

Parental child abduction – whether you are the left-behind parent or the “abductor” parent, you have the right to tell and defend your side of the story

International child abduction and, more specifically, parental child removal from their usual place of residence is becoming an increasingly common phenomenon due to the ease of international travel, the growing number of bi-cultural marriages, and the annually increasing cross-border divorce rates. An abducted child may be severely personally affected as a result of his/her removal, as may the left-behind parent too, who is faced with an abrupt change and an unimaginable, even if temporary, loss.

It should be taken into consideration that, when a child is being removed from his/her State of habitual residence, it is not only being deprived of contact with his/her other parent but is also being distanced from his/her home environment. A child's habitual residence is the usual place of its residence immediately prior to its removal or retention, which can be decided on the basis of multiple criteria, such as, language, social life, environment, medical care, education, employment, family, love of the place, etc. A child that is abducted and moved to a different State is forced to face numerous big changes, including a different society, culture and often language. Such changes will not only, inevitably, increase the physical distance of the abducted child from its habitual residence, but may also further complicate the procedure of locating, recovering and returning the internationally abducted child.

The issue of international child abduction is governed by the Hague Convention of 25 October 1980, which regulates the civil aspects of this matter. The Convention provides a system of co-operation between Central Authorities (in Cyprus, it is the Ministry of Justice and Public Order) of Member States (i.e. Contracting States) and an expeditious procedure regulating the return of the child to the State of his/her habitual residence. The Convention has been signed, until today, by 100 countries, a list of which can be found **here**¹. The enforcement of this Convention is subject to the condition that the abducted child has his/her habitual residence in a Member State of the Convention, and that the child is under 16 years old.

The primary objectives of the Hague Convention comprise the reinstatement of the status quo that existed prior to the wrongful action (whether removal and/or retention), the prompt return of the abducted child to the place of his/her usual residence, the acknowledgement

¹ <https://www.hcch.net/en/instruments/conventions/publications1/?dtid=42&cid=24>

and safeguarding of the rights of custody and of access under the laws of one Member State by the other Contracting States, as well as the prevention of cross-border child abductions. It is evident, therefore, that the fundamental purpose of the Convention is to protect children from any harmful effects caused by their wrongful removal from the country of their habitual residence to another country, or by their wrongful retention in some country other than that of their habitual residence.²

For the application of the return mechanism provided by the Convention, a custody order is not required. As long as a child is being wrongfully removed or retained from his/her habitual residence, it is presumed that the wrongful removal or retention is not in the best interest of the child. In this regard, it should be noted that a return order issued within the scope of the Hague Convention does not amount to a custody order nor any form of custody determination. It is simply an order requiring that the child be promptly returned to the Member State of his/her habitual residence, which consequently constitutes the most appropriate jurisdiction to determine the custody and access of the child.³

An applicant seeking the issuance of a return order must establish the following requirements before the relevant Central Authorities, either of the habitual residence of the child or any other Member State:

1. The child was habitually residing in another Member State;
2. The removal or retention of the child constitutes a breach of custody rights (acquired by judgment or by operation of law or by an agreement), under the law of the Member State where the child was a habitual resident immediately before the wrongful removal or retention; and
3. The applicant, at the time of the wrongful removal or retention, was actually exercising the aforementioned rights, either jointly or alone.

The relevant application for a return order can be filed either by a natural person or by a legal entity (e.g. the mother or father of the child, the grandparents thereof, an orphanage, or a relevant organisation), who will have to establish a prima facie case of satisfying the above criteria. In relation to the prompt return procedure, the Convention lays down a non-obligatory time-limit of six weeks for the Central Authorities to issue a decision on the matter, after which the applicant or the Central Authorities of the requested State may request a statement for reasons of any delay.⁴

Turning to the other side of the issue, an application for a return order may, in certain circumstances provided by the Convention, be rejected even if a prima facie case has been established; for example, if consent or subsequent acquiescence to the removal of the child is proven. An “abductor” parent may also legally defend their actions if they can prove that returning the child carries a serious risk of exposing it to physical or psychological harm, or

² RE H (1977 2 ALL ER 225)

³ Outline of the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, May 2014 (<https://assets.hcch.net/docs/e6a6a977-40c5-47b2-a380-b4ec3a0041a8.pdf>)

⁴ Explanatory Report by Elisa Perez-Vera (<https://assets.hcch.net/docs/a5fb103c-2ceb-4d17-87e3-a7528a0d368c.pdf>)

otherwise placing the child in an intolerable situation. Other grounds stipulated by the Convention on which an application for a return order can be rejected include, where a child has attained an age and a degree of maturity that are deemed sufficient for its views to be taken into account. Pursuant to such circumstances, the child will be given the opportunity to express its opinion on what course it believes is in his/her own best interest.

It is also worth noting that the Convention further grants a discretion to the competent authorities to elect not to return the abducted child if the application was delayed and made at least one year after the child's wrongful removal or retention, by reason of the fact that, after a prolonged period of time (at least one year), a child may have settled into his/her new environment and created bonds which shall be gravely interrupted by a possible return. Furthermore, the competent authorities are not bound to order the return of a child if the party opposing the application is successfully able to challenge the custody rights alleged by the left-behind parent. In other words, if the left-behind parent was not actually exercising any custody rights at the time of removal or retention of the child. Finally, an application for a return order will most likely be rejected if the return of the child shall contradict the fundamental rules relating to the protection of human rights and the fundamental freedoms established by the State to which the application is being addressed.

Within the scope of the Hague Convention, the Central Authorities of each Contracting State assume an integral role. Locating the abducted child, ensuring its prompt and safe return to his/her habitual residence, child protection, amicable resolution of such matters, and the safeguarding of custody and access rights, all collectively form the primary aims and cornerstones of co-operation between the Central Authorities of the Member States. Central Authorities also co-operate to prevent further harm to the child by initiating, or helping to initiate, proceedings for the return of the child, and by making necessary administrative arrangements to secure the child's safe return.⁵ In this regard, it is worth remembering that these systems designed by the Hague Convention for the safe return of abducted children and/or the safeguarding of the exercise of access rights, depend entirely on effective co-operation amongst the Central Authorities.

Bearing in mind all the elements surrounding the sensitive and serious matter of international parental child abduction, the best way to deal with this issue is to act calmly and to take the available legal measures so as not to exacerbate an already distressing situation for the child that is being subjected to these circumstances. The interests of the child in question should always be the priority, which is why it is vital that a parent finding themselves in this situation, whether as an "abductor" or a left-behind parent, remembers that the Central Authorities will provide them with the appropriate legal or administrative aid that will secure the best outcome for the child.

⁵Outline of the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, May 2014 (<https://assets.hcch.net/docs/e6a6a977-40c5-47b2-a380-b4ec3a0041a8.pdf>)