satisfied with their services. More in general, the same number of the respondents deemed unsatisfactory the level of the **services provided by national authorities or entities** in IPCA cross-border disputes (in particular, due to the limited knowledge of this field on behalf of legal practitioners), therefore, requiring a higher level of the services involved in IPCA proceedings.

As to the **length of judicial proceedings**, on the contrary, none of the respondents lamented significative delays.

– *Children's rights in IPCA disputes*

4 out of 8 respondents stated that children have **access to justice** in IPCA disputes (4 did not know), even though none of them specified under which conditions. In addition, 3 of them answered that the **right of the child to be heard** is guaranteed, whereas one lamented that this right is not fully respected, although none of them provided any further detail.
Regarding the **information** and **legal counselling** provided to children involved in IPCA disputes, a few respondents stated that this information is generally given by lawyers/attorneys or the special guardian when appointed by the court.
In relation to the **representation** of children in IPCA disputes and the **costs** associated to it, 2 respondents agreed that representation is not mandatory. None of them indicated which are the main **category of expenses** (providing of information, counselling, legal representation).
No cases of application of Art. 20 of 1980 Hague Convention on child abduction (according to which the return of the child may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedom) were reported.

– *Practical difficulties in IPCA cross-border disputes*

Out of 18 respondents, only one declared to have encountered **practical difficulties** in the application of the Regulation 2201/2003 in IPCA cases, underlining a limited application of Art. 11(8). The remainder declared not to have dealt with cases of application of the Regulation to IPCA cases.
Uncertainty was registered in relation to the question whether there are significant **differences** in terms of costs and delays between proceedings arising among EU Member States and among Contracting States of the 1980 Hague Convention: 5 out of 7 respondents did not have an opinion on this issue, the remainder answered one in the positive and the other in the negative, without however providing any further detail.

– *National law*

5 out of 9 respondents agreed that the Italian legal order provides for **provisional measures** pending IPCA proceedings. As to the **definitions of "serious risk of harm"**, "**parental acquiescence"** and **"habitual residence prior to the wrongful removal"**, 2 out of 7 respondents agreed that such definitions are not provided by the Italian legal order and 5 did not know about this specific issue.
3 out of 7 respondents concurred that the Italian legal order provides for the possibility of an agreement on the **relocation** of the child, however without explaining what the conditions and procedures are. In addition, when asked whether, in cases involving relocation flowing into abduction, the Italian legislation identifies the starting moment generating the **one-year period** (Art. 12(1) of the 1980 Hague Convention) to submit an application for return, only one out of 19 respondents specified that the time limit starts running when the left-behind parent

becomes aware of the whereabouts of the child, i.e. the country where he/she is present (the remainder did not know).
3 out of 7 respondents (the remainder did not know) responded in the affirmative when asked whether IPCA is regulated also by national provisions, without indicating them which could be intended as to the ratification law. The same number of respondents agreed on the possibility to recourse to **family mediation** or other ADR mechanisms in IPCA cases.
Regarding the existence of **specialized courts in family matters**, only 2 out of 7 respondents gave a positive answer, whereas 2 answered in the negative and 3 did not know. The positive answers could be interpreted as referring to the juvenile courts that, in the Italian legal order, have jurisdiction on IPCA cases.
Finally, 4 out of 6 respondents answered in the negative as to the existence of **proposals for a reform concerning IPCA** matters in the Italian legal order; 2 answered in the affirmative without providing addition clarification on the supposed content.

- *Good practices*

  None of the respondents indicated a specific good practice related to IPCA disputes.

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6. MAINTENANCE

The section on maintenance matters received a generally low number of responses. The most answered part was that on debtor-related information, which may be explained by the general nature of its questions. On the contrary, throughout the other parts the most frequent answer was "I do not know". This could also be linked to the technicality of some questions, which may have discouraged respondents from answering to them.

6.1. MAIN FINDINGS

– *Debtor-related information*

Regarding the judicial and non-judicial means to obtain **information concerning the financial situation of the debtor** prior to issuing a maintenance decision, respondents referred, as to the judicial, to the court order to produce evidence pursuant to Art. 210 of the Italian Civil Procedural Code and the court order to search for assets to be seised by means of data transmission according to Art. 492-*bis* of the Italian Civil Procedural Code. As to the non-judicial means, they referred to requests to access land registers/business registers/vehicle registers and investigation carried out by private detectives or the revenue police. These means are available to both the parties to the maintenance proceedings and the public bodies.

The debtor-related information that can be obtained usually regard its income and immovable property, investments and possible pending enforcement procedures concerning the debtor. Respondents also gave account of some limitations in the access to this information, particularly regarding the financial situation (debtor's income), while the information contained in land registers and vehicle registers are publicly available. No particular issue was reported as to the application of these means to obtain information in cross-border cases, and possible suggestions to improve the recourse to these means referred to the obligation to disclose the information from an early stage of the proceedings, and a closer cooperation in the access to the information by foreign entities.

As to the judicial and non-judicial means to verify a **serviceable address of the debtor**, respondents concurred on the possibility to access the population registers held by the Municipalities, or the civil status registers. Also, these means are available to both the parties to the maintenance proceedings and the public bodies.

Mixed answers came from the question on the existence of limitations in the access to this kind of information: some respondents believed there were such limitations, others did not, and other did not know. In relation to cross-border cases, the few respondents were generally unaware of any restrictions or impediment, however 3 of them did give an answer in the negative, without providing further details in this regard. Possible suggestions for improvement the location of the debtor's whereabouts concerned the creation of a common population register, and a closer cooperation in the access to this information.

Respondents confirmed that debtor-related information can be obtained also at the stage of enforcement of the decision.

– *Specific problems regarding maintenance recovery*

Almost all respondents did not answer to the question as to whether it would be desirable that the **ground of jurisdiction laid down in Art. 3(b)** of Regulation 4/2009 be clarified so that it applies also to **public bodies**. Nonetheless, the only two answers were in the affirmative.
Mixed answers were given with regard to the existence in Italy of **public benefits** granted to maintenance creditors in the event that the debtor fails to fulfil its obligation: 2 in the affirmative (without specifying under which conditions and/or procedures), 4 in the negative and 3 respondents did not know. Where these benefits are indeed granted, the majority of respondents were however unaware as to whether the State would have recourse against the debtor.
When asked to exemplify the **main obstacles** occurring in the context of cross-border recovery of maintenance, respondents generally reported difficulties in locating the debtor and its assets, and in the enforcement of maintenance orders.

– *Recognition, enforceability and enforcement under Chapter IV of Regulation 4/2009*

The majority of respondents (and, in some cases, all of them) answered "I do not know" to the following questions in this part of the questionnaire, thus showing a lack of awareness in relation to these aspects:

- whether in other Member States foreign maintenance decisions are directly enforced pursuant to **Art. 17** of Regulation 4/2009 in the same way as domestic maintenance decisions;
- whether there are difficulties in the application of **Art. 21 and Art. 24** of Regulation 4/2009;
- whether maintenance debtors tend to confuse the **grounds for refusal of enforcement** with **modification grounds**.

All respondents stated to have never applied for recognition and enforcement of a maintenance decision with the competent judicial authorities **without asking the Central Authority** for assistance.
Mixed answers were given to the question on the procedure chosen by the debtor in order to request for a **reduction of the maintenance obligation**: 4 respondents referred to the proceedings to modify the conditions of separation/divorce, 2 respondents recalled the appeal against the maintenance decision, and one of them the opposition against the enforcement.
Respondents also agreed that both the application for a declaration of enforceability and for enforcement require the **mandatory representation of a lawyer/attorney**.
Regarding the use of **Annexes I-IV** provided by Regulation 4/2009, respondents answered as follows:

- the majority of them believed that these forms are easy to find (5 out of 8), but mixed answers were given as to whether they are easy to fill in (4 respondents in the affirmative, 4 did not know). Also, respondents were generally unaware as to whether the national enforcement authorities find these forms easy to understand (5 did not know, and only 3 answered in the affirmative);
- similarly, a clear trend could not be found in relation to the improvement in the free circulation of maintenance decisions thanks to the use of these forms (4 positive answers, and 4 respondents did not know);

- almost all respondents answered "I do not know" with regard to the desirability to include further information in Annexes I-IV, to having experienced difficulties in obtaining the extracts of maintenance decisions from the competent authority in the State of origin, to the possibility that the authority of the State of origin issues an extract of the decision also in the language of the State of enforcement, and as to whether the competent authorities in the State of enforcement avail themselves of the possibility of dispensing with the production of the extract if the maintenance decision is written in their official language, or if there is an official translation available.

– *Cooperation between Central Authorities under Chapter VII of Regulation 4/2009*

The majority of respondents did not report **cases** in which they had requested the assistance of the Italian Central Authority. Only one of them referred to have made use of the system of cooperation in order to locate the debtor and cut the costs associated to it, and the same respondent also declared to have faced practical difficulties, without providing further details.
Mixed answers were given to the question on the **improvement in the access to justice** thanks to the implementation of the system of cooperation between Central Authorities: 2 in the affirmative, and 3 did not know. Most respondents were also uncertain as to whether, in their experience, Central Authorities facilitated an **amicable settlement** of the maintenance dispute: one of them gave a negative answer, and 4 did not know.
Regarding the languages accepted by the Central Authorities in Italy, beside Italian, one respondent correctly answered "English and French".
All respondents answered "I do not know" to the following questions in this part of the questionnaire, thus showing a lack of awareness in relation to these aspects:

- in case of an application for legal aid, whether the Central Authority provided its assistance and to which extent, whether assistance was provided also by entities/parties other than Central Authorities, and whether it is known to defendants and their counsels that they can apply for legal aid in maintenance enforcement proceedings;
- whether the assistance of the Central Authority has facilitated the bringing and the positive outcome of maintenance enforcement proceedings;
- whether Central Authorities have processed the application within the timeframe established by law;
- whether Central Authorities have taken measures to facilitate a quicker resolution of the proceedings;
- whether in Italy the applicant directly requests the assistance of Central Authorities, or there are decentralised entities/organisations serving this purpose;
- whether, as public bodies, they have experienced being denied the assistance of a Central Authority.

Regarding the use of **Annexes VI-VII** provided by Regulation 4/2009, respondents answered as follows:

- 4 out of 7 respondents believed that these forms are easy to find (the remaining 3 did not know) and 3 out of 7 respondents deemed them easy to fill in (the remaining 4 did not know);
- no suggestion for improvement was given with regard to these forms;

- mixed answers were given in relation to the practical support that Central Authorities offer to applicants when filling in the forms: one respondent answered in the affirmative (without exemplifying the type of support), one in the negative and 4 did not know. When asked to specify whether it is possible to receive other forms of support (e.g. from other entities/organisations), mixed answers were also given: one respondent answered in the affirmative, one in the negative, and 3 did not know.

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7. UNACCOMPANIED MINORS

This section was the one that registered the highest contribution of social workers. It is interesting to notice how on certain issues opposite outcomes have emerged.

7.1. MAIN FINDINGS

When asked whether the Italian legal order fulfills the **obligations** arising from the 1950 European Convention on Human Rights, the 1989 New York Convention on the Rights of the Child and the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children when dealing with the protection of unaccompanied minors, 6 out of 10 respondents answered in the affirmative and 4 in the negative, showing significantly diverging opinions on the matter.
Despite not giving any example, the was a unanimous consent on the existence of offices, agencies, organisations or other entities (e.g. guardians) specifically tasked with taking care of unaccompanied minors.
Uncertainty was registered in relation to the adoption on **specific provisions regarding unaccompanied children in the implementation of the Directive 2003/86 on family reunification and the Directives 2011/95** (on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted), **2013/32** (on common procedures for granting and withdrawing international protection) and **2013/33** (lying down standards for the reception of applicants for international protection). In fact, only 5 out of 11 responded in the affirmative and one of them specifically recalled that the Italian Immigration Statute contains provisions on unaccompanied children, that the Law n. 47/2017 is specifically devoted to unaccompanied children and that also the Legislative Decree n. 142/2015, implementing Directives 2013/32 and 2013/33, contains *ad hoc* provisions). The other 6 respondents declared not to have a specific opinion on this issue.
With regard to the suitability of **private international law** (hereinafter, pil) **instruments** to enhance the protection of unaccompanied minors, 6 out of 11 respondents answered in the affirmative, 4 did not know and one answered in the negative (especially considering that in Italy unaccompanied children are minors close to coming of age and, therefore, there is a rather limited room for the application of PIL Regulations and Conventions). At the same time, 4 out of 12 respondents stated that the Italian legal order contains specific PIL provision, whereas the other 8 did not know about the specific matter. However, it has to be stressed that, apart from the provisions of the Regulation 2201/2003 and the 1996 Hague Convention, in the Italian national legislation are not present specific PIL provision regarding this category of subjects, which shows a certain degree of uncertainty on the matter.

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8. INTERNATIONAL PROTECTION

Given its specific focus, this section has mainly been answered by social workers, who however reported different opinions on the issues that have been raised.

8.1. MAIN FINDINGS

According to the answers of 4 respondents, beside the person who represents the asylum seeker within the procedure for the obtainment of international protection, **additional assistance** is generally granted by NGOs, Italian Council for Refugees, voluntary services and preliminary reception centres.

4 respondents declared that generally migrants are not assisted by an **interpreter in civil proceedings regarding family matters** (which actually reflects the situation in Italy), but, at the same time, 3 others stated that this usually does happen (additional 3 did not know).

The majority of the respondents (5 out of 9) reckoned that **PIL rules** do not sufficiently take into consideration the situations of refugees, asylum seekers and stateless people, but no motivation was given (on the contrary, 2 answered that they do and 2 did not know).

Except for one respondent, who recalled that the notion of **habitual residence applied to displaced people** has to be interpreted taking into consideration the factual link with the territory, other 3 respondents did not have a specific opinion on this issue.

Only 2 respondents reported to have dealt with cases of **cross-border placement of children** within a procedure aimed at granting international protection, in particular two cases of family reunification of unaccompanied minors with the sister residing in the UK and the parents residing in France, respectively.

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9. MEDIATION

Given the very targeted focus, this section received a rather low number of responses reflecting the number of professional mediators that accessed the questionnaire. In general, from the given answers it is possible to infer a limited familiarity with cross-border cases.

9.1. MAIN FINDINGS

– *Cross-border family mediation*

Respondents confirmed that in the Italian legal order **cross-border family mediation** is not specifically regulated and that there is not a specific register of mediators for cross-border family cases. Indeed, no affirmative answers were given on these issues.
At the same time, however, no indication was given regarding **entities** to which directing families involved in cross-border disputes, neither was specified whether mediators involve children in mediation procedures.
General uncertainty emerged in relation to the possibility of recurring to family mediation also in cross-border cases: only 2 respondents answered in the affirmative, while one in the negative and 4 did not know. The same outcome was found in relation to the question whether the family mediation is **free of charge**.
Mixed answers emerged when participants were asked about their awareness of **national or international networks** of practitioners involved in cross-border family disputes (judges, lawyers/attorneys, mediators): 3 respondents answered in the affirmative and 3 in the negative. In general, however, there is no clear knowledge where to access information on family mediation or other ADR mechanisms when dealing with cross-border cases since no indication was given either in this respect. Indeed, only 2 respondents declare to be familiar with two **websites** (*www.crossbordermediator.eu* and *www.mikk-ev.de*). This is also confirmed by the fact that only 2 respondents declared to be aware of **cases of cross-border family mediation** (in particular, in a case of family reunification and another concerning a child to whom protective measures were granted).
The general trend of lack of familiarity regarding family mediation within cross-border family disputes is confirmed by the absence of answers regarding **practical difficulties** in the application of the Directive 2008/52 on certain aspects of mediation in civil and commercial matters and in the recognition of mediation agreements; as well as by only one respondent stating that the Regulation 2201/2003 should contain specific references to family mediation.
Also, no awareness was shown as to whether the **Central Authorities** recourse to professional mediators; only one respondent declared that Italian courts direct family members to professional mediators.

– *Other aspects*

When asked whether the Italian legal order provides for mechanisms of **arbitration or conciliation**, the majority of the 10 respondents reported that, according to the Italian Civil Code, the President of the Court is obliged to try the conciliation between the spouses. Moreover, Law n. 162/2014 introduced the possibility to reach out-of-court settlements with the assistance of one or more lawyers/attorneys (also in the presence of minor children).


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- *Children's rights*

  The 6 respondents who answered this sub-section agreed that the **child should be heard** when carrying on cross-border family mediation proceedings, however, among them, one lawyer specified that in practice this is actually appropriate only when the child shows a certain capacity of forming his/her own views. Nonetheless, **no cases** where reported of children being heard within cross-border family mediation procedures.

- *Good practices*

  None of the respondents indicated a specific good practice related to international family mediation.

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10. PUBLIC DOCUMENTS

Considering that Regulation 2016/1191 is applicable starting from 16 February 2019, this section registered a rather low response rate. A longer period of application is therefore needed in order to draw some significant conclusions.

10.1. MAIN FINDINGS

– *Content of the Regulation*

Only 4 out of 12 respondents declared to be familiar with the Regulation 2016/1191, which is confirmed by 9 out of 10 participants stating that additional information published on the e-justice portal or on national authorities' websites are desirable.

– *Exemption from legalization*

8 out of 11 respondents are not yet capable of identifying **applicative difficulties** given the short period in which the Regulation had been applicable at the time of the questionnaire. The other 3 respondents, on the contrary, claimed that the standard forms are not always sufficient and appropriate to make it possible for the document to enter the civil registers. In the absence of control mechanisms (QR code, microchips, transmission by certified email), another possible risk is that forged documents enter the civil registers.

– *Certified copies*

In Italy, in relation to the different categories of public documents, certified copies can be **issued** by notaries, courts, civil registrars and, in general, civil servants acting as public officials (13 answers). 6 out of 12 respondents stated that it is possible to obtain certified copies of foreign documents, even though none of them provided any further detail (4 answered in the negative, 2 did not know).
In general, certified copies have the same legal value as the original documents in order to be exhibited to administrative and jurisdictional authorities (8 respondents).
As to **certified translations of documents**, 12 out of 13 respondents indicated that they are issued by translators after the court has approved them. 7 out of 14 respondents wrongfully declared that in Italy exists an official list of translators that can issue certified translations and only 4 correctly answered for the negative (3 did not know). However, it cannot be excluded those who answered in the affirmative mistook the official list with the lists of translators and interpreters that each single Court may appoint as consultants.

– *Translations and multilingual standard forms*

In Italy, the only official language is Italian (14 respondents).
A high level of uncertainty has been registered as to the question on which **languages** are **accepted** in Italy for the public documents to be presented to their authorities (according to Art. 24 of the Regulation). As indicated in the e-justice website, besides Italian, Italy indicated

German (for Trentino Alto Adige region), French (for Valle d'Aosta region) and Slovenian (for Friuli Venezia Giulia region). However, 2 out of 8 respondents indicated all the official EU languages, 2 indicated English, one English and French.
No **practical difficulties** could be identified regarding the use of multilingual standard forms by any of the respondents (8 answers). The forms are generally considered easy to fill in (8 out of 11 answers; the remainder did not know) and complete in order to ensure the circulation of the corresponding document (5 out of 10 answers), even though 2 answered in the negative due to the above-mentioned risk of forgery and because they excessively summarise the content of the corresponding document (3 did not know).

– *Administrative cooperation*

The Italian **Central Authority** is the Internal Market Information system Coordinator, i.e. the Department of European Policies established within the Presidency of the Council of Ministers, even though only 2 out of the 5 respondents appeared to be aware of it, having the remainder indicated either the Ministry of Home Affairs or given no answer at all.
No awareness emerged in relation to the **IMI system** established by Regulation 1024/2012 (which shall be used for requests for information in cases of reasonable doubt of the authenticity of a document) since 6 out of 8 respondents had no opinion on this issue (one respondent considered it appropriate; another, instead, too complicated).
A similar outcome emerged when participants were asked whether it is easy to register to the IMI repository, whether it will improve the cooperation between Member State and whether the IMI system facilitates the access to the model documents contained in its repository, in relation to which aspects 5 out of 7 respondents did not have any opinion and 2 responded in the affirmative (specifying that IMI systems could be useful for municipal authorities).

– *Other comments*

The only substantial comment provided by one respondent deemed that it would have been more useful to provide multilingual forms accepted in each State, following the example of the 1976 Vienna Convention on the issue of multilingual extracts from civil status records, rather than the forms currently introduced by the Regulation, which translate the original document.

– *Questions about domestic law*

Almost all respondents agreed that in Italy it is provided the possibility to issue electronic documents (10 out of 12, the remaining 2 did not know). When asked to specify the procedure to issue and transmit such documents, respondents referred to digital signature and certified e-mails, respectively.
With regard to the existence of a system for establishing the authenticity of a document, respondents gave mixed answers: a slight majority did not know (6 respondents), 5 of them answered in the affirmative and only one in the negative. Among those who gave a positive answer, one further explained that the investigation on the authenticity can be initiated by courts, and it may concern all aspects of the document (besides authenticity, also the validity and evidential value).

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Mixed answers were also given as to the existence of means to provide evidence of the authenticity of a document whenever the legalisation cannot be obtained: only one respondent answered in the affirmative, 3 in the negative and the remaining 5 did not know.