

María del Carmen CHÉLIZ INGLÉS, *La sustracción internacional de menores y la mediación. Retos y vías prácticas de solución* (Tirant lo Blanch, Valencia 2019), 405 pp.

International child abduction is not a new topic for research in the field of Private International Law but the interesting approach offered by the author of this book, María del Carmen Chéliz Inglés, is undoubtedly appealing from both a theoretical and a practical point of view. International child abduction cases as a part of International Family Law are progressively increasing following the trend in private international relationships and they imply not only difficult legal issues due to the complex existing legal framework but also, and above all, emotional implications which arise in family disputes aggravated by the presence of children and the imperious need to protect their best interest. In this field, it is unanimously understood that the protection of the best interest of the child requires resolving this kind of cases as effectively as possible in the shortest feasible time. The legal instruments covering international child abduction controversies establish short deadlines and time is a factor that can lead to a different solution depending on the circumstances at stake. But such instruments have deficiencies and the deadlines are usually violated, so in this context, mediation as an alternative dispute resolution mechanism appears as a major tool as explained by the author in this remarkable monograph.

The book includes a Prologue signed by Professor Diago Diago, three Chapters and a number of final remarks. The first Chapter deals with the problems arisen from the interrelation between the two main instruments governing international child abduction cases that take place within the European Union: the Hague Convention on the Civil Aspects of International Child Abduction of 1980 and the European Regulation 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. After a deep analysis of their respective scopes and main solutions, the author concludes this first Chapter providing the limitations of both instruments, namely: their restricted territorial scope of application, the inconsistency to real life of key concepts like “child abduction” and “right of custody”, the heterogeneous interpretation of the grounds for refusal to order the return of the child, the violation of the procedural deadlines and the lack of a consequence derived from such violation and finally, the absence of preventive measures. These deficiencies justify the need to think about alternatives which may be more in line to the needs of these particular controversies, as well as to the achievement of the desirable outcomes that they deserve.

Indeed, the second Chapter of the monograph deals with mediation as a “revulsive” to the limitations of these legal instruments, which actually refer to the usefulness of “amicable solutions”, of mediation in particular. The multiple advantages of this alternative dispute resolution mechanism are explained in detail in this Chapter: it goes further the territorial scope of application of the said legal instruments, it improves the

adaptability of the solution to the particular case on the basis of party autonomy, it promotes celerity and decreases the costs, it allows the adoption of preventive measures and it entails additional advantages like the resolution of related conflicts or the avoidance of future possible abductions. Still, mediation also presents some weaknesses and the author is well aware of them: the need to assess beforehand the adequacy of the use of mediation for a particular case (the so-called “mediability of the dispute”), the resort to mediation as a way to delay the return of the child, the limits established by the law governing the mediation and the cross-border recognition and enforcement of the mediation settlement. This latter issue is one of the key aspects the success of mediation in cross-border cases relies on. It cannot be fully developed or successful if the agreement the parties have reached is not granted efficacy in every country where it is required to be enforced. The third Chapter tackles this crucial and complex issue.

The cross-border enforcement of mediation agreements is regulated in two main international instruments in Spanish Private International Law: the already mentioned European Regulation 2201/2003 and the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children of 1996. These instruments shall be applied to the circulation of mediation agreements on matters falling under their scope of application (parental responsibility) among the Member States of the European Union or the relevant contracting states (46 in the latter case, including the 28 Member States of the European Union) respectively, and therefore it is advisable, if not necessary, that the parties (and/or their legal advisors) and the mediator know beforehand the requirements for the future recognition and enforcement of settlements in the relevant countries in order to ensure that the achieved agreement is fully enforced.

However, even in those cases where the aforementioned legal instruments are applied, the existing legal framework does not always resolve the arising situations and therefore, the current system still has some room for improvements. To this end, the author provides in this monograph *de lege data* and *de lege ferenda* solutions. Among the latter ones, the possible adoption within the Hague Conference on Private International Law of a legal instrument governing “package agreements” (that include decisions the parties have achieved regarding several Family Law aspects: parental responsibility, right of access, maintenance...) is particularly interesting. This model will be based on the following aspects: the “one-stop shop” rule in the sphere of international jurisdiction, the predominant role of party autonomy and the creation of a simple procedure of recognition and enforcement. The author considers that the adhesion of the European Union to this future instrument may help to improve the current system.

Notwithstanding, even with an improved system, international child abduction cases do not only involve countries where the above rules are applicable as the author properly points out in this Chapter. The adoption of bilateral or multilateral instruments favours the resolution of cross-border cases but their entry into force in a country depends on the

subsequent ratification based on the political will. Not every international convention is ratified by all the countries worldwide and the lack of a binding instrument between two or more countries hinders the path towards a satisfying outcome since national authorities will apply their own systems and not common rules. This is particularly challenging in cases involving parties coming from countries with different cultural backgrounds. For instance, the family organisation and the rights of women notably differ in societies based on opposing values and principles and this heterogeneous panorama has also an impact in private international relations. Mediation can still play a significant role in this scenario but issues like the determination of the law governing the mediation settlement and its recognition and enforcement in all the countries involved become more difficult to deal with. From the Spanish perspective, the author analyses the rules set up in the Law 5/2012 on Mediation in Civil and Commercial Matters and the Law 29/2015 on International Legal Cooperation in Civil Matters.

In conclusion, the book authored by María del Carmen Chéliz Inglés provides a detailed and rigorous analysis of the legal framework governing international child abduction in Private International Law and the convenience and usefulness of resorting to mediation, when appropriate, as a way to improve the resolution of these disputes within and outside the European Union. I would strongly recommend reading this book to anyone interested in deepening in mediation in Family Law matters and specifically in international child abduction, a field where this alternative dispute resolution mechanism can contribute to ameliorate access to justice and the protection of the interest of the child as evidenced in Ms Chéliz's research.

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