

COVID-19 CHALLENGES TO THE CHILD ABDUCTION PROCEEDINGS*

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ABSTRACT

While creating a new notion of everyday life, the COVID-19 pandemic also affects the resolution of cross-border family disputes, including the international child abduction cases. The return of an abducted child to the country of his or her habitual residence is challenged by travel restrictions, international border closures, quarantine measures, but also by closed courts or cancelled hearings. Those new circumstances that befell the whole world underline two issues considering child abduction proceedings. The first one considers access to justice in terms of a mere possibility of the applicant to initiate the return proceeding and, where the procedure is initiated, in terms of the manner of conducting the procedure. The legislation requires a quick initiation and a summary resolution of child abduction proceedings, which is crucial to ensuring the best interests and well-being of a child. This includes the obligation of the court to hear both the child and the applicant. Secondly, it is to be expected that COVID-19 will be used as a reason for child abduction and increasingly as justification for issuing non-return orders seen as a “grave risk” to the child under Article 13(1)(b) of the Child Abduction Convention. By analysing court practice from the beginning of the pandemic in March 2020 to March 2021, the research will investigate how the pandemic has affected child abduction proceedings in Croatia. Available national practice of other contracting states will also be examined. The aim of the research is to evaluate whether there were obstacles in accessing the national competent authorities and courts during the COVID-19 pandemic, and in which manner the courts conducted the proceedings and interpreted the existence of the pandemic in the context of the grave risk of harm exception. The analyses of Croatian and other national practices will be

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used to gain an overall insight into the effectiveness of the emerging guidance and suggest their possible broadening in COVID-19 circumstances or any other future crises.

Keywords: *international child abduction, Child Abduction Convention, Brussels IIbis Regulation, COVID-19 pandemic, access to justice, grave risk of harm exception, undertakings*

1. INTRODUCTION

The COVID-19 pandemic affects the resolution of cross-border family disputes, including international child abduction cases. The most important international instrument which regulates international child abduction, i.e. the Convention on the Civil Aspects of International Child Abduction (hereinafter: the Child Abduction Convention),¹ defines international child abduction as a wrongful removal or retention of a child to a country different from that of their habitual residence. Such removal is unilaterally decided by the abductor, usually a parent, without the other parent's consent or subsequent acquiescence.² The aim of the Child Abduction Convention, which is to restore the *status quo* by means of a safe and prompt return of a child to the state of his or her habitual residence,³ is now being challenged by the COVID-19 pandemic circumstances such as travel restrictions, closed international borders, quarantine measures, but also by closed courts or cancelled hearings.⁴

This complex matter of child abduction cases is regulated at international and EU level, as well as by national laws.⁵ The research will be focused on the EU level, where the rules on child abduction between the Member States are amended by Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No

¹ HCCH, *Hague Convention on the Civil Aspects of International Child Abduction*, 25 October 1980, Hague XXVIII. Convention on the Civil Aspects of International Child Abduction (Konvencija o građanskopravnim vidovima međunarodne otmice djece), Official Gazette, International Treaties, No. 8/2018.

² Child Abduction Convention, Art 3. González Beilfuss, C., *Chapter C.8: Child Abduction*, in: Basdow, J.; Rühl, G., Ferrari, F; de Miguel Asensio, P. (eds.), *Encyclopaedia of Private International Law*, Edward Elgar Publishing, Cheltenham, UK, Northampton MA, USA, 2017, pp. 298–300.

³ Pérez-Vera, E., *Explanatory Report on the 1980 HCCH Child Abduction Convention*, HCCH, 1982, Para. 16.

⁴ See Leuret, A., *COVID-19 pandemic and derogation to human rights*, *Journal of Law and the Biosciences*, Vol. 7, No. 1, 2020, pp. 1-15.

⁵ See Kruger, T., *International Child Abduction: The Inadequacies of the Law*, Hart Publishing, Oxford and Portland, Oregon, 2011, pp. 1–15.

1347/2000 (hereinafter: the Brussels II*bis* Regulation).⁶ The paper will also consider the regulation and conduction of the proceedings in the Republic of Croatia.⁷ The Act on the Implementation of the Hague Convention on the Civil Aspects of International Child Abduction (hereinafter: the Implementation Act) was enacted on 1 January 2019, and became applicable in the Republic of Croatia.⁸ As to the implementation of the child abduction proceedings in Croatia, several ECtHR rulings have pointed out the inefficiency of child abduction proceedings in Croatia.⁹ Moreover, the research study on the four period prior to the enactment of the Implementation Act (hereinafter: the Župan/Kruger/Drventić Study) indicated problematic aspects of handling international child abduction cases in Croatia.¹⁰ It still remains open to see whether the Implementation Act has brought any improvements to the child abduction proceedings.

The first aspect identified as being affected by the pandemic is access to justice in terms of a mere possibility of the applicant to initiate the return proceeding before the Central Authorities and courts, and, where the procedure is initiated, in terms of the duration and manner of conducting the procedure. The second aspect

⁶ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 [2003] OJ L 338 (hereinafter: Brussels II*ter* Regulation).

⁷ Croatia became a party to the Child Abduction Convention on 8 October 1991, pursuant to the Notification of Succession of 8 October 1991 (Odluka o objavljivanju mnogostраниh međunarodnih ugovora kojih je Republika Hrvatska stranka na temelju notifikacija o sukcesiji) – Official Gazette, International Treaties, No. 4/94. The Brussels II*bis* Regulation is applicable in Croatia since 1 July 2013. The revised Brussels II*ter* Regulation will become applicable in the whole EU on 1 August 2022. Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction [2019] OJ L 178 (hereinafter: Brussels II*ter* Regulation).

⁸ Act on the Implementation of the Hague Convention on the Civil Aspects of International Child Abduction (Zakon o provedbi Konvencije o građanskopravnim vidovima međunarodne otmice djece), Official Gazette No. 99/2018.

⁹ Such as *Karadžić v Croatia*, App. No. 35030/04, 15 December 2005, and *Adžić v Croatia*, App. No. 22643/14, 12 March 2015, both denouncing the long duration of return proceedings; *Vujica v Croatia*, App. No. 56163/12, 8 October 2015, and *Adžić v Croatia (No. 2)*, App. No. 19601/16, 2 May 2019, both concerned the way in which the proceedings were conducted.

¹⁰ The results of this research will be mostly compared with the research in: Župan, M.; Drventić, M.; Kruger, T., *Cross-Border Removal and Retention of a Child – Croatian Practice and European Expectation*, International Journal of Law Policy and the Family, Vol. 34, No. 2, 2020, pp. 60–83. Other research conducted by Župan, M.; Ledić, S., *Cross-border family matters - Croatian experience prior to EU accession and future expectations*, Pravni vjesnik, Vol. 30, No. 3-4, 2014, pp. 49–77; Župan, M.; Hoško, T., *Application of the Hague Child Abduction Convention in SEE region: Croatian national report*, in: Župan, M. (ed.), *Private International Law in the Jurisprudence of European Courts – family at focus*, Faculty of Law Osijek, Osijek, 2015, pp. 227–243; Medić, I.; Božić, T., *Haška konvencija o građanskopravnim aspektima međunarodne otmice djeteta (1980) - casus belli*, in: Rešetar, B. (ed.), *Pravna zaštita prava na (zajedničku) roditeljsku skrb*, Faculty of Law Osijek, Osijek, 2012, pp. 161–197.

touches upon the COVID-19 pandemic used both as a reason for child abduction and increasingly as justification for issuing non-return orders seen as a “grave risk” to the child under Article 13(1)(b) of the Child Abduction Convention.¹¹

As in all other legal aspects affected by COVID-19, adjustment of child abduction proceedings is unavoidable as well. To remove a possible barrier to accessing the Central Authorities and courts, the European Union¹² and the Council of Europe¹³ are both offering their support in terms of collection and release of the information on the management of the judiciary and judicial cooperation in civil matters in their Member States during the pandemic. As to the manner of conducting the proceedings, the Hague Conference for Private International Law (hereinafter: the HCCH) issued a brief Toolkit¹⁴ giving the guidelines to help mitigate the impact of the COVID-19 crisis on a wrongfully removed or retained child. The HCCH addressed that the safe and prompt return of a child to the state of habitual residence needs to be properly carried out in a timely manner. The impact of the pandemic can be mitigate such that the authorities need to focus on each individual child on a case-by case basis, while carefully navigating the return exception cases and ensuring continuing and suitable contact between the parent and the child. It also stresses the significance of considering the application of the provisions that provide for urgent provisional measures for the protection of the child.¹⁵

By analysing court practice in incoming cases from the beginning of the pandemic in March 2020 to March 2021, the research will investigate how the pandemic has affected child abduction proceedings in Croatia. This research was made based on the entire case files, and data were collected on the operation of the Central Authorities, courts and other institutions involved. For that reason, Croatian practice will be mostly analysed within the framework of access to justice. Available national practice of other contracting states will also be examined in processing the matter of the application of the grave risk exception from Article 13(1)(b) of the

¹¹ Freeman, M., *The Child Perspective in the Context of the 1980 Hague Convention*, In-depth Analysis Requested by the JURI committee, 2020, p. 17, [[https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/659819/IPOL_IDA\(2020\)659819_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/659819/IPOL_IDA(2020)659819_EN.pdf)] Accessed 15 March 2021.

¹² European Commission, *Comparative Table on Covid-19 Impact on Civil Proceedings*, 2021, [https://e-justice.europa.eu/content_impact_of_covid19_on_the_justice_field-37147-en.do], Accessed 23 April 2021.

¹³ Council of Europe, *Management of the judiciary - compilation of comments and comments by country*, 2021, [<https://www.coe.int/en/web/cepej/compilation-comments>], Accessed 23 April 2021.

¹⁴ HCCH, *Toolkit for the HCCH 1980 Child Abduction Convention in Times of COVID-19* (hereinafter: HCCH Toolkit), 2020, [<https://www.hcch.net/en/news-archive/details/?varevent=741>], Accessed 15 March 2021.

¹⁵ *Ibid.*

Child Abduction Convention. The aim of the research is to evaluate whether there were obstacles to accessing the national competent authorities and courts during the COVID-19 pandemic, and in which manner the courts conducted the proceedings and interpreted the existence of the pandemic in the context of the grave risk of harm exception. While drawing the conclusions, the research will consider the usage of modern technologies, direct judicial communication and safeguards such as protective measures and undertakings. The analyses of Croatian and other national practices will be used to gain an overall insight into the effectiveness of the emerging guidance and suggest their possible broadening in COVID-19 circumstances or any other future crises.

2. ACCESS TO JUSTICE AND THE OPERATION OF THE RETURN PROCEDURE

The Child Abduction Convention stresses the need for speed by advocating for a prompt procedure.¹⁶ It obliges the Contracting States to use the most expeditious procedures available,¹⁷ while the judicial and administrative authorities shall act expeditiously in return proceedings and, where a decision has not been reached within six weeks from the commencement of the proceedings, the applicant or the Central Authority of the requested State has the right to request a statement of the reasons for the delay. A number of provisions are designed to maximise the accessibility of the Convention to left-behind parents by removing financial or other obstacles to submission of applications under the Child Abduction Convention.¹⁸ The compliance with those rules can be challenged by the extraordinary circumstances such as the pandemic. This chapter will elaborate how the pandemic affected the operation of Central Authorities and courts.

2.1. The Application before the Central Authority

The application of the Child Abduction Convention will in broad outline depend on the instruments brought into being for this purpose, including the acting of Central Authorities.¹⁹ The left-behind parent usually applies to the Central Authority of the child's habitual residence, although he or she can apply directly to the Central Authority of the requested State or even straight to the courts of the

¹⁶ Child Abduction Convention, Preamble and Arts. 1, 2, 7, 9, 11 and 12(1).

¹⁷ Child Abduction Convention, Art. 2., Pérez-Vera, *op. cit.*, note 3, Para. 63.

¹⁸ Shulz, R., *The Hague Child Abduction Convention. A Critical Analysis*, Hart Publishing, Oxford and Portland, Oregon, 2013, p. 11.

¹⁹ Beaumont, P.; McEleavy, P., *The Hague Convention on International Child Abduction*, Oxford University Press, Oxford, 1998, p. 242.

requested Member State.²⁰ Where the left-behind parent applies to the Central Authority of the requesting State, that Central Authority has to ensure that the application meets the requirements of the Child Abduction Convention and that all necessary supporting documents, translated where necessary, are attached to the application before forwarding it to the Central Authority of the requested State.²¹ Upon receipt of the application, the Central Authority of the requested State will also check whether the application meets the requirements of the Convention, before transmitting the request to the court, and where necessary, ask the requesting State to supply further information. The functions of the Central Authority are much broader and not only related to application management. They are prescribed by Article 7 of the Child Abduction Convention, which determines how, among other things, Central Authorities shall initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and taking all appropriate measures to secure the voluntary return of the child or to bring about an amicable resolution of the issues. The system of the Central Authorities in Articles 53-55 of the Brussels II*bis* Regulation corresponds to the procedures of the Child Abduction Convention.²² The new wording of the Brussels II*ter* Regulation identifies the oversights and regulates more broadly and precisely the functions of the Central Authorities, while incorporating the specific function of the Central Authorities within the Child Abduction Chapter.²³ The next chapters will focus on the accessibility and speed of the acting of Central Authorities.

2.1.1. *The Operation of EU Central Authorities*

The Child Abduction Convention does not explicitly regulate the time limit for the Central Authority acting, still considering the six-week time limit for a return decision and 12 months for mandatory return; it is clear that it should act expeditiously. The Brussels II*bis* Regulation does not provide for a provision regulating this matter either. There was an attempt in the wording of the Brussels II*bis* Recast

²⁰ Child Abduction Convention, Art. 29, Pérez-Vera, *op. cit.* note 3, Para. 139.

²¹ HCCH, *Guide to Good Practice Child Abduction Convention: Part I - Central Authority Practice*, 2003, paras 5.1–5.8., [<https://assets.hcch.net/docs/31fd0553-b7f2-4f34-92ba-f819f3649aff.pdf>], Accessed 16 March 2021.

²² See Župan, M., *Cooperation between Central Authorities*, in: Honorati, C. (ed.), *Jurisdiction in Matrimonial Matters, Parental Responsibility and International Abduction. A Handbook on the Application of Brussels Iia Regulation in National Courts.*, Peter Lang, Torino, 2017, pp. 265-293.

²³ Brussels II*ter* Regulation, Art. 23., Musseva, B., *The recast of the Brussels Iia Regulation: the sweet and sour fruits of unanimity*, ERA Forum, Vol. 21, 2020, p. 136.; Župan, M.; Hoehn, C.; Kluth, U., *The Central Authority Cooperation under the Brussels II ter Regulation*, Yearbook of Private International Law, Vol. 22, 2020/2021, pp. 217-231.

Proposal providing that the Central Authorities should complete their acting of preparing the file to be transferred to a court in six weeks, save where exceptional circumstances make this impossible.²⁴ Such provision has not become part of the new Brussels II^{ter} Regulation, which merely states that such authorities should act expeditiously.²⁵

In some Contracting States the implementing legislation sets time limits for various stages of legal proceedings which can include the acting of the Central Authority.²⁶ The Croatian Implementation Act stipulates only that the acting of the Central Authority should be expeditious.²⁷ The Lowe/Stephens Study showed that in 2015 Central Authorities took an average of 93 days to send applications to a court.²⁸ The Župan/Kruger/Drventić Study affirmed that the average time the Central Authority needed to transmit the application to a court was 86 days. Case-by-case analyses indicated that the long periods taken by the Central Authority are mostly caused by incomplete applications. The completion of the application was additionally prolonged by the periods needed for the issuance of public documents, the making of translations, or simply inactivity of the applicant.²⁹ In circumstances of the pandemic, this time could be even prolonged due to work organisation or human and technological capacities of Central Authorities. This period can also be affected by the accessibility of other institutions, from which e.g. the left-behind parent needs to issue some documentation, obtain legal aid, make the translation of documentation, and the like.³⁰

²⁴ Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast), Brussels, 30.6.2016, COM(2016) 411 final, 2016/0190 (CNS) (hereinafter: Brussels II^{bis} Recast Proposal), Recital 27 and Art. 63(1)(g). See: Beaumont, P.; Walker, L.; Holliday, J., *Parental responsibility and international child abduction in the proposed recast of Brussels IIa Regulation and the effect of Brexit on future child abduction proceedings*, International Family Law Journal, Vol. 2016, 2016, pp. 307-318.; Kruger, T.; Samyn, L., *Brussels IIbis: successes and suggested improvements*, Journal of Private International Law, Vol. 12, No. 1, 2016, pp. 132-168.

²⁵ Brussels II^{ter} Regulation, Art. 23(1).

²⁶ HCCH, *Guide to Good Practice Child Abduction Convention: Part I - Central Authority Practice*, op. cit., note 22, p. 44. See: Schuz, R., *Disparity and the Quest for Uniformity in Implementing the Hague Abduction, Convention*, in: Rains E, R., *The 1980 Hague Abduction Convention. Comparative Aspects*, Wildy, Simmonds & Hill Publishing, London, 2014, pp. 1-58.

²⁷ Implementation Act, Art. 9(11).

²⁸ Lowe, N.; Stephens, V., *Global Trends in the Operation of the 1980 Hague Abduction Convention: The 2015 Statistics*, Family Law Quarterly, Vol. 52, No. 2, 2018, p. 376.

²⁹ Župan; Drventić; Kruger, op. cit., note 11, p. 70.

³⁰ See: Župan, M.; Drventić, M., *Prekogranične građanskopravne otmice djece*, in: Župan, M. (ed.), *Prekogranično kretanje djece u Europskoj uniji*, Pravni fakultet Osijek, Osijek, 2019, pp. 357-360.

In order to inform the judiciary, national authorities, legal practitioners but also the citizens, the European Commission has collected through the European Judicial Network contact points and published the Comparative Table on the Covid-19 Impact on Civil Proceedings (hereinafter: the Comparative Table).³¹ This informative table contains the information on EU judicial cooperation for 25 Member States that provided their answer.³² 16 Member States replied that all or most of the caseworkers of the Central Authority work from home, i.e. telework.³³ Some of them provided additional information on the mode of operation, indicated that e-mail is the best form of communication and warned of possible delays. Some of them stressed that, despite the fact that most of the work is carried out by teleworking, there are employees on premises who deal with the post or urgent cases.³⁴ Seven Member States indicated that their Central Authority is operational, without providing the manner of work organisation.³⁵ Greece submitted the answer that the work is carried out in a mixed system of remote working and physical attendance at the workplace in rotation. The Republic of Croatia informed that the Central Authority is operational. Still, the employees work in rotating groups, which was prescribed at national level by the Government Decision for all state administration employees.³⁶ Czechia reported that the Central Authority works in emergency mode, i.e. with no personal contact and in limited working hours. Despite the mode of operation, some of the Member States indicated that they accept the applications attached as a scanned document, while delivery of a hard copy of original documents can be postponed.³⁷

It is clearly noted that the Comparative Table serves only for the information purposes and it is not binding on either Member States or the Commission. It is unquestionable that such kind of information enhanced cooperation when the EU was confronted with the pandemic and lockdown. Objections to the questionnaire refer to the fact that the question dealing with the operation of Central Authorities was merely named “EU Judicial Cooperation”. As a consequence, the answers were

³¹ European Commission, *Comparative Table on Covid-19 Impact on Civil Proceedings*, *op. cit.* note 13.

³² Data were not delivered by Cyprus and Sweden.

³³ Austria, Belgium, Denmark, Estonia, Finland, France, Ireland, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, and Slovenia.

³⁴ Belgium, Finland, France, and Portugal.

³⁵ Bulgaria, Croatia, Germany, Hungary, Latvia, Malta, and Spain.

³⁶ Decision on the Work Organisation in the State Administration Bodies during the Epidemic of the COVID-19 Disease Caused by SARS-CoV-2 Virus (Odluka o organizaciji rada tijela državne uprave za vrijeme trajanja epidemije bolesti covid-19 uzrokovane virusom SARS-CoV-2), Official Gazette No. 32/2020. See: Grgurev, I., *COVID-19 and Labour Law: Croatia*, Italian Labour Law e-Journal, Vol. 13, No. 1, 2020, p. 3.

³⁷ Estonia, France, Poland, Romania, Slovakia, Slovenia, and Spain.

delivered to different extents and with different meanings. Despite a clear disclaimer that this represents only the overview document which cannot reproduce relevant measures adopted by Member States in their entirety, with all details and exceptions, it would have been more useful if the Commission had drafted the questionnaire with some sub-questions which would have contributed to the uniformity of answers. Such sub-questions could be related to a work flexibility arrangement (teleworking or working in the office), a type of communication (personal or remote – written, by phone or e-mail), and whether the Central Authority receives and transfers the application without original documentation. To assure full utilisation and effectiveness of this kind of informative document it is also necessary to be sure that the information is regularly updated. It is for sure that the information provided was in force at the beginning of the pandemic, in the period from March to May 2020. Although there have certainly been periods of normalisation or successful adaptation of administrative work, the EU is still confronted with the pandemic. Judicial and administrative cooperation is still not normalised, and the manner of its organisation needs to be regularly updated in order to assure functional cross-border cooperation, especially in those sensitive cases such as child abduction.

2.1.2. *The Operation of the Croatian Central Authority*

In the period from March to May 2020, which was marked by the beginning of the pandemic and the strictest lockdowns, there were no new incoming return cases initiated before the Croatian Central Authority, seated within the Ministry of Labour, Pension System, Family and Social Policy.³⁸ The two incoming cases were initiated after the start of the pandemic, in months following that initial period.

In the first case, on 29 June 2020, the Swedish Central Authority addressed the Croatian Central Authority via e-mail, following abduction of the child taken by the mother from Sweden to Croatia. The Croatian Central Authority reacted promptly and only a few days later asked the Swedish Central Authority to send the original documents and simultaneously sent the scanned documents to the competent Social Welfare Centre to check whether the mother agrees to return the child voluntarily. On 21 July 2020, the Croatian Central Authority informed the Swedish Central Authority that the mother does not agree to return the child voluntarily and asked again for the original documents to be able to send the ap-

³⁸ Ministry of Labour, Pension System, Family and Social Policy, [<https://mrosp.gov.hr/obitelj-i-socijalna-politika/obitelj-12037/djeca-i-obitelj-12048/medjunarodna-suradnja-u-podrucju-zastite-djece-12054/prekogranični-postupci-o-roditeljskoj-skrbi-12055/12055>], Accessed 17 March 2021. See: Župan, M.; Medić, I.; Poretti, P.; Lucić, N.; Drventić, M., *The Application of the EU Fam's Regulations in Croatia*, in: Viarengo, I.; Villata, F. (eds), *Planning the Future of Cross Border Families. A Path Through Coordination*, Hart Publishing, Oxford, 2020, pp. 429-461.

plication to the court. The Croatian Central Authority decided not to wait further for the documents to be completed and hence forwarded the application to the Municipal Civil Court of Zagreb, noting that the remaining documents are to be sent subsequently. The Municipal Civil Court received the application on 8 September 2020. It took around 60 days to transmit the application from the Central Authority to the court. There is no sign that the pandemic has slowed down the acting of any Central Authority in this case. It is assumed that a delay in completion of documentation occurred due to the applicant's lack of financial sources.³⁹

In the second case conducted upon the application of the Central Authority of the United Kingdom filed in October 2020, no extraordinary delays in the operation of the Central Authority were identified. It took around 60 days to transmit the application to the Court because the Croatian Central Authority needed to locate the child in Croatia, since the child did not reside at the address written in the return application. This communication and transfer between the competent institutions were conducted without difficulties caused by the pandemic.⁴⁰ The cases analysed have shown that there were no delays in the operation of the Croatian central authority in child abduction cases during the pandemic. Work was organised such that sensitivity and emergency of the child abduction cases were a priority. Communication with the central authority was uninterrupted both in writing and by e-mail.

2.2. Return Proceedings

The Child Abduction Convention obliges the authorities to act expeditiously in proceedings for the return of a child and aims at issuing a decision within six weeks from the date of commencement of the proceedings.⁴¹ This means that the authorities have to use the fastest procedures in their legal systems and give priority to return applications.⁴² The same time frame was provided by the Brussels II*bis* Regulation.⁴³ The rule was additionally strengthened by the Commissions' Practice Guide for the application of the Brussels IIa Regulation and taking a stand that Member States should seek to ensure that a return order issued within the prescribed six weeks shall be enforceable within the same period.⁴⁴

³⁹ Municipal Civil Court of Zagreb, No. 131 R1 Ob-1746/20-8 of 21 October 2020.

⁴⁰ Municipal Civil Court of Zagreb, No. 147 R1 Ob-2726/20-16 of 25 January 2021.

⁴¹ Child Abduction Convention, Art. 11.

⁴² Pérez-Vera, *op. cit.*, note 3, Para. 104.

⁴³ Brussels II*bis* Regulation, Art. 11(3).

⁴⁴ European Commission, *Practice Guide for the application of the Brussels IIa Regulation*, 2016, p. 56. [http://ec.europa.eu/justice/civil/files/brussels_ii_practice_guide_en.pdf], Accessed 17 March 2021.

Finally, the Brussels II^{ter} Regulation clarifies this provision further, by providing that a six-week time frame for the procedures applies to each instance.⁴⁵ By proposing these time frames the legislator provided for a more realistic time frame.⁴⁶

Proceedings are conducted in accordance with procedural law of each Contracting State. The expeditious acting should be ensured through a national implementation legislative.⁴⁷ In addition to the timing of the operation,⁴⁷ there are some obligations imposed on the courts that need to be met in that short time frame. First and foremost, there is an obligation to hear a child. The Child Abduction Convention does not contain a general provision on the hearing of a child. It does, however, refer to the child's objections to return: Article 13(2) stipulates that the court may refuse return if the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his or her views.⁴⁸ This provision was supplemented by the Brussels II^{bis} Regulation, explicitly stating that, when applying Articles 12 and 13 of the Child Abduction Convention, the child must be given the opportunity to be heard.⁴⁹ In order to address the shortcomings of the current Brussels II^{bis} Regulation,⁵⁰ the Brussels II^{ter} Regulation raised the principle of hearing the child to a higher level by introducing a separate provision on the right of the child to express his or her views.⁵¹ This provision makes the hearing of the child a general rule for all cases in matters of parental responsibility and not only in relation to return proceedings. In addition to the obligation of hearing the child, the Brussels II^{bis} Regulation provides that a court cannot refuse to return a child unless the person who requested the return of the child has been given an opportunity to be heard.⁵²

In order to secure the prompt return during the pandemic the HCCH advised the Contracting States to promote mediation, including online and remote mediation; to arrange information, electronic and communications technology in order to ensure that abduction cases advance towards a resolution, including electronic filing of documents, virtual and/or hybrid hearings, and the taking of evidence by electronic

⁴⁵ Brussels II^{ter} Regulation, Art. 24(2) and (3).

⁴⁶ Beaumont; Walker; Holliday, *op. cit.*, note 25, p. 313.

⁴⁷ Župan, M., Foreword, in: Župan, M. (ed.), *Private International Law in the Jurisprudence of European Courts - Family at Focus*, Faculty of Law Osijek, Osijek, 2015, pp. 17–36.

⁴⁸ Child Abduction Convention, Art. 13(2).

⁴⁹ Brussels II^{bis} Regulation, Art. 11(2).

⁵⁰ See: Ubertaini, B., *The hearing of the child in the Brussels IIa Regulation and its Recast Proposal*, *Journal of Private International Law*, Vol. 13, No. 3, 2017, pp. 568–601.

⁵¹ Brussels II^{ter} Regulation, Art. 21.

⁵² Brussels II^{bis} Regulation, Art. 11(5) and Brussels II^{ter} Regulation, Art. 27(1). Pataut, E., *Article 11 Return of the child*, in: Magnus, U.; Mankowski, P. (eds.), *Brussels IIbis – Commentary*, Sellier European Law Publishers, München, 2012, pp. 127–145.

means; to safeguard equal participation and access to information, resources, and technology, e.g. equal access to video- and teleconferencing equipment and internet connectivity and to communication and collaboration among members of the judiciary across borders through direct judicial communications or the International Hague Network of Judges (hereinafter: IHNJ).⁵³ The chapter will further analyse whether there were any pandemic related obstacles preventing the court from acting expeditiously and hearing the child. It will also be examined whether the recommendations of the HCCH were employed by the Member States.

2.2.1. *The Operation of the Judiciary in EU Member States*

In addition to the information on Central Authorities, the Comparative Table also contained the information collected on time limits, the organisation of the judicial system and the judiciary in EU Member States.

Some of the Member States introduced many legislative measures in order to regulate the time limits in civil procedure, while in some of them there were no changes. Most of the measures concerned the suspension of the limitation period for the court acting, with certain exceptions.⁵⁴ Even though many States listed the cases and procedures which are exempted from suspension, none of the answers listed child abduction. Most of the Member States also extended the time periods for parties to act, especially when applying for legal remedies.⁵⁵ There were countries which did not introduce any measures.⁵⁶

Regarding the organisation of the judicial system and the judiciary, most of the Member States informed that they postponed hearings in civil matters in non-urgent cases.⁵⁷ Some of them listed urgent cases, which mostly include family matters and child protection matters.⁵⁸ Some Member States indicated that, when the procedure continues, a decision can be issued without hearing, i.e. on the basis of conclusions drawn by parties and given in writing.⁵⁹ Many Member States also indicated the possibility of conducting remote hearings.⁶⁰ Denmark and Germany informed that the judges are the ones deciding on urgent cases.

⁵³ HCCH Toolkit, *op. cit.*, note 15, p. 2.

⁵⁴ Austria, Belgium, Bulgaria, Cyprus, Czechia, Estonia, France, Italy, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, and Spain.

⁵⁵ Belgium, Bulgaria, Estonia, France, and Luxembourg.

⁵⁶ Denmark, Finland, Germany, Ireland, Lithuania, and Sweden.

⁵⁷ Belgium, Croatia, Cyprus, Estonia, Greece, Ireland, Italy, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.

⁵⁸ Estonia, France, Ireland, the Netherlands, Lithuania, and Portugal.

⁵⁹ Belgium, the Netherlands, and Luxembourg.

⁶⁰ Belgium, Bulgaria, Croatia, Estonia, Finland, France, Hungary, Latvia, the Netherlands, Portugal, and Romania.

Like in the part referring to the operation of Central Authorities, the information on the operation of the judiciary differs a lot. For that reason, it cannot be stated for sure that all Member States have secured that the court will deal with the abduction proceedings as expeditiously as possible. Still, it can be derived from most of the information that in some countries there was the possibility of conducting hearings in person with the health measures respected, while in some of them, distance hearings could be held.

2.2.2. *The Operation of Court Proceedings in Croatia*

The Implementation Act has now introduced more stringent and specialised rules of procedure to be applied in international child abductions.⁶¹ The Act was enacted in response to the ECtHR *Adžić v Croatia*⁶² judgment, where the court determined that the judicial procedure in Croatia lasted 151 weeks longer than the envisaged 6 weeks.⁶³ The Župan/Kruger/ Drventić Study has shown that the average duration of the first instance procedure was 56.66 days. The longest and the shortest trial recorded lasted for 239 days and 22 days, respectively.⁶⁴

The Implementation Act introduced concentrated jurisdiction in child abduction cases.⁶⁵ This Act placed all international child abduction cases within the jurisdiction of the Municipal Civil Court of Zagreb and all appeals in this matter within the jurisdiction of the County Court of Zagreb.⁶⁶ This was in the line with the previous recommendation by the practitioners and stakeholders,⁶⁷ as well as aca-

⁶¹ Implementation Act, Arts. 16-19.

⁶² *Adžić v Croatia*, App. No. 22643/14, 12 March 2015.

⁶³ Župan; Hoško, *op. cit.*, note 11, p. 238.

⁶⁴ The Lowe/Stephens 2015 Study has provided the information for selected countries, where the time it took the national courts to conclude applications varied, for instance, an average of 43 days in Scotland and 82 days in Germany. Lowe; Stephens, *op. cit.*, note 29, p. 377.

⁶⁵ See: Župan, M.; Poretti, P., Concentration of jurisdiction in cross-border family matters – child abduction at focus, in: Vinković, M. (ed.), *New developments in EU labour, equality and human rights law*, Faculty of Law Osijek, Osijek, 2015, pp. 341–359.

⁶⁶ Implementation Act, Art. 14. Prior to that, there were 24 municipal courts dealing with the return requests in the first instance and 3 county courts functioning as courts of second instance in family matters in the Republic of Croatia. Act on the Territorial Jurisdiction and Seats of the Courts (Zakon o područjima i sjedištima sudova), Official Gazette No. 67/18.

⁶⁷ Hague Conference on Private International Law, *The Judges' Newsletter on International Child Protection*, Vol. XX / Summer-Autumn 2013; Permanent Bureau of the Hague Conference on Private International Law, *Conclusions and Recommendations of the Fourth Meeting of the Special Commission to Review the Operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (22–28 March 2001)*, p. 10, [<https://assets.hcch.net/docs/ee6929b5-2244-4466-ad5a-6d2ccb772e3.pdf>] Accessed 20 March 2021; Hague Conference on Private International Law, *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of Interna-*

demics.⁶⁸ To ensure that the first-instance procedure lasts no longer than six weeks, the Implementation Act empowers the courts with additional tools to depart from ordinary family law procedures, e.g. parties may be summoned by a phone call, telefax or e-mail, the court does not have to hold an oral hearing, and the court has to render its decision within eight days of the date of the conclusion of a hearing. Furthermore, the Implementation Act encourages judicial cooperation, with the aim of speeding up the collection of evidence from abroad. The said Act has also introduced the provision on issuing a second-instance decision within 30 days.⁶⁹ No extraordinary appeal is permitted.

Four cases were conducted before the Municipal Civil Court of Zagreb in the examined period, i.e. from March 2020 to March 2021. Two of them were initiated before the court in Croatia prior to the outbreak of the pandemic in March 2020. The analyses will focus on the part of the proceedings conducted in the period from March 2020 to the end of proceedings.

In the case initiated by the central authority of Bosnia and Herzegovina, the applicant father asked the return of a child taken by the mother to Croatia. The Court ordered the return of the child by its decision from the end of 2019.⁷⁰ The court of second instance accepted the mother's appeal and returned the case to the court of first instance for a renewed procedure with its decision of 28 January 2020.⁷¹ As the court of second instance decided that the reasons set out in Article 13(1) (b) were not examined broadly enough when the case was returned, on 4 March 2020, the court of first instance addressed the competent Social Welfare Centre to ask for its opinion. The Centre delivered its opinion on 1 July 2020. The significant delay in the Centre's proceedings can be noticed and can be credited to the outbreak of the novel pandemic. The Court hearing was held in person on 16 September 2020, with only legal representatives of both parties present. The new first-instance non-return decision was issued on 19 November 2020, i.e. 10 months after the second-instance decision.⁷² It took too long for the whole proce-

tional Child Abduction, PART II – Implementing Measures, 2003, p. 29, [<https://assets.hcch.net/docs/de043c72-ee0e-477b-8bae-53726a4b8545.pdf>], Accessed 20 March 2021.

The latest, the Brussels IIter Regulation in recital 41 provides that Member States should consider concentrating jurisdiction in child abduction cases in a limited number of courts.

⁶⁸ Beaumont; Walker; Holliday, *op. cit.*, note 25, pp. 307-318.; Župan; Poretti, *op. cit.*, note 65, pp. 341-359; Župan, M.; Poretti, P., *Concentration of Jurisdiction – Is Functionality of Judiciary Becoming an Obstacle to Access to Justice?*, EU and Comparative Law Issues and Challenges Series (ECLIC), Vol 3, 2019, pp. 297–323;

⁶⁹ Implementation Act, Art. 16(4).

⁷⁰ Municipal Civil Court of Zagreb, No. 130 R1 Ob-937/2019-22 of 18 November 2019.

⁷¹ County Court of Zagreb, No. 39 Gž Ob-100/20-3 of 28 January 2020.

⁷² Municipal Civil Court of Zagreb, No. 130 R1 Ob-349/2020-55 of 19 November 2020.

ture to be renewed due to a delay in the acting of the Social Welfare Centre. The Court asked the Croatian authorities to question the father's situation, while the circumstances of the father's situation in the requesting State should be examined. The delays can be undoubtedly mostly attributed to the pandemic; there are still some matters attributable to the court not acting in accordance with the aim of the Child Abduction Convention.⁷³

The second case was initiated at the end of 2019 by the father, also through the Bosnian Central Authority. By the Court decision of 7 February 2020, the Municipal Civil Court of Zagreb ordered a return decision of the two children to Bosnia and Herzegovina.⁷⁴ The court of second instance received the case and the appeals on 12 March 2020. It issued a decision on 28 May 2020.⁷⁵ It missed a 30-day deadline prescribed in the Implementation Act by more than two times. The court of second instance abolished the decision and returned it for a new trial before the court of first instance. The Municipal Civil Court of Zagreb issued a new decision on 1 July 2020,⁷⁶ again ordering the return of the children to Bosnia and Herzegovina. The case considered very sensitive circumstances which included sexual abuse of the child, and it took a long time to examine those allegations and evidence. It can be concluded that the court of second instance was the one that caused a delay first by long proceedings and second by insisting on a thorough examination of the situation.

The two cases were initiated during the pandemic, and have been previously described in the chapter on the operation of the Central Authorities. They will be further analysed in this chapter. In the case initiated by the Swedish Central Authority, the Court received the return application from the Croatian Central Authority on 8 September 2020.⁷⁷ Just one day after receipt of the request, the Croatian IHNJ judge contacted the Swedish IHNJ judge and asked about the regulation of parental responsibility in Sweden in the cases where the parents are not married. It took only one day to receive the answer stating that according to Swedish law, if the parents are not married, custody of the child is awarded to the mother. On 21 October 2020, the Court issued a non-return decision, explaining that removal of the child was not illegal in accordance with Article 3 of the Abduction Convention, since the father did not submit any evidence of joint parental responsibility. It took the Court 43

⁷³ See: Župan; Kuger; Drventić, *op. cit.*, note 11., p. 78.; Župan, M.; Drventić, M., *Kindesentführung vor kroatischen Gerichten mit besonderer Rücksicht auf die aus Deutschland kommenden Anträge*, *Revija za evropsko pravo*, Vol. 20, No. 1, 2018, pp. 63-83.

⁷⁴ Municipal Civil Court of Zagreb, No. 97 R1 Ob-2368/19-41 of 7 February 2020.

⁷⁵ County Court of Zagreb, No 76 Gž Ob-323/2020-4 of 28 May 2020.

⁷⁶ Municipal Civil Court of Zagreb, No. 97 R1 Ob-1130/20-4 of 1 July 2020.

⁷⁷ Municipal Civil Court of Zagreb, No. 131 R1 Ob-1746/20-8 of 21 October 2020.

days, i.e. exactly 6 weeks, to issue a decision. There were no delays because of the pandemic. The case provides a good example of using direct judicial communication, which in this case led to a faster case resolution.⁷⁸

In the case initiated by the Central Authority of the United Kingdom, the Court received the application from the Central Authority on 11 December 2020.⁷⁹ As soon as the Court received the application, it ran multiple actions in parallel, i.e. it referred back to the Croatian Central Authority to obtain some information about the application, issued a decision on appointing a guardian ad litem to the minor child, requested the competent social welfare centre to provide its opinion regarding the existence of the circumstances which would require the application of Article 13(a)(b) of the Child Abduction Convention. It took less than 10 days for the Social Welfare Centre to provide its opinion. The hearing was held in person on 22 January 2021, the mother and the applicant father were present, together with their representatives. The hearing was also attended by the child's guardian ad litem. The father was heard at the hearing. The child was heard on 23 January 2021 personally by the guardian ad litem on the premises of the Centre for Special Guardianship, which provided the court with an extensive report afterwards. The Court issued a decision on 25 January 2021, 44 days after the commencement of proceedings, which corresponds to the 6-week time frame. No delays were recorded in the court acting, all other institutions included – the Social Welfare Centre and the Centre for Special Guardianship acted expeditiously, with no obstacles caused by the pandemic.

The analysis of the case law indicated that the court of first instance acted expeditiously despite the pandemic. The first instance decisions were issued in the 6 weeks timeframe and had met all procedural requirements. The use of the direct judicial communication is commended. There are noted delays in the acting of the second instance court and Social Welfare Centre in the most critical period of the pandemic. The previously observed difficulties related to the broad analyses of circumstances in the country of abduction, which extends beyond the aims of Child Abduction Convention, are still present.

3. GRAVE RISK OF HARM EXCEPTION

The Child Abduction Convention provides a limited number of grounds for refusing the return. The authorities of the Contracting States most often use the

⁷⁸ See: Lortie, P., *Neposredna sudačka komunikacija i Međunarodna haška sudačka mreža prema Haškoj konvenciji o otmici djece iz 1980.*, in: Župan, M. (ed.), *Private International Law in the Jurisprudence of European Courts - Family at Focus*, Faculty of Law Osijek, Osijek, 2015, pp. 135-149.

⁷⁹ Municipal Civil Court of Zagreb, No. 147 R1 Ob-2726/20-16 of 25 January 2021.

return exception provided by Article 13(1)(b).⁸⁰ According to that article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body opposing its return establishes that there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. The implementation of that article seemed to be challenging to the national courts, consequently being the subject of several decisions of the European Court of Human Rights (hereinafter: the ECtHR).⁸¹ The ECtHR indicated that in abduction cases the court deciding on abduction must take into account the individual child's interests. The court has a difficult task to carefully examine the best interests of the child in the context of the return decision, without examining the best interests of the child to be conducted in the context of a meritorious decision on parental care.⁸²

The necessity of guidance was recognised by the HCCH, which issued a Guide to Good Practice dedicated especially to the application of Article 13(1)(b) (hereinafter: the Guide to Article 13(1)(b)).⁸³ It offers information and guidance on the interpretation and application of the grave risk exception, and shares good practice taken from a variety of jurisdictions. The Guide offers valuable guidelines, still not predicting the situation like the pandemic that occurred after its publication. Still, the guidance on the understanding of the grave risk exception, which distinguishes between three types of "grave risk" that are often employed together, and its step-by-step analyses, is universally applicable.⁸⁴ The guidance that can be linked by analogy with the pandemic can be found in the part which explicitly discusses the risks associated with the child's health, stating that in those cases, *the*

⁸⁰ See: Lowe; Stephens, *op. cit.*, note 29, p. 15 and 60.

⁸¹ *Neulinger and Shuruk v. Switzerland*, App. No. 41615/07, 6 July 2010, *Šneerson and Kampanella v. Italy*, App. No. 14737/09, 12 July 2011, *X v. Latvia*, App. No. 27853/09, 23 November 2013.

⁸² McEleavy, P., *The European Court of Human Rights and the Hague Child Abduction Convention: Prioritising Return or Reflection?*, Netherlands International Law Review, Vol. 62, 2015, p. 310.

⁸³ HCCH, *Guide to Good Practice Child Abduction Convention: Part VI - Article 13(1)(b)*, 2020, [<https://assets.hcch.net/docs/225b44d3-5c6b-4a14-8f5b-57cb370c497f.pdf>], Accessed 20 March 2021; Marjanović, S.; Živković, M., *Tumačanje iznimke ozbiljne opasnosti u slučaju građanskopravne otmice djeteta*, in: Župan, M. (ed.), *Prekogranično kretanje djece u Europskoj uniji*, Pravni fakultet Osijek, Osijek, 2019, pp. 381-397.

⁸⁴ Guide to Article 13(1)(b), Paras. 23-27. See: Momoh, O., *The interpretation and application of Article 13(1) b) of the Hague Child Abduction Convention in cases involving domestic violence: Revisiting X v Latvia and the principle of "effective examination"*, Journal of Private International Law, Vol. 15, No. 3, 2019, pp. 626-657; Trimmins, K.; Momoh, O., *Intersection between Domestic Violence and International Parental Child Abduction: Protection of Abducting Mothers in Return Proceedings*, International Journal of Law, Policy and the Family, Vol. 35, No. 1, 2021, p. 5.

*grave risk analysis must focus on the availability of treatment in the State of habitual residence, and not on a comparison between the relative quality of care in each State.*⁸⁵

The HCCH toolkit does not refer to the matter of interpretation of Article 13(1) (b); yet it offers some advice in terms of securing the child's return, where feasible and permitted under the relevant laws and procedures of the individual Contracting Party, considering the availability of practical arrangements that allow for the safe return of the child, such as the placement of the returning child on flight priority lists, considering the purchase of medical and travel insurance in the case of COVID-19 infection, and where necessary, quarantine facilities at the destination.

The HCCH Toolkit gives advice on increasing access to knowledge, including the knowledge of relevant good practice and case law turning on issues related to COVID-19. In that light, the selected national case law will be analysed in terms of the interpretation of the grave risk of harm exception.

3.1. COVID-19 as the Grave Risk Exception in National Court Practice

The first case publicly accessible was the one that occurred before the court in the United Kingdom in March 2020.⁸⁶ The court was deciding on the return of the abducted child PT born in 2008 and living all of her life in Spain. In February 2020, the mother travelled with PT to England, and the father claimed that the trip was without his knowledge or consent. The case was brought before the court on 10 March 2020. The hearing was held remotely, i.e. via the Microsoft Teams platform, on 27 March 2020, and it was recorded. The mother refused to return the child stating, inter alia, that there are health risks posed by the current coronavirus pandemic. The judge decided to treat that posing as an objection under Article 13(1)(b). The judge referred to that objection in relation to the following two facts: first, that at the date of the preparation of the judgment the pandemic is more advanced in Spain than in the UK, and second, there is currently an increased risk of infection posed by international travel. Still, the judge decided that the Article 13(1)(b) defence is not applicable to the case. The judge thoroughly analysed and explained that PT does not fall into the category of the elderly or those with underlying health condition and that there is no evidence of which country is more or less safe than the other. He concluded that there is a genuine risk that PT could contract the virus whether she remains in England or returns to Spain. The judge admits that travelling associated with the return is likely to increase the risk that PT could contract coronavirus, but

⁸⁵ Guide to Article 13(1)(b), Para. 62.

⁸⁶ KR v. HH [2020] EWHC 834 (Fam), 31 March 2020, Family Division of the High Court of Justice of England and Wales (the UK), [INCADAT Reference No.: HC/E/UKe 1460].

still he did not consider that such a risk is sufficient to amount to the “grave risk” of physical harm required by Article 13(1)(b). The judge also accepted the father’s numerous undertakings to support the PT’s return to Spain, but none of them related the protection of child’s health.

The case example from Germany refers to the child whose return was ordered back to Australia. The German Family Court ordered the child’s return by its decision of 17 March 2020. It decided that no impediments existed to the child entering Australia. The obligation to undertake self-isolation for 14 days upon arrival did not endanger the child’s well-being or pose a grave risk of harm. A short stopover in Dubai changed nothing about this as according to the information available to the court, the onward flight to Australia was guaranteed to take place.⁸⁷ Another German case referred to the child abducted from Armenia to Germany. On 5 February 2020, the father initiated the return proceedings before the German court. The court did not accept the mother’s argument that the return of the child is not possible due to the lack of flight options as corresponding to a grave risk of harm for the child. The court explained that it was not apparent that the child would be exposed to greater health risks as a result of the COVID-19 pandemic in Armenia than in Germany, which is one of the countries with the highest number of cases worldwide and that the difficult character of the trip to Armenia does not constitute an intolerable situation.⁸⁸

The interpretation of the notion of a grave risk of harm in Croatia has already been evidenced as very broad by the Župan/Kruger/Drventić Study. In the majority of cases analysed, there was actually no consideration of risk in the country of origin, but rather of the fact that a parent would be better suited to a child, in the court’s view, and that due to a close connection between the child and the abducting parent, the separation would constitute a grave risk of harm.⁸⁹ From that point of view, it is hard to predict what kind of explanation the court would give if the abducting parent raised an objection to a grave risk of harm due to the pandemic since in none of the cases this objection was made by the parent. The indirect court position on that manner can be derived from the case where the court of second instance objected to the court of first instance that it had not taken into account circumstances that could hinder the children’s return due to the epidemic in Croatia and Bosnia and Herzegovina. Following that objection, the Municipal

⁸⁷ OLG Thüringen - 1 UF 11 20, 17 March 2020, Thuringia Higher Regional Court (Germany), [INCADAT Reference No.: HC/E/DE 1475].

⁸⁸ AG Hamm - 32 F 14/20, 23 April 2020, Hamm Local Court (Germany), [INCADAT Reference No.: HC/E/DE 1472].

⁸⁹ Beaumont; McEleavy, *op. cit.*, note 20, p. 145.

Civil Court of Zagreb issued a new decision,⁹⁰ again ordering the return of the children to Bosnia and Herzegovina and giving its stance regarding the epidemic situation. It explains that the anti-epidemic measures are issued at national level and that every person is obliged to adhere thereto. The court is not in the position to take the future measures as relevant since they are unpredictable. It is up to the parties to adhere to the measures in force when enforcing the return decision (e.g. a self-isolation measure when crossing the border). The court also refers to the pandemic as a possible danger for the child, stating that there is currently an increase in infected persons both in Croatia and in Bosnia and Herzegovina, but on 30 June 2020, there were more infected persons in Zagreb than in Mostar. It concludes that it will not take into account the epidemic circumstances in its decision since the situation is unpredictable and changeable, and the circumstances in the period of enforcement cannot be predicted.

In all cases analysed within this chapter, the courts took a similar stance and used the same argumentation. It can also be concluded that they share an opinion that neither the COVID-19 pandemic nor travel restrictions can be seen as a grave risk within the meaning of Article 13(1)(b) of the Child Abduction Convention. Yet, this cannot be taken as universal, following the HCCH guidelines on a case-by-case approach. The national court should be aware of the consideration of a grave risk of harm developed by the HCCH in the Guide to Article 13(1)(b) and used in its practice and reasoning, which was not noticed in the analysed case law. Moreover, a possible objection refers to poor employment of protective measures and undertakings securing the child's return in terms of his or her better health protection.⁹¹ The matter that requires additional questioning is whether the practice of almost every court to compare the pandemic situation in the abduction state and the state of child's habitual residence is in line with the HCCH guideline stating that in a situation where the risk is associated with the child's health, *the grave risk analysis must focus on the availability of treatment in the State of habitual residence, and not on a comparison between the relative quality of care in each State.*⁹²

4. CONCLUSION

As in all other legal aspects affected by COVID-19, the adjustment of child abduction proceedings was also unavoidable. It can be concluded with almost com-

⁹⁰ Municipal Civil Court of Zagreb, No. 97 R1 Ob-1130/20-4 of 1 July 2020.

⁹¹ See: Župan, M.; Ledić, S.; Drventić, M., *Provisional Measures and Child Abduction Proceedings*, Pravni vjesnik, Vol. 35, No. 1, 2019, pp. 9–32; Pretelli, I., *Provisional Measures in Family Law and the Brussels II ter Regulation*, Yearbook of Private International Law, Vol. 20, 2018/2019, pp. 126.

⁹² Guide to Article 13(1)(b), Paras. 23-27. See: Rusinova, N., *Child abduction in times of corona*, 2020, [<https://conflictoflaws.net/2020/child-abduction-in-times-of-corona/>], Accessed 25 March 2021.

plete certainty that the communication with the EU Central Authorities was not interrupted in relation to the communication and document exchange with other Central Authorities, parties, or other national institutions. Most of the Member States transformed their work to teleworking, ensuring a minimum presence in urgent cases and case management. At same level of certainty, it can be concluded that Member States have secured the expeditious operation of abduction proceedings before the courts. It is to be expected that child abduction cases are treated as urgent; in some countries, hearings continue to be held in person, while in some other, remote hearings were introduced.

The informative tool developed by the European Commission on the mode of operation and the organisation of the judiciary and central authorities is only partially useful. In order to achieve reliable administrative and judicial cooperation in child abduction matters, more detailed and uniformed information on the operation of national authorities needs to be collected, published and regularly updated due to the uncertainty of the ongoing pandemic. This kind of digital assistant that could be useful for any future crisis will have an impact on their work. This should also serve as a lesson to those Member States, if they have not done that yet, to invest in the modernisation of their administrative and judicial systems, IT equipment and proper education of civil servants.

The analysed Croatian case law has shown that during the pandemic there were no delays in the operation of the Central Authority and that the court of first instance in Croatia acted expeditiously, mostly remaining within the 6-week time frame. It showed its willingness to employ direct judicial cooperation. Delays in the proceedings were identified when certain activities recorded a decline in the most critical period from March to May 2020, when the action of either the court of second instance or the social welfare centre was prolonged. Unfortunately, that prolongation cannot be attributed only to the pandemic, but to issues of tendency already evidenced to broadly examine a child's situation beyond the limits of the return procedure.

Comparative case law analysed has shown that courts share the opinion that neither the COVID-19 pandemic nor travel restrictions can be seen as a grave risk within the meaning of Article 13(1)(b) of the Child Abduction Convention. National courts should be aware of the consideration of a grave risk of harm developed by the HCCH in the Guide to Article 13(1)(b) and used in its practice and reasoning. Moreover, a possible objection refers to poor employment of protective measures and undertakings securing the child's return in terms of his or her better health protection.

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