



Università
di Genova

DISPO DIPARTIMENTO
DI SCIENZE POLITICHE

Online expert seminar series
«*New rules for international
families – revised Brussels II ter
regime*»

Child participation between past research results and new perspectives

The VOICE project and the MiRI project

17 December 2020

Francesca Maoli

Disclaimer excluding Commission responsibility - The content of the MiRI Project (JUST-JCOO-AG-2018-831608), and its deliverables, amongst which this presentation, represents the views of the author only and is his/her sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.



The Project is co-funded by the Action Grants to support transnational projects to promote judicial cooperation in civil and criminal matters JUST/JCOO/AG/2018 of the European Union under Grant agreement No 831608.

MiRI
Minor's Right to
Information in EU
civil actions

Researching children's rights and well-being



The VOICE project

The best interests of the child in international child abduction proceedings

The MiRI project

Minor's right to information in EU civil actions



MiRI
Minor's Right to Information in EU civil actions



The Project is co-funded by the Action Grants to support transnational projects to promote judicial cooperation in civil and criminal matters JUST/JCOO/AG/2018 of the European Union under Grant agreement No 831608.

Researching children's rights and well-being



The VOICE project

The best interests of the child in international child abduction proceedings

2018 - 2019

- Legal analysis on international child abduction in Europe:
 - giving substance to the best interests of the child
 - the hearing of the child by the judge
- (Sociological research on family resilience)
- (Trainings on child-inclusive mediation)

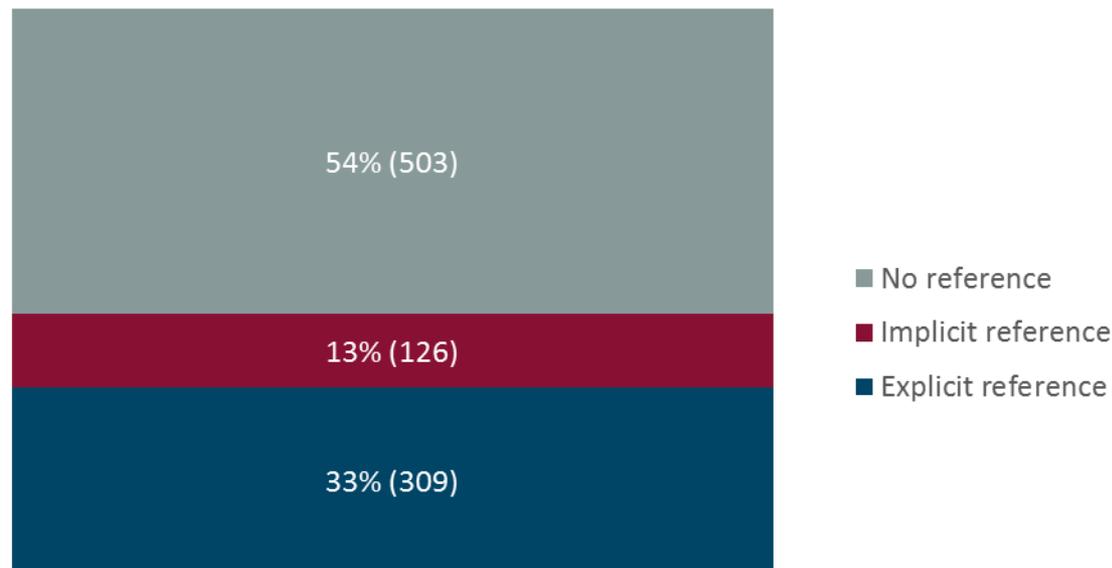
The VOICE research – legal analysis

- Cases decided between March 2005 and December 2017
- 17 national jurisdictions (938 national cases) + ECHR + ECJ
- Data gathering via Qualtrics Survey
- Qualitative analysis with NVIVO

Giving substance to child's best interests

The child's best interests concept is acquiring importance in international child abduction proceedings in Europe but:

- It is not homogeneously spread
- Does not appear broadly



NATIONAL CASE LAW FROM 17 EU COUNTRIES

Giving substance to child's best interests

Recurrent patterns:

I) Explicit references to child's best interests are often based on **the rationale of the 1980 HCCA** (182 cases out of 309).

II) Jurisdictional considerations

The court of the State of habitual residence is the best authority to evaluate which is the best interests of the child.

III) Living conditions

Bad living conditions in the **State of origin** may justify non return (art. 13(b), art. 20 HCCA), when there is a high standard of danger for the child's wellbeing.

Wealthier/better conditions in the **State of refuge** do not justify, per se, non return.

Giving substance to child's best interests

Other relevant interpretations:

- Best interests of the child coincides with the possibility to **maintain a stable relationship with both parents** (but key-role of primary caregiver)
- The resolution of conflicts between parents
- An adequate preparation for return (by the parents)

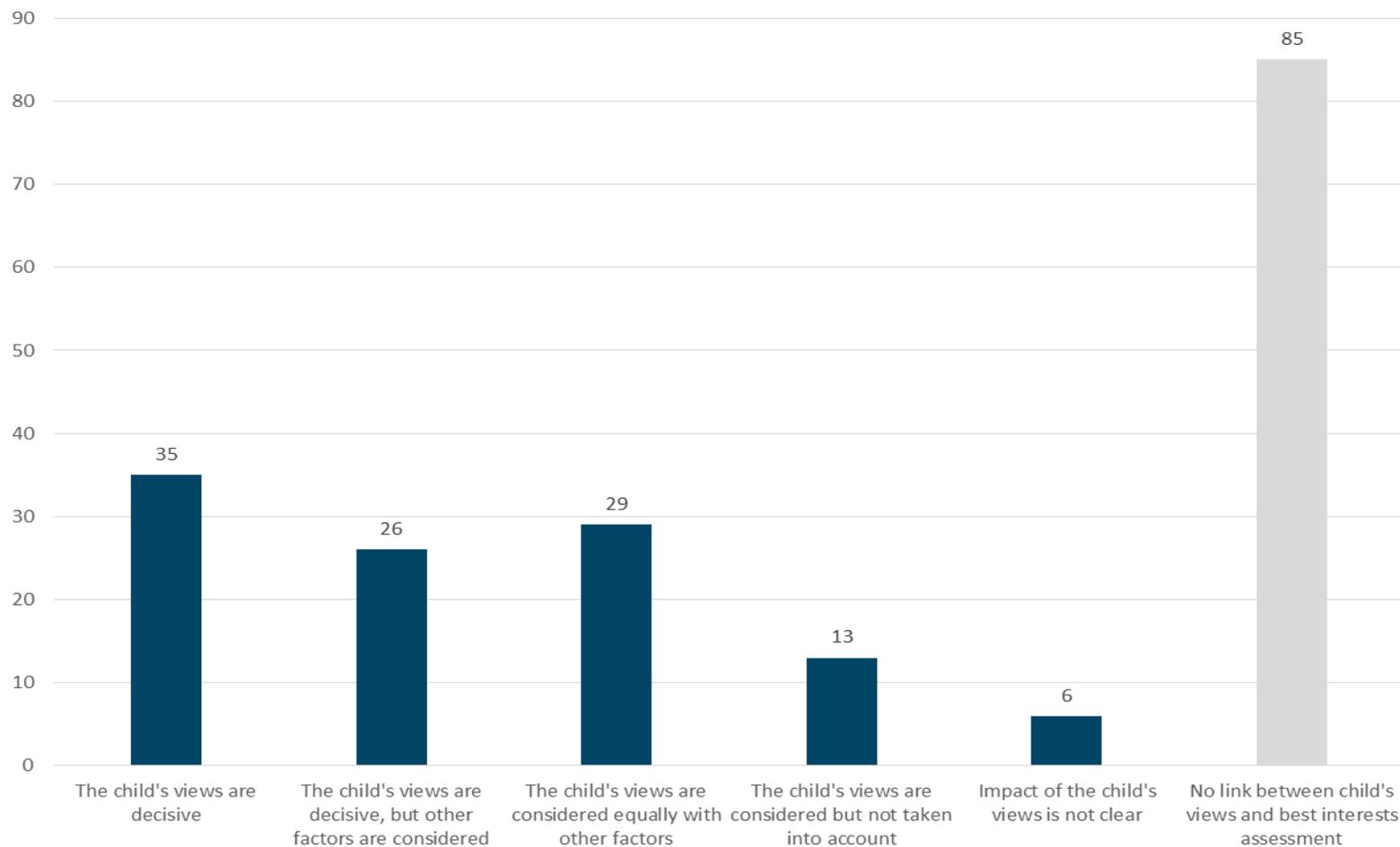
Research on the hearing of the child

Question:

- To what extent did the court **seek the child's views to assess his or her best interests?**
 - Child's views can be taken into account as an **exception to return (Article 13(2) HCCA)**.
 - Child's views can also offer **broader insight on what is in the best interests of the child**.

The child is heard

Impact of the child's views on the final decision



The child is not heard

Reasons for not hearing the child:

- Age and/or maturity (age ranged between 1 and 10 year old)
- Children requiring additional support
- Influence / manipulation
- The child's best interests
- National procedures

Conclusions

- The principle of child's best interests is rich in contents and meanings in EU case law. Courts refer to heterogeneous and different factors.
- The analysis enabled to find some recurring patterns. These interpretations and these factors usually play a role in the way judges interpret and apply the grounds for non-return.
- In the cases in which the child was heard, we see on the one hand that courts take the hearing into account for broader purposes than only to consider the applicability of Article 13(2) HCCA.
- On the other hand, the courts remain faithful to the exceptions provided in the HCCA.

Researching children's wellbeing

- Legal analysis on the right of the child to receive information in EU civil proceedings:
 - analysis of six EU countries (Italy, France, Latvia, Spain, Portugal, Bulgaria)
 - analysis on the role of social services in Italy
- Guidelines on common best practices at the EU level

2020 - 2021

The MiRI project

Minor's right to information in
EU civil actions



The right to information

- . The **child's fundamental right to participate and express his/her views in proceedings** concerning him/her is one of the guiding principles of the 1989 United Nation Convention on the Rights of the Child (Article 12), and can be distilled from other sources of international and regional human rights
- The child's fundamental right to participate and express his/her views in the aforementioned proceedings cannot be effectively exercised (either directly or indirectly) if the child does not receive **adequate knowledge and support**. See: General Comment n. 12, CoE Guidelines, IAYFJM...

The right to information

- Bridging the gap between human rights and EU regulations in the field of civil cooperation in civil matters.
- EU regulations in matters of parental responsibility and other related matters introduced some important procedural changes that impact upon children involved in family proceedings, the very same instruments did not impose any change to domestic child consultation procedures.
- Significant divergence exists between the Member States in procedures for giving adequate information to children.

First insights from the Italian research report

- No provisions of law specifying the right to information (Who? When? How? What?)
- No fixed practice of courts – sensitivity of the judge seems to have a very important role
- Recognition of human rights law provisions but no implementation of the right to information
- No preparation before the execution of a return order under the 1980 Hague Convention (and Brussels II *bis*)

Research implications on judicial cooperation in civil matters

- Implications on the child's best interests
- If a decision on parental responsibility does not clearly show that the child has been properly informed of his or her right to be heard, is the decision enforceable under the Brussels II *bis* (or *ter*) Regulation?
- And more...

Survey is still open!

UniGe

DISPO