Abducted and retained children in international cases – a follow-up

Committee on Civil Affairs
Abducted and retained children in international cases – a follow-up

Foreword

As part of the Riksdag’s (Swedish Parliament’s) evaluation and follow-up of parliamentary decisions, and as part of the process of improving the state of knowledge prior to consideration of motions in this field, the Committee on Civil Affairs decided on 8 April 2008 to undertake a follow-up of the issue of wrongfully abducted or retained children in international cases. The objective has been to highlight the extent to which children are abducted or retained, to describe how the issue has been dealt with by Swedish authorities and highlight any possible problems in the regulatory frameworks, and to ascertain whether there are any other possible obstacles to the authorities’ ability to solve problems as promptly as possible.

The report has been prepared in the Riksdag Administration by the Research Service’s Evaluation and Research function. It has been published in the Reports from the Riksdag series (Report 2008/09:RFR8) in accordance with the Committee’s decision of March 2009.

This leaflet describes why and how the follow-up was carried out and presents a summary of the findings.
Introduction

Background
The issue of wrongfully abducted or retained children in international cases has received increasing attention in recent years. The Riksdag has considered Government bills and private members’ motions that have, in various ways, been connected with legislation on abducted children on a number of occasions. The Committee on Civil Affairs has stated that it is urgent and crucial to prevent cases of child abduction.

Wrongful abduction of children refers primarily to cases involving the removal of a child by a parent, either to or from Sweden, without consent. Wrongful retention refers to cases involving the retention of a child by a parent, in Sweden or another country, after a court has decided that the other parent should have custody of the child.

Purpose, focus and delimitations
The purpose of the Committee on Civil Affairs’ follow-up is to improve the state of knowledge prior to consideration of motions in this area. The follow-up has mainly focused on highlighting the following issues:

- What is the scope of the problem of wrongful abduction or retention of children? How has the situation developed so far in the 21st century? What are the Swedish cases of child abduction like?
- Which public authorities and/or organisations deal with issues relating to abducted children and how are these issues dealt with at different levels? What support and what information is offered to families affected by child abduction?
- What regulatory frameworks are there and are there any problems connected with these frameworks?
In this context it is important to underline that the follow-up did not include evaluating or assessing the way in which the relevant authorities work with child abduction cases. The ambition has been to give a general picture of how a case may be processed when a parent approaches the authorities in Sweden for help.
Implementation

Studies of documents, interviews etc.

Background information for the follow-up has been obtained in various ways. Conventions, legislation and other regulatory frameworks have been studied, as well as parliamentary documents, inquiries and publications from various authorities. Information about international child abduction published by various authorities on their websites has also been studied.

Furthermore, interviews have been conducted with people working with the issue at various Swedish authorities or other organisations. These have included interviews with officials at the Ministry for Foreign Affairs, the National Board of Health and Welfare, the Children’s Ombudsman and people working for the newly established organisation The Network for Missing Children.

Survey of cases of child abduction reported to the Ministry for Foreign Affairs

The follow-up has also included studying cases concerning wrongful abduction or retention of children reported to the Swedish central authority. In Sweden’s case it is the Ministry for Foreign Affairs that serves as the central authority, under the Enforcement Act, and which therefore receives and forwards applications for the return of children. To be able to shed greater light on the issue of abducted children, a study has been undertaken of all outgoing and incoming cases with the Ministry for Foreign Affairs opened in 2003 and in 2006. Most of the statistics presented in this report have been obtained from in-depth studies of these cases.

The decision to study cases from 2003 and from 2006 was based on the following considerations. The year 2003 allows certain international comparisons as there are international statistics from this year. The year 2006 was chosen to illuminate how the situation had changed since 2003, with regard to a number of factors. Another
reason was to be able to follow up the results of opened cases from as recent a period as possible. It is generally known that it often takes a long time before child abduction cases can be closed. The more recent the year that is studied, the more cases there will be that are not closed.

As part of the follow-up, a total of 200 cases with the Ministry for Foreign Affairs have been studied, 110 of which have concerned the wrongful abduction or retention of children. However, it should be noted from the start that the differences between the two years should be interpreted cautiously, in view of the fact that the number of cases is small when the data are broken down into the various factors examined in the study.

**Study visit by the Committee on Civil Affairs to the Hague**

In January 2009, the Committee on Civil Affairs carried out a study visit to the Hague, partly in order to study international work in this field, and partly to examine how other countries work with the issue of abducted children.

In the Hague, the Committee on Civil Affairs visited the Dutch central authority, with the purpose of studying how it works with international cases of wrongful abduction or retention of children.

Further, the Committee on Civil Affairs carried out a study visit to the Hague Conference on Private International Law, an international organisation with the task of stimulating cooperation between countries in the field of private law. The visit took place at the Secretariat of the Hague Conference, with the purpose of studying how the organisation works to prevent children from being wrongfully abducted or retained in another country.

**Other study visits**

As part of the follow-up, officials have also carried out study visits to the European Commission in Brussels. Experts from the Com-
mission were interviewed in order to study relevant international regulatory frameworks in the field. A visit was also paid to the European Parliament’s Ombudsman (and staff) for matters relating to international abduction or retention of children. The Ombudsman serves as an intermediary to bring about international mediation between parents who want to resolve conflicts by finding consensual solutions. Through his staff, the Ombudsman is involved in individual cases, but must have an impartial position vis-à-vis both parents. The cases concern countries both in and outside Europe.
Scope and developments

The Committee on Civil Affairs’ follow-up shows that it is difficult to estimate the true extent of the problem of child abduction and retention, both to and from Sweden. One reason is that there may be “hidden cases” in the statistics since not all cases are reported to the central authorities – in the case of Sweden, the Ministry for Foreign Affairs. This may be because the affected parents lack knowledge of how to go about reporting the case, because of a lack of faith in the authorities’ capacity to offer support or because of a desire to deal with the situation alone.

In 2008, a total of 105 cases were reported to the Ministry for Foreign Affairs, 79 concerning wrongful removal or retention (return cases) and 15 concerning access rights. The remaining 11 cases concerned the enforcement of judgments or applications for assistance in contacts between social authorities in various countries. A majority of the return cases from 2003 and 2006 that were specifically studied in the follow-up also concern wrongful abduction from Sweden or retention of children in countries other than Sweden.

In January 2009, the Ministry for Foreign Affairs had 100 open cases. Around 60% of these cases concerned children who have been removed from Sweden, or access to a child who is abroad. The follow-up shows that the majority of child abduction cases are processed in accordance with the Hague Convention. Roughly 20% of all cases reported to the Ministry for Foreign Affairs in the period 2001-2008 concern abduction from Sweden to a country that has not acceded to existing conventions in the field of civil law.

Increased number of child abduction cases

The Committee on Civil Affairs’ follow-up shows that the total number of cases concerning wrongful abduction or retention of children reported to the Ministry for Foreign Affairs indicates an increase. Reported cases means both cases where parents in Swe-
den submit an application to the Ministry for Foreign Affairs regarding the return of a child to Sweden (outgoing cases), and cases reported to the Ministry for Foreign Affairs via central authorities or the legal representatives of applying parents regarding the return of a child from Sweden (incoming cases). This increase in the number of child abduction has also been noted internationally.

There can be a number of reasons why the number of cases of wrongful abduction or retention is increasing. The Committee on Civil Affairs has earlier pointed out that increased mobility across borders in the last few decades has meant that it has become more common for a parent to take children with them to another country without consent in order to prevent the other parent from having custody. More and more people travel to and work in different countries. It is also more common for people from different countries to have children together. When the relationship breaks down, disputes about the children may arise. There can be several reasons for this, and they are often based on family problems. The follow-up shows that it may, for example, be a case of one parent trying to protect their children from the other parent, or that the parents cannot agree on what country the child should live in. Custody disputes in international contexts are difficult for everyone concerned, particularly for the children involved. In cases of international divorce and separation, it also means the child is torn, not just between the parents, but also between two countries.

**No complete picture of child abduction cases**

The follow-up shows that in 54% of the studied cases, it was the mother who removed or retained the child. As regards cases to which there are no applicable conventions (non-Convention cases), it was almost always the father who removed the child from Sweden. The average age of the children was about seven, and according to the findings of the follow-up, the children included in the study often had Swedish or dual nationality (one of which
was Swedish). Of all child abduction cases in 2006, approximately 70 children were wrongfully removed to or retained in another country which was not their country of habitual residence. In the majority of cases, the parties involved had shared custody of the children. Just over half of all applying parents in the studied cases had either Swedish or dual nationality, while just under 40% of the abducting or retaining parents had Swedish or dual nationality. One-third of the applying parents and one fifth of the abducting or retaining parents were born in Sweden.

The follow-up shows that in the years studied, the highest proportion of requests for the return of children to Sweden concerned countries in Western Europe (31% in 2006). Countries requesting the return of children from Sweden included the other Nordic countries, the USA and countries in Western Europe.

The follow-up shows that we do not currently have a complete picture of child abduction cases. The picture presented in the media has been somewhat one-sided. A study of a number of articles in some of the main daily newspapers between 2005 and 2008 reveals that the articles have often drawn attention to cases in which a father has removed the child from Sweden to another country or in which the removal has been to a non-Convention country. The follow-up shows that when various cases have been highlighted in the media, the Ministry for Foreign Affairs has presented the different kinds of case it normally deals with.

---

1 The articles that were studied were published in Aftonbladet, Göteborgs-Posten, Svenska Dagbladet and Sydsvenskan between 2005 and 2008.
How the authorities deal with cases

Responsible authorities

The Committee on Civil Affairs’ follow-up shows that a number of Swedish authorities are involved in child abduction cases. According to the Conventions, the courts are the decision-making bodies in these cases. The requested state’s (the state to which the child has been removed or in which the child is being retained) courts are competent to decide whether the removal or retention of a child is wrongful or not. In Sweden, all applications for the return of children should be submitted to Stockholm City Court since 2006. The Ministry for Foreign Affairs is the liaison body (central authority) which performs tasks to ensure that best possible application of the Conventions. The Ministry for Foreign Affairs is, for example, to receive and forward applications under the Conventions. In addition, the National Legal Aid Authority is responsible for processing applications for legal aid with the litigation costs that arise in connection with the processing of cases in court. The police authorities and municipal social services may also be affected by child abduction cases.

In the follow-up it has been noted that by assigning all child abduction cases to the Stockholm City Court, the Court has developed specialist knowledge as all cases are processed by the same court. In connection with the Committee’s visit to the Hague Conference, the Secretariat identified Sweden as a good example where child abduction cases are handled by specialised courts.

It can also be noted that the role of the Ministry for Foreign Affairs is primarily to liaise, coordinate and inform. It is the competent court in the requested state that decides whether a child is to be returned or not. The follow-up also shows that the Ministry for Foreign Affairs has an important responsibility, in its capacity as central authority, in child abduction cases. Following a proposal from the Committee on the Constitution, the Riksdag has decided
to notify the Government that a review should be undertaken of how the Ministry for Foreign Affairs’ processing of this kind of case can be improved and made more efficient, and that the Riksdag is then appropriately informed of the findings of the review. The follow-up shows that this review has been undertaken and that steps are being taken at the Ministry to continue to improve the efficiency of the processing of cases. The Government has stated that when the results of the Committee on Civil Affairs’ follow-up are ready, it will be able to adopt a position as to whether further measures are necessary.

As regards other authorities, it can be noted that the very limited number of child abduction cases means that the authorities, in many cases, do not have an opportunity to develop any kind of specialist knowledge of child abductions.

**Cooperation between affected countries’ judicial systems**

The affected countries are dependent on good cooperation in order to solve child abduction cases as quickly as possible to ensure the best interests of the child. The follow-up shows that various initiatives have been taken, for example, by the Hague Conference and in the EU to improve cooperation between states parties’ courts.

It is important that Sweden takes an active role in continued cooperation. The follow-up shows that direct communication between judges in different countries affected by child abduction cases is important. This should generate a better knowledge of other countries’ judicial systems which, in the long run, should facilitate a quicker and improved processing of cases.

**Cooperation between affected countries’ central authorities**

One factor that helps to ensure that a case is processed rapidly and in the best way in view of the children’s perspective, is that the central authorities can cooperate and communicate with each other. A necessary condition for this is that the central authorities have
a knowledge of each other’s practical procedures for processing child abduction cases, their judicial systems etc. The Ministry for Foreign Affairs states that the Swedish central authority cooperates especially closely with the central authorities in the other Nordic countries. The follow-up has shown that there are difficult Convention cases that take a long time to solve. In order to help to ensure that these cases are cleared up as quickly as possible from the point of view of the best interests of the child, it is important that the Swedish central authority’s efforts to develop cooperation with other central authorities continues.

A body for liaison with the ISS

It can be noted that Sweden does not have a body for liaison with the International Social Service (ISS), which works to support individuals and families with social issues in international contexts. It is important that the ISS has a body for liaison with Sweden, which can help to make cooperation between affected countries more efficient in international cases involving the wrongful removal or retention of children.

Processing times

The regulations stress the importance of speedy processing of cases involving abducted or retained children. If the processing time is longer than six weeks from the date the application for the return of the child was submitted, the court is obliged, at the request of the applicant, to state the reason for the delay.

The follow-up shows that processing times for Convention cases vary considerably, between 4 and 740 days for cases opened in 2006. The median time in 2006 was 130 days. Approximately 40% of the cases studied were closed within 7 – 26 weeks. In 2006, almost one-quarter of all cases were closed within 6 weeks. In the case of non-Convention cases, the median time was 310 days in 2006, compared with 730 in 2003. The processing time for non-
Convention cases opened in 2006 varied between 14 and 440 days. The corresponding figures for cases in 2003 was 24 and 1,800 days respectively.

As regards the closing of cases, the follow-up reveals that in 2003 and 2006 voluntary returns of children to their country of habitual residence took place in one-third of all Convention cases. In 2006, the courts in the affected countries decided that the child should be returned to the country of habitual residence in approximately one in three Convention cases. Cases that have been closed as a result of the parents agreeing on the voluntary return of a child take the shortest time. After this come cases in which a court decision on the return of a child has been taken.

The follow-up shows that the processing time of a case is influenced by a number of factors. One important factor is whether the case involves states that have acceded to existing conventions in the field or not. If there are no valid conventions or agreements there are, in principle, no tools with which to affect the processing time or outcome of a case.

**Support and information to custodians**

The Committee on Civil Affairs has previously stated that it is important that Swedish authorities help custodians in various ways in their efforts to get their children returned. The follow-up shows that the Ministry for Foreign Affairs provides information to the public, primarily through its website. This information can be crucial to individuals involved in a child abduction case. However, the follow-up shows that this information is difficult to find and that information about regulations has not always been fully up-to-date on the Ministry for Foreign Affairs’ website. In comparison with the websites of other countries’ central authorities, the website is not particularly well-developed as regards the amount of information, user-friendliness and accessibility for those living in other countries. The follow-up shows that, for parents living other
countries and whose children have been abducted to Sweden, there is no information in English available on the Ministry for Foreign Affairs’ website. During the course of the follow-up, the Ministry for Foreign Affairs has stated that it has started to update the information on its website and that a new brochure is being produced for parents. This brochure was completed in May 2009.

The follow-up shows that applying parents may have great expectations on the Ministry for Foreign Affairs as a central authority as regards its role in returning the child to its country of habitual residence. However, it can be noted that the Ministry for Foreign Affairs lacks the tools to be able to bring about a speedy resolution of all cases, especially as regards non-Convention cases.

According to the 1980 Hague Convention, central authorities should also help applicants to find a legal representative and to apply for legal aid. The follow-up shows that the legal aid that is offered varies from country to country. Starting a legal process to return a child to or from Sweden constitutes a reason to be granted legal aid.

In the follow-up, the Ombudsman of the European Parliament and representatives of the Network for Missing Children have highlighted a number of problem areas from the perspective of the parents. For example, it was said that there are difficulties in getting hold of a representative or lawyer with knowledge of and experience of the existing conventions and their practical application. Differences in the way the various Convention countries interpret and apply the Conventions can mean that it takes a long time to close a case and that mediation is needed between the abducting and the applying parent in order to find solutions for the whole family, but especially for the child. It may also be the case that the central authority is contacted far too late or that the local police authorities do not provide sufficient support when a parent has abducted a child.
International outlook

As part of the Committee on Civil Affairs’ follow-up, a brief review of how the central authorities are organised in other countries has been undertaken. The follow-up shows that responsibility for Convention cases has often been assigned to the Ministry of Justice, while responsibility for non-Convention cases is often assigned to the equivalent of the Ministry for Foreign Affairs.

The follow-up also shows that in certain countries there are either independent private or central government bodies that work with international mediation in issues relating to the abduction or retention of children. It is noted that no such body exists in Sweden. In the follow-up, it has been possible to note that processing times are shortest in cases where the parents have agreed to return the child. This is why the importance of international mediation in cases concerning wrongful removal or retention of children is underlined in this report. The importance of international mediation in such situations is also emphasised in the new Brussels II Regulation, which includes rules on cooperation between authorities in EU member states in individual cases concerning parental responsibility. According to the Regulation, the authorities should cooperate to facilitate agreements between individuals with parental responsibility through mediation or other ways of resolving problems that arise. In this context, the Ombudsman of the European Parliament has emphasised the importance of professional mediation as a possible tool for resolving problems that arise, alongside civil court procedures.

It is important here to note that Swedish courts are currently unable to approve an agreement that has been drawn up between parents by means of mediation. A proposal that such a possibility be introduced to Swedish law has been presented in an inquiry, but according to the Ministry for Foreign Affairs, it has not yet been implemented.
Regulatory framework

Conventions and legislation

The handling of issues concerning international removal or retention of children is guided by international conventions, EU regulations and Swedish laws. In the follow-up, it is primarily the UN Convention on the Rights of the Child, the 1980 Council of Europe Convention, the 1980 Hague Convention, the Brussels II Regulation and the Act concerning Recognition and Enforcement of Foreign Decisions relating to Custody etc. and concerning the Return of Children (Enforcement Act) that have been studied. The regulatory framework serves both to prevent cases of wrongful removal or retention and to clear up cases in which a removal or retention has already taken place. A large part of the Conventions has been incorporated into Swedish law in various ways, and the EU regulations are directly applicable in Sweden. The emphasis in the regulatory framework is that the best interests of the child must come first when custody or return cases are to be determined.

The Committee on Foreign Affairs has previously established that the 1980 Hague Convention has generally proved to be a good tool in preventing and combating international abductions of children, but that even in cases involving countries that have acceded to the Hague Convention, it can sometimes take a very long time before a solution is reached. This follow-up has indicated similar results. The 1980 Hague Convention is the most central and useful international convention, and it has been incorporated into Swedish law through the Enforcement Act. The Convention applies between Sweden and 80 other countries.

The follow-up has not indicated any distinct problems regarding the design of the regulatory framework. A number of difficulties have, however, been highlighted in the follow-up, for example, that the concept of “habitual residence” is not defined in the Hague
Convention and that the best interests of the child can collide with the restrictive application of the Convention’s grounds for refusal.

Non-Convention cases

In cases concerning non-Convention countries, there are no regulations in international law or national Swedish laws to guide the Ministry for Foreign Affairs’ processing of child abduction cases. If the parents are unable to reach an amicable agreement, it takes a long time to close these cases. The follow-up also shows that there is a considerably smaller chance of the child being returned to Sweden that in Convention cases.

The Committee on Civil Affairs has previously stressed that it is a matter of importance that Sweden takes measures to establish cooperation with non-Convention states. The follow-up shows that this need still remains.

Convention cases concerning custody

The follow-up has shown that Convention cases concerning custody issues take longer to process than return cases. This is partly because the 1980 Hague Convention’s requirements regarding speedy processing of these cases are not as stringent as in cases concerning the return of children.

Brussels II cases

The part of the Brussels II Regulation that concerns the enforcement of judgments is not yet applied to any great extent. As the Regulation is, at the same time, a reinforcement of the 1980 Hague Convention, it is, however, always applied in parallel with the Convention in cases involving another EU member state. The follow-up shows that so far there is no established practice, in Sweden or in the rest of the EU, regarding the part of the Regulation that concerns authorisation, enforcement and cross-border cooperation.
The Council of Europe Convention

Over time, the number of cases processed in accordance with the Council of Europe Convention has decreased and there are just a few of these today. The follow-up shows that on account of developments, this Convention is no longer applied to any great extent. One explanation may be that the Convention is largely covered by the new Brussels II Regulation.
The Committee on Civil Affairs’ follow-up

*Abducted and retained children in international conditions – A follow-up (Report 2008/09:RFR8).*

The follow-up report is available in Swedish on the Riksdag website (www.riksdagen.se) and may also be ordered from the Riksdag Printing Office (Postal address: 100 12 Stockholm, Sweden, tel.: +46-8-786 58 10, fax: +46-8-786 58 10 or e-mail: ordermottagen@riksdagen.se). The website also contains follow-ups from other parliamentary committees, some of which have been translated into English.