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evidence for a hearing of the Senate Judicial Committee On the issue of “International  
Child Abduction”**

**I. The Purpose of the Hague Convention**

The 1980 Hague Convention on the Civil Aspects of International Child Abduction (the Hague Convention) is a world-wide convention designed to secure the prompt return of abducted children who have been removed from, or retained outside, their country of habitual residence, so that any subsequent welfare issues relating to the children can be decided in the home jurisdiction.

The Hague Convention is designed to discourage child abduction and to ensure “the protection of children against the harmful effects of their wrongful removal or retention. “ It is not intended to pass moral judgment. Most importantly it is not concerned with the merits of a custody case. Criticisms or complaints about the custodial parent or the terms of a custody award, are matters to be dealt with by the jurisdiction of the child’s habitual residence. The paramount objective of the Hague Convention is to return the child “promptly “ and to confirm the jurisdiction of the county origin in custody matters.

Save in exceptional circumstances (see Article 13b), the Convention is based on the assumption that it is in the child’s best interest to be returned quickly to its country of habitual residence. This ensures that the courts of that country - which are better placed to do so- can determine the issues relating to the child’s future. The abducting parent cannot then profit from the abduction by choosing one jurisdiction over another in the hope of reversing previous custody decisions.

**II. The Problem: Inconsistent application**

For the Hague Convention to work effectively in its dual purpose of discouraging abductions and returning abducted children promptly to their country of habitual residence, it must be consistently interpreted and enforced.

But, in the past few years there has been growing concern that the effectiveness of the Convention is being undermined by the failure of some signatory states to fulfill their obligations.

One of the reasons is that judicial systems lie at the heart of national sovereignty. This often inhibits cross-border co-operation, which requires the competence of national courts to be limited by international obligations. The issue of child abduction is a prime example of the limitations of international co-operation in the judicial area.

The Forum on International Child Abduction held in Washington on 15th and 16th September 1998, under the auspices of the National Center for Missing & Exploited Children (NCMEC) and opened by Chairman Ben Gilman identified the major weaknesses in the Hague Convention; weaknesses, which some signatories exploit to avoid returning abducted children to their country of habitual residence. The NCMEC's report on the Conference pointed in particular to three problems: the systematic use of the exception in Article 13b ("the loophole clause"), the slowness of proceedings and the non enforcement of court orders by some countries.

### **1. Article 13b defence - the loophole clause:**

The exception to the requirement for the immediate return of the child to the country of habitual residence is to be found in Article 13 of the Convention. "the judicial or administrative authority of the requested State is not bound to order the return of the child if

Article 13a: ....

Article 13b: "there is a grave risk that the child's return would expose him/her to physical or psychological harm or otherwise place the child in an intolerable situation. "

Alinea 2: "The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has obtained an age and degree of maturity at which it is appropriate to take account of its views".

**Grave risk:** The Hague Convention provides limited defences based on welfare considerations - a court has the discretion not to return an abducted child if returning it would place the child at "grave risk of psychological or physical harm " or put it in an "intolerable situation ". These are strong terms and they are meant to apply 'in extreme circumstances only. The precedent case of *Friedrich v. Friedrich* (US Appeal's Court - 6th District, 1996) established that "grave risk of psychological or physical harm" could only apply to a situation where a child would be returned to a zone of famine or war or to a situation of serious abuse or neglect.

**Child's objection:** The Hague Convention also provides a limited opportunity for the child to be heard provided it has obtained an "age and degree of maturity" at which it is appropriate to take its views into account. But a main intention of this article was to draw a clear distinction between a child's objections, as defined in the article, and a child's wishes as

commonly expressed in a custody case. This is logical, given that the Convention is not intended as an instrument to resolve custody disputes per se. It follows, therefore, that the notion of “objections” under Article 13b is far stronger and more restrictive than that of “wishes” in a custody case.

In the United States a restrictive judicial definition to Article 13b has been given in the *Friedrich v. Friedrich* precedent case. In England, the Consultation paper on Child Abduction published in the February 1997 issue of the *British Family Law Journal* reported that the High Court has taken a policy decision to approach Article 13b with great caution (in particular against the risk of indoctrination by the abducting parent) and, even if a child were found to object to a return, to refuse a return only in an exceptional case. (See also the precedent Court of Appeal case *C (a Minor)* 23 April 1999 FAFN4F 1999/0306/2).

But whereas the intent of the Convention is not to allow this objection except in the most narrowly defined circumstances, ‘in some countries - notably in Germany - it has become virtually the rule. The Lowe Report of 1996 found that every time the child’s “objections” was raised as a defence, a return order was refused by the German courts (even when children as young as 3 and 5 apparently stated an “objection” to their return).

In 1996, the Lord Chancellor’s Department (English Central Authority) issued a report naming Germany as the worst offender with regard to the Hague Convention. The report said that in the previous year, 17 cases (from the jurisdiction of England & Wales only) led to formal requests to Germany, yet none resulted in a judicial return. The Lord Chancellor’s Department accused the German courts of hiding behind legal technicalities to override their obligation to repatriate abducted children.

In France, where the problem is substantially larger than in England (France and Germany having a common border), President Chirac has on several occasions raised his concern over Germany’s failure to return children abducted from France. In December 1998,, the President talked about “the law of the jungle” following the violent abduction of two children from French territory by men hired by a German father. (There could be no more compelling example of the dangerous consequences of allowing possession to become 9/10<sup>th</sup> of the law ‘in cases of international child abduction). The French Minister of Justice, Madame Elisabeth Guigou, declared in March 1999 that there were “cultural problems” with Germany that needed to be overcome.

Similarly, in the 34 cases of American parents (involving 42 children) that I am presenting today, the notions of “psychological harm and/or the child’s objection” have been consistently used to stop the return of abducted children and then to deny access to them. In all our cases there is a striking uniformity in the arguments used by German courts and authorities.

For example:

- The child is better off with the German parent (by implication, the better parent) and the victim parent is in no position to take care of the child. Therefore returning the child to the US would cause it “psychological harm

- The child does not want to leave Germany and it “objects” to returning to the USA (in the cases of Joseph Cooke, Jeffrey Cook, Joseph Howard and Edwin Troxel, the children were less than six years old).

It is interesting to note that the arguments used by German courts to justify not returning a child are often contradictory: for example “the mother works and can therefore support the child” when a German mother is the abductor (case of James Rinaman) but “the mother works and therefore has no time for the child’ when the mother is the foreign victim parent requesting a return (cases of Ildiko Gerbhash and Catherine Meyer). Similarly, when a German mother is the abductor the German courts argue that it would cause the child “severe psychological damage” to be separated from its mother, but when the mother is the foreign victim parent this argument no longer applies. Instead, it is argued that it would cause the child “severe psychological damage” to be separated from its new environment.

Used in this manner, Article 13b delivers children into precisely the danger from which the Hague Convention is supposed to protect them.

Indeed, a common thread in all too many cases is the sustained, vengeful effort of the abductor to deprive the other parent of contact with the child to the maximum degree possible. The aim in fleeing one judicial system to another is to reverse permanently previous custody decisions and destroy the other parent’s relationship with the child.

When parents abduct children, they are obviously not going to speak well of the other parent, saying that he/she still loves them and wants to see them. On the contrary, as in my case, the children are told that their other parent is a bad mother or father, who has abandoned them and could see them at any time if only he or she wanted to.

Children who are abducted will often have already suffered from their parents’ separation. But in addition they will experience the trauma of being suddenly snatched from the security of a familiar environment, friends, school, grand parents - usually at an age when the breakdown of a family relationship is hard to understand. They do not know what is happening or why. Situations are worse if the abducting parent is hiding from the police or taking precautions against re-abduction - when the child realises there is a state of war between its parents. The child becomes confused and angry. It is traumatised by the loss of one parent. Its greatest fear becomes not to lose the remaining parent.

This is similar to the “Stockholm Syndrome” when hostages identify with their captors. But

in child abduction cases, the syndrome is even more severe because of the age of the child-hostage, its relationship with the captor, and the latter's ruthless psychological exploitation of the relationship.

Many studies have been done in the USA about what is known as "Parental Alienation Syndrome" - when one parent systematically denigrates the other - and its devastating effect on children. The child soon replaces the positive memories of the absent parent with hurt and anger at what it sees, and is encouraged to see, as abandonment and betrayal. In its craving to keep the love of the only remaining parent, the child ends up asserting vehemently that it does not want contact with the victim parent.

This is not just psychologists theorising. It is my actual experience and that of the many parents who have contacted me.

What greater psychological harm, what more intolerable situation could there be for a child, than to be exposed to systematic indoctrination by one parent against the other; and, worse, to carry the main burden of responsibility in adult court proceedings for deciding between mother and father?

Apart from perverting the original intent of the Hague Convention, asking a child 'in effect to choose between parents is a form of child abuse.

In addition, the systematic use of Article 13b to legitimise abductions and refuse a return further extends the meaning of the Hague Convention to encompass in practice an unwarranted jurisdiction 'in custody matters - exactly the opposite of the Convention's aim. Certain consequences flow from this, all of them prejudicial to the victim parent.

When a child is not returned, the abducting parent has the additional advantage of having subsequent proceedings dealt with in the country of retention rather than the country of the child's habitual residence. Case studies show that such court decisions, dealing with custody and access rights, can favour the abducting parent. This, combined with the fact that in some countries (for example Austria and Germany) judges are reluctant to enforce access orders, results in a situation where a parent is often deprived of all contact with the child. On this interpretation of Article 13, the Hague Convention becomes in effect the instrument of alienation between child and victim-parent - the very opposite of what was intended

Professor Elisa Perez-Vera provided the primary source of interpretation of the Convention in her Report of 1980: "The Convention as a whole rests upon the unanimous rejection of the phenomenon of illegal child removals and upon the conviction that the best way to combat them at an international level is to refuse to grant them legal recognition... the systematic invocation of the said exceptions, substituting the forum chosen by the abductor for that of the child's residence, would lead to a collapse of the whole structure of the Convention by depriving it of the spirit of mutual confidence which is its inspiration

## **2. The delay factor - possession is 9/10<sup>th</sup> of the law:**

The merit of the Convention is supposed to lie ‘in the speed of its proceedings. The unusually rigorous limits on defences cannot otherwise be justified as being in the best interest of the abducted child. Lengthy proceedings would also give abductors a further advantage by allowing them to indoctrinate the child against the left-behind parent (for the purpose of Article 13b) and by generating a new argument, namely that the child is now settled in its new environment and should not be moved again.

Since Article 13b is an exception to the requirement for the “immediate return” of the child, it stands to reason that an abductor will usually use it as a defence.

The abducting parent will usually try to slow down the process, and introduce issues and evidence which would expand and lengthen what should be summary proceedings. It is quite contrary to the purpose of the Hague Convention for states to permit such an expansion to impede the speedy resolution of the request for return. (See Article 11: “The judicial or administrative authorities Of Contracting States shall act expeditiously in proceedings for the return of children”. It stipulates that if an application is not determined within 6 weeks, an explanation may be required of the court of the requesting state).

But, some countries are markedly slower in dealing with Hague applications than others. For example, judicial returns take on average 5 1/2 weeks in England versus 26 weeks in Germany, while judicial refusals take 11 weeks versus 36 weeks (during which contact with the children is difficult, if not impossible).

The length of proceedings is clearly a major problem, where complaints are commonly made about Germany. There seem to be two basic reasons for the delay: the first is that Hague applications are not accorded top priority and the second is that Hague Convention hearings are heard by inexperienced judges and start at the *Amtsgericht* (lower court) level.

In countries where Convention cases are heard centrally - at the high court level, as in England & Wales - by a small number of specialist judges, the system works well. Cases are dealt with expeditiously, based on paper evidence and without the child’s view being usually heard (i.e. approaching article 13b - “the child’s objections” - with great caution). Judges usually make a decision to return the child, relying on the court of habitual residence to make a fair decision at any subsequent custody hearing.

In countries where Convention cases are first heard at the lower level, they tend to be slow and dealt by judges who are inexperienced and/or unwilling to uphold the difference between proceedings under the Hague Convention and normal custody cases. As a result, children are usually not returned.

Since an abducting parent will usually, within the framework of Article 13b, level allegations against the other parent and request that oral evidence be heard, it is important that courts do not treat these Article 13b objections as “a merit of custody” argument. Such considerations are meant to be reserved to the court of the child’s habitual residence. But in Germany, courts have shown themselves ignorant or careless of their obligations under the Convention. Underlying this is a distrust of foreign courts.

Amtsgericht (lower court) decisions can then be appealed in the Oberlandesgericht (high regional court) which causes further delay in the proceedings. Appeals can take several months to decide and judges are usually not more experienced. Hague applications are again treated no differently to normal custody proceedings. But even an appeal ruling that the child should be returned does not end the proceedings, as the appellate courts have no power of enforcement.

Under German Family law, children’s views are required to be taken into account and it is normal for children, even quite young, to appear in court. The child’s attendance at the court lies at the judge’s discretion but it is not unknown for children as young as 3 years old to participate in court proceedings. Court procedures nearly always ‘involve the Jugendamt (Youth Authority) who are asked to interview the children and report to the court. This causes further delay in the proceedings and gives an additional advantage to the abductor, by providing him with a new argument namely that the child has “adjusted to its new environment” and that it would be “unsettling” to return it to its country of habitual residence. In the case of Joseph Cooke, these arguments have been taken to such extremes that a German court has committed his two children (who were 3 and 5 at the time) to the care of German foster parents rather than return them to their natural father in the USA.

In most cases, the Jugendamt does not make inquiries pertaining to the child’s habitual residence and it is the abductor, not the victim parent, who is interviewed. But, more importantly, the involvement of the Jugendamt fundamentally violates the spirit of the Hague Convention. The Convention is clear: ‘In considering the circumstances referred to in article 13b, the judicial and administrative authorities shall take into account the information relating to the background of the child provided by the Central Authority or other competent authority of the child’s habitual residence’ - not as is the practice in Germany, of the child’s country of retention.

Although listening to children is by no means the same as considering their objection under Article 13b of the Convention, the child’s presence is likely not only to lengthen the proceedings, allow judges to treat the objection under Article 13b as a “merit of custody” but also put the child at risk of being indoctrinated by the abducting parent.

Indeed, when children are interviewed, it becomes of paramount importance to abductor-parents that their children say “the right thing” to the judges and the Youth Authority. This puts

an 5% higher premium on placing psychological pressure on abducted children. But, the German courts refuse to take into account the abductor's opportunity to programme the children's emotions and are unwilling to admit independent expert opinion to examine children and the degree to which they have been indoctrinated (Parental Alienation Syndrome).

### **3. Non-enforcement**

Without effective enforcement, the object of the Hague Convention cannot be realised. The most critical aspect of enforcement is that when the summary process has taken place and a return has been ordered, the power exists to carry out and enforce that order.

In Germany (and I believe in Austria) Under s. 33 of the German law of Non-Contentious Matters enforcement powers are vested exclusively in the court of first instance. This means that the high court decision to return the child can only be forced by the Amtsgericht judge who originally heard the case. This enforcement process can take several months and does not always end in a return being made. There have been several notable examples when an Oberlandesgericht ordered a return and the lower court in effect refused to enforce it.

But even at the lower level, the system does not work well as it is customary for judges to make decisions without ensuring that their orders are actually enforced. This in turn allows the abductor to abscond with the child (e.g. cases of Sanjas Das., Catherine Meyer, James Rinnaman, Kenneth Roche where the Amtsgericht return orders were never enforced).

The next problem is that in several Convention countries, abduction is not considered a criminal act - again in Austria and Germany. In England there is a criminal statute which covers child abduction. It is the Child Abduction Act of 1984. The penalty on conviction can be a substantial term of imprisonment. The act probably has a deterrent effect in itself but it also allows the full resources of the police to be employed to look for a missing child and the abducting parent. The police do not need to wait for court orders and can seek the help of Interpol. It also allows the UK to seek extradition of abductors where there is an appropriate extradition treaty. When abductors flee to a weak Hague country, with slow or irresolute courts and a poor enforcement system, it is often speedier and more effective for a UK citizen to use the criminal offence and seek an extradition warrant for the parent to be arrested and then lawfully to recover the child.

In England, there is almost always a desire at every level to search with utter and unrelenting vigour for a missing child, but there can be a reluctance to prosecute a parent for abducting, once the child has been recovered. The reason is that the imprisonment of the parent is probably a further punishment of the innocent abducted child, who probably loves both parents. That is why prosecutions need special authority, and are comparatively rare. The real use of the criminal statute is that it allows the full range of powers for the pursuit of a wanted criminal to be used to find the abductor, and more importantly, the child.

Once that has been achieved, and once the family court has decided what should happen in the child's best interest, it may be unnecessary or inappropriate to prosecute.

The Lord Chancellor (as the Central Authority) tends to delegate in individual abduction cases to the lawyers appointed by him. They will certainly seek to liaise with police.

Specialist police groups, such as those concerned with extradition have highly developed expertise, which can be quickly employed. Special Branch in particular can track the international movement of abductors, and monitor and control movements at UK airports, with a high degree of effectiveness.

Finally, the Tipstaff, the enforcement arm of the High Court, will routinely act through the police, over which it has authority, and when an order is made by a High Court judge to search for a missing child (a 'SEEK AND LOCATE' order), that order can instantly be faxed to every police station in the country.

But this system does not apply in Germany since first of all it has no extradition treaties and secondly, abduction is not a criminal act -unless a child is taken out of Germany.

#### **4. Additional problems with the Germany legal system**

The German authorities tend to be inefficient in locating abducted children. As a result, some victim parents cannot initiate Hague proceedings (cases of John Dukesherer, Joseph Howard). Furthermore, under German law it is possible to change a child's surname without the approval of the father or for a child to be adopted without the consent of both parents.

Many victim parents complain that the Berlin Central Authority offer them little, or no help. Victim parents are also required to pay DM 2,000 by the Berlin Central Authority to allow them to initiate court proceedings. Some parents cannot afford this to be i with (Robert James, Taylor Tali). German courts also tend to charge for the hearings themselves. This, combined with the costs of lawyers, the translating and travel expenses, makes it impossible for most parents to continue with lengthy proceedings which may last years.

Under German law it is possible to make "ex-parte" emergency custody orders, that is to say, without the knowledge or presence of the opposing party (cases of Rebecca Collins, Joseph Cook, James Filiner, Joseph Howard, George Uhl, Donald Youmans).

The notion of German domicile can also be established in matter of months (cases of Mark Wayson, George Uhl). As a result, German courts are able to claim jurisdiction over that of the country of habitual residence and some Hague applications have been rejected (case of Joseph Howard)

Since German courts consider a child German if one of its parents is German, decisions tend to favour the German nationality over others. Germany still operates the “blood law”, based on the 1913 Imperial Naturalization Act which grants citizenship from parent to child on the basis of bloodline rather than birthplace or residence. This also allows German authorities to argue that the Vienna Convention governing consular access to US citizens does not apply.

Access is made as difficult as possible and often denied altogether, drawing on arguments based either on the ‘fear of re- abduction “ or/and “ the child’s will”. Victim parents are then told that it would be “emotionally unbearable” and “against the child’s interest” to have contact with them. In my own case, the German court has refused to implement access agreements made ‘in the court itself which my ex-husband has with impunity refused to honour. Similarly, grandparents are denied all access. My 87-year- old father may never live to see Alexander and Constantin again.

The main complaints however remain, that, under German law, access rights are not enforceable; and the custodial parent has all the rights - the other parent has none.

## **V. International Child Abduction - what needs to be done:**

In an ideal world, a consistent, uniform and rigorous approach to enforcing the Hague Convention would solve the problem of international child abduction. But we have to be realistic. That will not happen any time soon. So, we need another remedy in the meantime.

It is not for me as a non-American to say what should be done in this country. But from my experience of the last five and a half years, I am clear that certain things are necessary if these terrible miscarriages of justice are to be rectified.

It has to be understood by the authorities of the country of the victim parent that child abduction is not a private legal matter ‘in which they have no role to play. To deny a parent access to his/her children is to deny a human right. To refuse to return a child promptly to its place of habitual residence is in the overwhelming number of cases to violate the Hague Convention. To steal a child across frontiers must be seen as a felony.

All this gives ample grounds for the government of the victim- parent to intervene forcefully with the government of the abductor, where the courts in that country are unwilling or unable to deliver justice.

As Senator DeWine said in an interview with Reader’s.Digest in September 1999: “We go after countries that steal our products or violate patent and copyright laws, but not when they are supporting the theft of American children.” And as Hillary Rodham Clinton said at the launch of ICNffiC in April 1999: “ Ultimately these matters are not just about individual children and the pain of victim parents, but they really are a question of human rights. ‘

In today's world it is no longer acceptable for a Government to hide behind the independence of courts when human rights abuses or gross miscarriages of justices.

What should we be saying to governments, such as the German? First, that the miscarriages of justice the past must be reviewed and set right. In almost all cases that means, at the very least, enforceable rights of access in conditions which are not dictated by the abducting parent.

Second, that procedures and mechanisms are put in place that ensure these miscarriages of justice do not recur.

We have to remember that in virtually all these cases the problem is not so much the behaviour of ex-spouses and ex-partners, but the failure of the courts to deliver justice. The courts are the problem. It is they who are responsible for the miscarriages of justice. Governments can no longer wash their hands over them.

In the cases I am presenting today, German courts and authorities have consistently shown themselves heavily biased towards the German parent; either ignorant or careless of their obligations under the Hague Convention; repeatedly reliant on arguments based on "fear of re-abduction" or the "children's will" severely to constrain access to children; slow to call hearings and to give judgements; ready to make "ex-parte" decisions, without informing, or hearing the witnesses from, the non-German side- unwilling to admit independent expert opinion to examine children and the degree to which they have been indoctrinated (Parental Alienation Syndrome); and unwilling to enforce access agreements made 'in court.

As a result, Rebecca Collins has not seen her children since 1994; Glen Gebhard. since 1994; Joe Howard since 1994; James Rinaman since 1996; Kenneth Roche since 1991; Edwin Troxel since 1997; Mark Wayson since 1998; Anne Winslow since 1996; Donald Youmans since 1994; Joseph Cooke's two children have been placed in foster care and he has not seen them since 1994 and John Dukheshere and George Uhl do not even know the whereabouts of their children... to name but a few. None of us have received any information on our children's welfare. And to top it all, the German courts often demand child maintenance payments from the victim parents!

## **V. My case**

In 1984, I married a German medical doctor, Hans-Peter Volkinann, in London and our first son, Alexander, was born a year later. We then moved to Germany for the sake of my then-husband's career and I gave up my own 'in the City of London. Our second son, Constantin, was born in 1987. Our marriage subsequently broke up and in 1992 we agreed a legal separation. I was awarded custody of the children (who were to live with me in London) and Volk-

mann was granted generous access rights.

At first, all worked well. The children continued their schooling at the French Lycee in London (Constantin conning first 'in his class) and they spent vacations with their father 'in Germany. I rebuilt my career in the City of London so that I could support my children. By 1994 I had managed to obtain a senior position in a bank and to buy a comfortable apartment for the three of us.

In July 1994, the children left as usual for their summer vacations with their father in Germany. Without warning, four days before they were due to return to London, their father informed me that he was not sending them back. He then disappeared with the boys. For the next four weeks, I had no idea of their whereabouts, despite police searches.

In August 1994, the High Court of England & Wales ordered the children's "immediate return" to Britain under the terms of the Hague Convention. The children were made "Wards of Court". In September 1994 the appellate court of Verden (Lower Saxony) upheld the English decision and also ordered the "immediate return" of the children. But in defiance of the court order,- Volkmann bundled the boys into a car and vanished. The local police and the Court bailiffs were unwilling to help.

The following day, Volkmann lodged an appeal in the higher court of Celle, a nearby town. To my dismay and astonishment, the judges made a provisional ruling that the children should remain in Germany until the appeal was heard because "otherwise the mother could hide them in England" Still worse, the ruling was made "ex-Parte"; that is, without informing me or my lawyers so that I was left unrepresented at the hearing.

In October 1994, the Celle court reversed the earlier English and German decisions on the grounds that it was the "children's wishes" to remain in Germany, so exploiting the so-called loophole clause of the Hague Convention (Article 13b). The judges expressed the view that the children were German and that they had been suffering in a 'foreign environment.. especially since German is not spoken at home or at school, that they were taunted as Nazis." The judges also ruled that the children had attained an age at which it was appropriate to take their views into account "since a 7 year old child faced with the decision to play judo or football, generally knows which decision to make".

The Jugendamt (Youth Authority) testified at both hearings that a return to the UK would cause the children "severe psychological harm", again taking advantage of the Convention loophole clause. The children had, they said, adapted to their new environment, Alexander felt himself German and the mother had no time for them because she worked. The Jugendamt took evidence only from the German side. Neither I nor anyone from the children's habitual environment in London was interviewed.

At the time of the hearing, I had not seen or spoken to my children in over four months, during which they had been under the sole influence and control of their father and his family.

The Celle court decision meant that in German law all further legal proceedings on custody and access had to take place on the abductor's home territory. The consequence of this has been that since 1994, I have never been able to gain normal access to my children.

Between November and mid-December 1994, five applications to see my children were rejected on the grounds that I could "re-abduct" the boys and that in any case they no longer "wished" to see me. This went as far as to deny me access to the boys over the Christmas holidays. In January 1995, following my desperate attempt to see my boys in Verden, my ex-husband asked the court to transfer their place of residence to Germany on the false allegation that I had sought to re-abduct them. Despite a police reporting that this was untrue, in my absence and without allowing me to file my defence, the court accepted my ex-husband's request. This was followed in March 1995 by a decision of the Verden court, giving temporary custody of the children to my ex-husband, despite their being "Wards of Court" in England. The decision gave me only three hours access to my children, once a month, to be followed after 6 months by one day a month. The access visits had to take place either in my ex-husbands house or 'in the office of the Jugendamt.

My ex-husband reneged on even these highly limited access arrangements. The court, far from enforcing them, cut back my visitation hours in yet another "ex- parte" decision 'in October 1995. Thus, a pattern was set which exists to this day: of the Court promulgating access arrangements, my ex-husband refusing to abide by them, and the Court refusing to enforce them.

Despite every guarantee on my part, including the support of the British Consul General 'in Hamburg, the fear of abduction was consistently used, over the next few years, to deny me and my parents normal access rights. Between the summer of 1994 and December 1998 I managed to see my sons for only 12 hours under the most harrowing conditions: either locked in my ex-husband's secluded house, under the supervision of a third party; or in the offices of the Jugendamt. AU visits were broken off after less than two hours.

In September 1997, Volkmann divorced me. My German lawyer strongly advised me not to fight for custody, saying that to facilitate access, it was in my best interest to move quickly to grant Volkmann a divorce and acquiesce in his getting custody. So, in exchange for giving him custody, it was agreed in court that I should have access to my children on "neutral territory", that is in Hamburg.

But when, six long months later, the moment finally came for me to see my sons, Volkmann backed out at the last moment, stating that it was the "wishes" of the children not to see me and that they feared I would "abduct" them. The Verden judge refused to enforce the access

agreement. It was only then that I discovered that while the custody arrangement was legally enforceable, the access agreement was not. It is extraordinary that a court can rule on divorce and custody while neglecting to protect a parent's rights of access to his/her children.

Further applications for access were rejected and the Verden judge ruled that she would not decide on future access rights without first holding yet another hearing. This would entail, she said, her seeing the children and once more requesting a report from the Jugendamt.

The Jugendamt took two months to file the report. I was not interviewed. Their recommendation was that I should see my children once every two months for five hours in a priest's house 'in Bremen. This was as inhumane as it was impractical, since by now I was living 'in the USA. By strange coincidence the recommendation was almost identical to a proposal Volkmann had made me the previous year.

It took until December 1998 to secure the promised hearing; i.e. 15 months after the divorce hearing which should have given me enforceable access rights. The Verden court ruled that the children should get accustomed to me "little by little" and that it would be too "stressful" for them to see their mother who after a four year separation was practically a stranger to them. The judge once rejected my argument that the children had been deliberately programmed against me and that for us to re-establish a relationship, what was needed from the start was continuous contact over several days.

The judge established a programme of visits, each of which would be longer than the last and which would culminate in the children visiting me in Washington 'in August of this year. My husband and I, travelling from the US, saw the boys in December (3 hours), January (one day) and February (2 days). Each visit was marked by increased tension on the part of the boys. My husband, Christopher, who had never before met his step-sons, was shocked to see how in only two months they changed from being children increasingly excited to see their mother to becoming sullen zombies monotonously repeating the same "talking points" against me.

Predictably, a week before the April visit (the first which would involve the children being 'in continuous contact with me, 'including overnight), Volkmann sent a fax to say that he would not bring Alexander and Constantin to Hamburg because this was against the boys' "wishes" and that it could not be in their "best interest" to be forced.

The judge, once again, refused to enforce her decision, stating that a new hearing would have to be held. And before then, she needed to see the children and get another report from the Jugendamt!

We were then informed that the judge had left on indefinite maternity leave and that months would pass before a new judge would be competent to hear my case. Meanwhile, a tempo-

rary judge rejected a further application requesting the enforcement of the May and subsequent visits. He claimed to be satisfied that Volkmann was acting in good faith.

As of today, I have no access rights whatsoever since the schedule of visits established in the December 1998 decision is at an end. The German Minister of Justice recently wrote to our Ambassador in Bonn saying that the courts were independent and that she could not intervene. Since it is the courts, not my ex-husband, which are the final arbiter over whether I can see my children, I find myself 'in an impossible catch-22 situation.

The German courts and the German authorities have rejected all my requests to have my children examined by an independent psychologist specialising in Parental Alienation. In five years, I have received one letter and one school report. I have no information on my children's life, well being, schooling, or any other aspects of their existence. Under German law, I have no rights as a non custodial parent so confirming a letter I received from the Bundeskanzlerlei's office (German Chancellor's office) in 1995 stating that: "Under German law, it is impossible to go against the wish of the parent who has custody". I have no rights as a mother. In 5 ? years I have seen my sons 24 hours.

So the months pass, the years pass, and my children are growing up without a mother. Before my ex-husband abducted our children, they were allowed to see and love both their parents. Now, they are not.

Has anyone proved that I am an unfit mother? No. Has anyone proved that I do not love my children? No. But, I am nonetheless denied the rights that even women in prison are allowed. My parents have been denied all access as well. My 87-year old father may never live to see to see Alexander and Constantin again.

My children will be scarred for life and they may never recover from this experience. They have become confused and angry with me, because they have been told from the start that I have abandoned them. On two occasions, in 1994 and 1998, when I saw my sons and told them how happy I was to see them, Alexander replied: "you lie. Daddy told us that you could come and see us whenever you wanted - but you never did".