



Country fact sheet for the CRC

CHILDREN'S RIGHTS IN PARENTAL SEPARATION CASES

COUNTRY: BELGIUM

REPORT N°	<ul style="list-style-type: none"> ▪ Fifth and sixth Periodic Report (UNCRC)
PRE-SESSION/SESSION	<ul style="list-style-type: none"> ▪ Pre-sessional: (June 2018) ▪ Sessional 80th: (January-February 2019)
LAW (CONVENTIONS, REGULATION, DIRECTIVES, GUIDELINES, DOMESTIC LAWS)	<ul style="list-style-type: none"> ▪ Convention on the Rights of the Child 1989 (ratified in 1994) ▪ Hague Convention on the Civil Aspects of International Child Abduction 1980 (ratified in 1999) ▪ Hague Convention on Parental Responsibility and Protection of Children 1996 (ratified in 2014) ▪ Brussels IIa Regulation (EC) No 2201/2003 ('Brussels II bis') ▪ Directive 2008/52/EC of the European Parliament and of the Council of 2008 on certain aspects of mediation in civil and commercial matters ▪ HCCH Guide to Good Practice under the Child Abduction Convention: Mediation ▪ European Commission Proposal for the Brussels IIa Regulation recast (30 June 2016) ▪ Part 7 - Mediation and Part 4 – On Civil Procedures of the Belgian Judicial Code (1967) ▪ Act of 21 February 2005 amending the Judicial Code regarding mediation
EXECUTIVE SUMMARY	<p>Since the nineties, mediation is being institutionalised and recognised to be an effective mode of conflict resolution, taking into account the rights and the best interests of the child. The 2008 Directive of the European Parliament on mediation in civil and commercial matters gives political entrenchment for financially supported initiatives and practice development.</p> <ul style="list-style-type: none"> ▪ Belgium has a well-established practice of family mediation for domestic cases regarding parental separation, and played a pioneer role in implementing various models of mediation and restorative justice with criminal courts, in particular regarding juvenile justice. ▪ Belgium is a pioneer actor in the professionalization and promotion of family mediation in cross-border family disputes. Nevertheless, most of this effort has been limited to the scope the European Union. Expanding international family mediation outside EU represents the next upcoming challenge.
INTERNATIONAL PARENTAL CHILD ABDUCTION (IPCA)	<ul style="list-style-type: none"> ▪ International Conventions regarding wrongful removal or retention of children <ul style="list-style-type: none"> ○ The 1980 Hague Convention Ratification: Belgium is part of the 1980 Hague Convention on the Civil Aspects of International Child Abduction since 1999. The operation is managed within the Ministry of Justice. Since 2006, the Central Authority is subsidising mediation and cooperating with Child Focus, established to defend and promote the wellbeing of children. ○ The Brussels IIa Regulation: This Regulation of 2003 applies to family arrangements upon separation or child abduction when countries concerned are part of the European Union. Drafted after the CRC and The Hague Convention, it stresses on the best interests of the child in family disputes, e.g. providing for child hearings in return procedures after abduction. It also contains provisions on cross-border recognition of decisions regarding divorce and parental responsibility.

	<ul style="list-style-type: none"> ▪ Challenges: <ul style="list-style-type: none"> ○ Non-Hague countries: One tenth of the caseload registered in Belgium involves a non-signatory country, where judicial proceedings regarding child abduction are particularly difficult and results uncertain. Often these cases call on diplomatic means or amicable resolution. The Malta Process initiated by The Hague Bureau paves the way for judicial cooperation and amicable conflict resolution in countries of Sharia law, yet these cases remain challenging and far too often unresolved. ○ Recast of the Brussels IIa: While the Regulation is considered to work well, the European Commission undertakes, since 2016, a harmonisation process for more efficiency of cross-border judicial procedures with the goal to strengthen the rights of parents and safeguard the best interests of the child. For example, the European Parliament's Committee on Legal Affairs (JURI) proposed to expand the rule concerning the child's right to be heard in return proceedings to all matters of parental responsibility and arrangements; or, the European Commission proposes to consider children's participation rights - and respect of implemented standards in this regard - before recognition and exequatur of decisions. ○ Judicial deadlines: In Belgium, judicial proceedings are rather lengthy, taking on average a year to settle, far from the six weeks period prescribed by the 1980 Hague convention.
<p style="text-align: center;">INTERNATIONAL FAMILY MEDIATION (IFM)</p>	<ul style="list-style-type: none"> ▪ Family mediation in Belgium: Family mediation is integrated in the Judiciary Code since 2005. With the establishment of the "Commission fédérale de médiation", providing a pool of more than 1000 certified practitioners in various mediation fields, quality standards and practice control are guaranteed. Family mediation is widely used in domestic proceedings, especially for divorce and parental responsibility matters, upon both judicial referral and private initiative. Mediation services, just like legal aid, are free of charge for persons with low income. ▪ IFM in Europe: Belgium plays a leading role in IFM development and advancement in the European Union, in particular promoting research and training, establishing quality requirements and advocating for strengthened consideration of the best interests of the child. Missing Children hosts the "Cross-border Family Mediators" network; a Belgian-German initiative for IFM trained mediators, based on the Wrocław Declaration. In October 2017, Child Focus launched EPIC, a Belgian international family pre-mediation pilot project in cases of child abduction, funded by the European Commission and legal authorities in Brussels and Gent. ▪ IFM in the World: Although Belgium is at the forefront of IFM promotion, action is essentially confined to the EU. In the context of increasing expatriation and migration, there is a need to consider mediation worldwide as a means to fill a void in private international law. This is especially relevant for the cases of international child abduction outside the Hague Convention.
<p style="text-align: center;">STATISTICS</p>	<ul style="list-style-type: none"> ▪ International marriages and divorces: 17.2% of the marriages celebrated in Belgium were international marriages and 17.4% of the divorces filed involved a foreign partner in 2012 (more recent statistics of 2016 are difficult to interpret). ▪ International Child Abduction: Between 1985 and December 2016, 2802 cases of international child abduction were officially recorded, 73% of which consist of abduction from Belgium to a foreign country. Since 2004, the Central Authority opens on average 133 cases per year involving 179 children, mostly with France, the Netherlands, Morocco and Germany. Almost 60% of the cases involve a European country. Most of the cases (60%) end up in a voluntary return and 10% are resolved amicably. The average time to reach the final outcome of a case was 211 days in 2015. ▪ Family Mediation in Belgium: In 2015, an estimated 3210 family mediations were conducted, 84% of which were started on a voluntary basis and 16% on judicial request; 225 of these cases are estimated to have had a cross-border element.

	<p>Sources: European Parliament DG Internal Policies “Cross-border parental child abduction in the European Union”, 2015. N. Lowe & V. Stephens, “A statistical analysis of applications made in 2015 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction — Global report”, 2017 Statbel (Direction générale Statistique - Statistics Belgium) Baromètre de la médiation, 2016, Commission fédérale de Médiation</p>
<p>ACCESS TO INTERNATIONAL FAMILY MEDIATION</p>	<ul style="list-style-type: none"> ▪ Strengths: <ul style="list-style-type: none"> ○ Well-established and institutionalized mediation services for domestic disputes ○ Excellent network of mediators and 8 family mediators trained for cross-border conflicts (in the cross-border family mediator’s network), compared to 2 in Switzerland ○ Access to specialized IFM trainings thanks to partnerships with MiKKe.V. ○ Advancing research regarding IFM in partnership with universities (e.g. recent study on long term effects of child abduction) ○ EPIC Pre-mediation bureau for IFM in child abduction cases ○ Awareness-raising of judges on IFM benefits and possible referral ▪ Way Forward: <ul style="list-style-type: none"> ○ Assess number and satisfaction of EPIC beneficiaries to promote Belgian good practice ○ Increase referrals to IFM by Central Authority ○ Provide comprehensive IFM and child abduction statistical data (incl. qualitative analysis) ○ Further promote IFM within families ○ Broaden the scope of IFM promotion outside EU
<p>RISKS</p>	<ul style="list-style-type: none"> ▪ Slow judicial proceedings can be an obstacle to ensure the best interest of the child ▪ Too high/strict standards regarding child participation and cross-border mediator qualifications may slow down procedures and block cooperation
<p>POTENTIAL QUESTIONS</p>	<ul style="list-style-type: none"> ▪ Are there specialised trainings for Belgian judges dealing with international parental child abduction? ▪ What are the possibilities and recourses in non-Hague Convention cases?