

## Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

Being wrongfully removed from or retained outside of their State of habitual residence has a detrimental impact on a child. The habitual residence of a child is the focal point of that child's life prior to the wrongful removal or retention. Taking the child abruptly from the environment in which he or she has the strongest familial and social ties therefore has serious consequences. The increase in the number of families that are mobile across borders has unfortunately also led to a growth in the number of international child abductions. Locating, recovering, and returning these children can be complex and difficult.

The Child Abduction Convention aims to protect children internationally from the harmful effects of their wrongful removal or retention by providing a system of cooperation between Contracting Parties and a rapid procedure for the return of the child to their State of habitual residence. Although it pre-dates the United Nations Convention on the Rights of the Child (UNCRC), the Child Abduction Convention provides practical procedures that allow for the implementation of the international obligations enshrined in the UNCRC, in particular Articles 9, 10, 11 and 35. The Child Abduction Convention also provides for the protection of rights of access to the child. The Convention applies to children until the age of 16 (Art. 4).

### Principal features of the Convention

#### *The return mechanism*

The Convention provides for a procedure to bring about the prompt return of children, who have been wrongfully removed or retained, to the State of their habitual residence (Art. 1). The Convention is based on the principle that, save in exceptional circumstances, the wrongful removal or retention of a child across international borders is not in the interests of the child (Preamble). The return of the child to their State of habitual residence protects the right of the child to have contact with both parents (see, e.g., Art. 9.3 UNCRC), supports continuity in the child's life (Art. 8 UNCRC), and ensures that any determination of custody or access is made by the most appropriate court. The return order is designed to restore the status quo that existed prior to the wrongful removal or retention, and to deprive the taking person of any advantage gained as a result of the wrongful removal or retention. In so doing, the prompt return of the child also serves as a deterrent to international abductions.

A return order is not a decision on the merits of custody (Art. 19). It is simply an order that the child be returned to the jurisdiction that is most appropriate to determine custody and access. The limited scope of return decisions under the Convention therefore justifies the requirements that the return order be made forthwith (Art. 12), and that a court dealing with an abduction case is not permitted to decide on rights of custody until it has been determined that the child is not to be returned or unless an application under the Convention is not filed within a reasonable time (Art. 16).

An application for a return order requires the applicant to establish the following: that the child was habitually residing in the other Contracting Party (Art. 4), that the removal or retention of the child constituted a breach of custody rights attributed by the law of that Party (Art. 3(a)), and that the applicant was actually exercising those rights at the time of the wrongful removal or retention (Art. 3(b)).

## Exceptions to return

The Convention provides for certain exceptions in which the authority seized with the return application has discretion not to order the return of the child. Where it is demonstrated that the child is now settled in the new environment, the authority has the discretion to not make the return order (Art. 12). If the person or institution having care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented or subsequently acquiesced to the removal or retention, the authority is not bound to order the return of the child (Art 13(1)(a)). Where there is a grave risk that the return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation, the authority is similarly not bound to order the return of the child (Art. 13(1)(b)). The authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of the child's views (Art. 13(2)). Return may also be refused if it would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms (Art. 20).

## Role of authorities

The Convention provides for a system of Central Authorities in all Contracting Parties. Central Authorities in each Contracting Party have an integral role as the focus for administrative cooperation in the practical operation of the Convention. Central Authorities in each Contracting Party assist in locating the child and in achieving, if possible, a voluntary return of the child or an amicable resolution of disputes. They also cooperate 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. The Central Authorities are also obliged to promote the peaceful enjoyment of rights of access and to take steps to remove, as far as possible, obstacles to the exercise of such rights (Art. 21).

## Additional resources

The [Child Abduction Section](#) of the HCCH website contains the latest information about the Child Abduction Convention. This includes:

- Text of the Convention
- Status table of Contracting Parties
- List of Central Authorities and practical information (incl. Country Profiles)
- Explanatory Report on the Child Abduction Convention
- Guides to Good Practice: Parts I - VI
- Model Application Form
- Information on the International Hague Network of Judges (IHNJ)
- Information on the International Child Abduction Database (INCADAT)