International child abduction: navigating between private international law and children's rights law

In the summer of 2023 **Tine Van Hof** defended her PhD on this topic at the University of Antwerp. The thesis will be published by Hart Publishing in the Studies in Private International Law series (expected in 2025). She has provided this short summary of her research.

When a child is abducted by one of their parents, the courts dealing with a return application must consider several legal instruments. First, they must take into account private international law instruments, specifically, the Hague Child Abduction Convention (1980) and the Brussels IIb Regulation (2019/1111). Second, they have to take into account children's rights law instruments, including mainly the UN Convention on the Rights of the Child.

Because these instruments have different approaches regarding the concept of the best interests of the child, they can lead to conflicting outcomes. Strict adherence to private international law instruments by the return court could mean sending a child back to the country where they lived before the abduction. Indeed, the Hague Child Abduction Convention and Brussels IIb presume that it is generally best for children to return to the State of habitual residence and therefore require ¾ in principle ¾ a speedy return. The children's rights law instruments, on the other hand, require that the best interests of the individual child be taken into account as a primary consideration. If the court follows these instruments strictly, it could for example rule in a particular case that it is better for a child with medical problems to stay in country of refuge because of better health care.

The question thus arises how to address these conflicts between private international law and children's rights law in international child abduction cases. To answer this question, public international law can give some inspiration, as it offers a number of techniques for addressing conflicts between fields of law. In

particular, the techniques of formal dialogue and systemic treaty interpretation can provide relief.

Formal dialogue, in which the actors of one field of law visibly engage with the instruments or case law of the other field of law, can be used by the Hague Conference, the EU and the Court of Justice of the European Union (CJEU) as private international law actors, and the Committee on the Rights of the Child and the European Court of Human Rights (ECtHR) as children's rights law actors. By paying attention to the substantive, institutional and methodological characteristics of the other field of law, these actors can promote reconciliation between the two fields and prevent the emergence of actual conflict. However, a prerequisite for this is that the actors are aware of the relevance of the other field of law and are willing to engage in such a dialogue. This awareness and willingness can be generated through informal dialogue. The CJEU and the ECtHR, for example, conduct such informal dialogue in the form of their biennial bilateral meeting.

In addition, supranational, international and domestic courts can apply the technique of systemic treaty interpretation by interpreting a particular instrument (e.g., the Hague Child Abduction Convention) in light of other relevant rules applicable in the relationship between the parties (e.g., the UN Convention on the Rights of the Child). This allows actual conflicts between the two fields of law to be avoided. This technique was used, for example, by the ECtHR in *X v. Latvia*. To apply this technique, it is also important that courts are aware of the applicability of the other field of law and are willing to take into account its relevant rules. Again, courts have established initiatives that promote this awareness and willingness, such as the International Hague Network of Judges.

The expectation is that by applying these techniques, the potential conflict between private international law and children's rights law in the context of international child abduction will no longer manifest itself as an actual conflict. Further, applying these techniques will make it possible for national courts to adequately apply all instruments and make a balanced decision on the return of children. In addition to these two techniques, other techniques, such as coordination *ex ante*, are considered appropriate to better align private international law and children's rights law when dealing with other issues, such as for example international surrogacy.