PRACTICAL HANDBOOK ON EU FAMILY LAW

Part 2

Litigating International Child Abduction Cases under the 1980 Hague Convention in the EU

Nadia Rusinova

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Author: Nadia Rusinova
Research and Editorial Assistant: Natali Dimitrova

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Author-led workshops and custom training sessions based on this material are available for institutions, legal professionals, and academic programs. These sessions provide deeper analysis, case-based simulations, and practical guidance tailored to specific jurisdictional or institutional needs.

Contact:
nadia@nadiarusinova.com
www.nadiarusinova.com

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About the Handbook

International child abduction law has generated extensive and sophisticated literature. The 1980 Convention has been examined provision by provision, its objectives debated, its concepts analysed, and its relationship with human rights and European Union law explored in considerable depth. The HCCH has also developed an important body of practical guidance on the operation of the Convention and its interaction with the 1996 Convention.

This handbook approaches international child abduction from the perspective of litigation practice. A case rarely presents itself as a series of separate problems under Articles 3, 12 and 13 of the 1980 Convention. The relevant issues are interconnected and arise in a procedural sequence: the applicable legal framework must first be identified, the alleged removal or retention qualified, the respective positions of the applicant and respondent assessed, and any exception examined against the evidence available. Questions of protection on return, the limits of the requested court's powers, the form of the eventual decision and its enforcement may then become decisive.

The structure of the handbook follows that sequence. It moves from identifying the applicable framework and qualifying the alleged abduction, through the applicant's and respondent's litigation tracks, to the issues that cut across both litigation tracks like evidence, child participation, domestic violence, protective measures, parallel proceedings, agreements and judicial discretion, and finally to the decision, appeal, enforcement and post-decision consequences. This structure reflects a simple premise: the legal significance of a fact depends as much on where it enters the analysis as on what the fact is.

The handbook is the second part of the "Practical Handbook on EU Family Law". Part 1, Key Concepts, Legal Terminology, and CJEU Case Law in Cross-Border Judicial Cooperation addresses the vocabulary and conceptual architecture on which the whole field rests: the autonomous concepts used across the EU family-law instruments, their interpretation by the Court of Justice, and the way a single term travels between Brussels IIb, the Maintenance Regulation, Rome III and the Hague Conventions. It is organised concept-by-concept rather than instrument-by-instrument and is available as a free download.[1]

The two parts are designed to be used together but can be read independently. Where Part 2 relies on a concept developed more fully in the first volume — habitual residence, rights of custody, recognition and enforcement, the mechanics of the 1996 Convention — it refers to the relevant chapter of Part 1 rather than restating the analysis. Those cross-references take the form "see Handbook part 1, chapter …". A reader who wants the underlying conceptual treatment will find it there; a reader already familiar with the terminology can follow Part 2 on its own.

The handbook is intended principally for lawyers and judges working with international child-abduction cases in Europe. Its center of gravity is the 1980 Convention as it operates within the EU, supplemented by the Brussels IIb Regulation and, where relevant, the 1996 Convention. The ECHR,

[1] Nadia Rusinova, *Practical Handbook on EU Family Law. Part 1: Key Concepts, Legal Terminology, and CJEU Case Law in Cross-Border Judicial Cooperation* (2025), ISBN 978-619-93392-0-6. Freely available at www.nadiarusinova.com/handbook and archived on SSRN at https://ssrn.com/abstract=5368842 (DOI: 10.2139/ssrn.5368842).

the EU Charter, HCCH materials and comparative case law are incorporated where they affect the way a return case is argued, proved or decided.

The discussion therefore concentrates on propositions capable of doing work in litigation: the order in which questions should be asked, distinctions that alter the legal analysis, evidential consequences, procedural choices, arguments that courts have accepted or rejected, and mistakes capable of changing the result.

How to use the handbook

The handbook can be read sequentially, but it was designed to be entered at the point where the problem arises.

A lawyer assessing a new case can begin with the applicable regime and the qualification sequence in Units 1 and 2. An applicant can move directly to the litigation track in Unit 3; a respondent to Unit 4. Questions that arise regardless of which side is represented—evidence, hearing the child, domestic violence, parallel proceedings, protective measures, agreements and discretion—are collected in Unit 5. Unit 6 follows the case beyond the substantive return analysis into the form of the decision, appeal, enforcement and the consequences of return or non-return.

Within those sections, the bold propositions are intended to provide the quickest route through the analysis. The accompanying cases supply the factual context that legal propositions inevitably lose when stated abstractly. Tables and diagrams are used where sequence or comparison matters more than exposition.

The symbol 🇪🇺 identifies sections dealing specifically with EU law, in particular rules and mechanisms introduced by the Brussels IIb Regulation. Its absence does not mean that the discussion is inapplicable within the EU; it simply indicates that the section is not specifically EU-derived.

Wherever the source permits it, the electronic edition of the handbook links decisions directly to the original judicial database and, where technically possible, to the relevant paragraph or passage. The hyperlink is therefore part of the method of the handbook. Readers should be able to move from a condensed proposition to the underlying authority, inspect the reasoning in context, and decide for themselves how far the case supports an argument in another dispute. Where a stable public link is unavailable, the decision is identified by court, date and case number, ECLI or other official decision identifier, as available.

That matters particularly in this field. International child abduction cases are unusually sensitive to small factual differences. A quotation or headnote may conceal the feature on which the result actually turned: the timing of a statement alleged to constitute consent, the precise content of a custody right, the evidence available about protection on return, the manner in which a child's objection was expressed, or the procedural stage at which an allegation was first raised. Direct access to the judgment allows those differences to remain visible.

The case summaries in this handbook therefore offer a route into the authorities rather than a substitute for them. The book is intended to shorten the distance between a legal problem and the material needed to analyse it well.

Sources and scope of case law used

Case law is the working material of this handbook. The propositions developed in the following chapters are based on decided cases and illustrated through them. Only a fraction is cited: reading on that scale was necessary to identify which cases actually illustrate a proposition. The reason is simple: litigation practice is built on examples.

At the outset, comparative research seemed likely to disclose identifiable approaches—perhaps characteristic national positions on habitual residence, Article 13(1)(b), child objections, protective measures or judicial discretion. That was the one expectation the research did not confirm.

There are recurring legal questions, and there are recurring mistakes. Beyond that, the cases resist easy classification. Courts within the same jurisdiction may reason differently, and similar facts may acquire different legal significance from one case to another. A court may take a restrictive approach to one issue and a highly individualised approach to another. General descriptions of jurisdictions as "strict", "liberal" or particularly inclined towards or against return therefore have limited value. The approaches resist classification even where the recurring mistakes do not.

This absence of a simple pattern is itself important for litigation. The outcome of a return case cannot safely be predicted from the jurisdiction alone, or from a general impression of how a particular defence is treated there. The more reliable method is to identify the precise legal question, examine how courts have dealt with comparable facts, and understand why a particular argument succeeded or failed. The examples throughout this handbook are organised for that purpose.

National case-law databases are very uneven. The research involved searching a large number of national databases, and the differences between them are striking. Some contain extensive collections of judgments, offer effective search tools and make decisions relatively easy to locate and follow. Others are incomplete, difficult to search or simply not designed with comparative legal research in mind. In some systems, identifying relevant decisions can require numerous searches with different terminology; in others, even establishing whether a decision was appealed or followed by another decision may be difficult.

The result is unavoidable - a country may appear less frequently in the handbook because fewer decisions are published or because its database is difficult to use, rather than because its courts have dealt with fewer return cases.

Decisions themselves are written very differently. The contrast continues once a decision has been found. Dutch and German judgments, for example, are often clearly structured, with the facts, parties' arguments, legal framework and the court's reasoning set out separately. Decisions from some other jurisdictions, including Bulgaria and Poland, are more often written as continuous prose, sometimes with long accounts of the family history in which the relevant legal reasoning has to be identified and reconstructed.

There are similar differences at the European and comparative level. EU court acts tend to be concise and focused on the legal question referred to the Court and frequently say relatively little about the underlying litigation. Judgments from England and Wales are often much more narrative and provide considerably more information about the facts, evidence, submissions and practical choices facing the court.

These differences matter for a case-law handbook. Some decisions lend themselves easily to extracting a precise proposition. Others are valuable because they show in considerable detail how an argument developed in an actual case. Both can be useful, but in different ways.

The number of cases from a particular country does not indicate the importance of its case law. Some jurisdictions inevitably appear more often than others. This reflects not only the amount of litigation but also the availability of judgments, the quality and accessibility of the national database, the search functions it provides, and the way in which judgments are written.

The subject matter itself is also unevenly litigated. Some questions generate extensive case law. Habitual residence, consent and acquiescence, Article 13(1)(b), and child objections are obvious examples. Other issues, although important in practice, appear only occasionally in published judgments. The amount of material devoted to a question therefore reflects to a considerable extent the available case law. The asymmetry belongs to the litigation itself. Giving every provision the same amount of space would create a balance that does not exist in practice.

First-instance decisions are an important part of the case-law material. Many particularly useful return decisions come from first-instance courts. These proceedings are highly fact-sensitive and often end without an appeal. Some questions therefore appear most clearly, and sometimes only, in first-instance judgments. Such decisions are not treated here as less useful simply because the case did not proceed further. Their value for this handbook is different: they show how a legal question was identified, argued and resolved in an actual return case.

The reverse is also true. A judgment does not become useful for every proposition simply because it comes from a supreme or appellate court. A decision is cited here for the particular point that it supports.

A case example illustrates the proposition for which it is cited. A national judgment included in a case box should not be read as establishing "the universal Convention rule". The proposition preceding the example identifies the legal point for which the decision is relevant. The case then shows how that point arose and was dealt with in litigation.

That is the principal reason for using case law so extensively throughout this handbook: it shows not only what the law says, but what happens when it has to be applied.

Three practical observations on child-abduction cases

This handbook is grounded in close reading of case law across jurisdictions. Outcomes in child-abduction proceedings are shaped by three forces working together: the legal framework itself, recurring patterns of judicial reasoning, and the skill with which parties translate facts into the precise thresholds the 1980 Convention and its companion instruments demand.

What follows is the interpretive lens this handbook adopts – three observations, drawn from the case law, that explain why the book is organised around rules and cases rather than around the author's preferred reading of the Convention.

Child-abduction cases are structural, not ideological. International child-abduction cases are often described as a contest of principle – a conflict between the Convention's duty to return the

child quickly and the child's wider welfare. Some cases really are hard on the merits: the Convention's relationship with the child's welfare is a genuine and unsettled tension, and this handbook deals with it directly in Unit 5. But far more often, cases turn on more basic questions: whether the right legal framework has been identified; whether the burden of proof has been met at the right stage; and whether the court is even entitled, as a matter of law, to consider the arguments put to it. Where a party fails to establish a threshold point as habitual residence, the existence or exercise of custody rights, or a defence raised in time, the court never reaches the questions of value at all. What commentary presents as a clash of principle is therefore, more often than not, the result of a failure to work through the structure of the governing instruments. The disagreement is real, but it usually happens at a lower level than the participants think.

Judicial errors are not exceptional; they follow a pattern. Errors in return proceedings are often put down to hard facts or the emotional temperature of a particular case. A sustained reading of the case law tells a different story. The same mistakes come up again and again.

Courts treat rights of access as if they were rights of custody. They bring a full domestic best-interests inquiry into what is meant to be a summary procedure. They replace the Convention's specific tests with a general picture of harm. They misread how the 1980 Convention, the EU Regulations and the ECtHR fit together, usually by treating one as a gloss on another rather than as separate regimes that must be read side by side. These mistakes follow the fault lines between international instruments and national procedure, and they reflect predictable gaps in judicial training on the Convention's own concepts. Once the pattern is named, the mistake becomes easier to see coming – and, more usefully, easier for a prepared party to deal with it.

Many "hard" cases fail for entirely ordinary reasons. If the second observation is about the mistakes courts make, this one is about the mistakes parties make. Cases involving allegations of violence, a distressed child, or long separation are routinely called "hard cases," with the suggestion that the law itself is being pushed past its limits. Most of them fail for a simpler reason: the case was not built to the Convention's requirements.

Outcomes turn, again and again, on ordinary litigation failures – evidence that is missing or filed too late; accounts of the facts that change from one set of proceedings to the next; defences raised after the time for raising them has passed or raised in time but tied to the wrong provision; serious allegations that are never matched to the specific test the Convention sets. Where the structure is not respected, the court has little room to engage with arguments that are powerful in human terms but weak in law. The difficulty, in these cases, is in the translation, not in the law.

Unit 1: Foundations of International Child Abduction

> *"Child abduction cases are unquestionably some of the most sensitive in which a court may have to adjudicate. They arise in a particularly charged emotional and legal context, in which the mutual resentment of the parents, their feelings towards their child or children and the fundamental rights of both sides – which revolve around the best interests of the child or children – are intertwined."*
>
> – Opinion of Advocate General Emiliou, 12 January 2023, *Case C-638/22 PPU*[2]

1.1. The international and EU landscape – framework overview

1.1.A. Legal instruments regulating international child abduction – an overview

The legal framework governing international child abduction is based on a combination of international and regional instruments that pursue distinct but complementary objectives. Within the EU, three instruments form the core of this framework:

- Convention of 25 October 1980 on the Civil Aspects of International Child Abduction[3],
- Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children[4], and
- Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast)[5].

In addition to these private international law instruments, the interpretation and application of return proceedings are also shaped by the ECHR.[6] Although the ECHR does not regulate international child

[2] *Opinion of Advocate General Emiliou*, Case C-638/22 PPU (2023) ECLI:EU:C:2023:22.
[3] HCCH, *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (adopted 25 October 1980, entered into force 1 December 1983).
[4] HCCH, *Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (adopted 19 October 1996, entered into force 1 January 2002).
[5] Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) [2019] OJ L178/1.
[6] Convention for the Protection of Human Rights and Fundamental Freedoms.

abduction as such, Article 8 requires domestic courts to ensure that decisions affecting family life are taken following a genuine examination of the circumstances of the case and are supported by adequate reasoning. The case-law of the ECtHR therefore forms an important human-rights context for the application of the 1980 Convention and the EU framework.

The 1980 Convention

> *"The Hague Convention on the Civil Aspects of International Child Abduction 1980 is an admirably clear and simple instrument…"*
>
> – Baroness Hale of Richmond, *In re M (Children)* [2007] UKHL 55, §11.[7]

Adopted under the auspices of the Hague Conference on Private International Law (HCCH), the 1980 Convention is the foundational instrument in this field. It establishes a system of international cooperation aimed at securing the prompt return of children wrongfully removed to or retained in another Contracting State. Its purpose is not to determine the merits of custody, but to secure the prompt return of children wrongfully removed or retained and to restore the situation existing before the abduction. The 1980 Convention does not itself allocate jurisdiction over the merits of parental responsibility; that question is governed by other applicable instruments, such as the Brussels IIb Regulation or the 1996 Convention, or by national law. The 1980 Convention provides a streamlined procedure through Central Authorities, imposes a duty of expedition on national courts, and allows refusal of return only under narrowly defined exceptions. Today, it has wide global reach, with all EU Member States among its Contracting Parties.

The 1996 Convention

The 1996 Convention extends beyond abduction to regulate jurisdiction, applicable law, recognition and enforcement, and cooperation in matters of parental responsibility and child protection. It provides the overarching private international law framework for children's matters, including—but not limited to—cases of wrongful removal or retention. Its importance lies in clarifying which State's authorities are competent to take measures of protection, how such measures circulate across borders, and how authorities are to cooperate. In child abduction cases, it complements the 1980 Convention by providing the jurisdictional and recognition rules that apply once the child has been returned, or where return is refused. It thereby ensures that abduction disputes are embedded in a coherent framework of parental responsibility and child protection.

The Brussels IIb Regulation

Within the EU, the Brussels IIb Regulation provides a regional layer of rules, binding on all Member States except Denmark. It is a comprehensive instrument governing jurisdiction, recognition, and enforcement in matrimonial matters and parental responsibility, and it devotes a separate chapter

[7] United Kingdom House of Lords, *Re M (Children)* [2007] UKHL 55, §11.

to international child abduction. Its provisions build upon the Hague instruments but are tailored to the requirements of the EU's Area of Freedom, Security and Justice. The Regulation introduces detailed procedural rules–time limits, child participation, mediation, enforcement guarantees–and ensures the automatic circulation of certain return orders across the Union. While the Hague Conventions provide the global baseline, it provides enhanced rules for intra-EU cases, reflecting the principle of mutual trust among Member States.

The fundamental & human rights context

Although the ECHR is not a private international law instrument governing child abduction, it plays an important role in shaping the interpretation and application of return proceedings. Article 8 ECHR requires domestic courts to ensure that decisions affecting family life are taken following a genuine examination of the circumstances of the case and are supported by adequate reasoning.

The ECtHR has repeatedly emphasised that 1980 Convention proceedings must not be conducted in a mechanical or automatic manner. In intra-EU cases in particular, the Court has stressed that the Convention must be interpreted in light of the broader legal framework governing parental responsibility, including the relevant EU instruments.

CASE NOTE 1 | **ECtHR** | **X v. Latvia** | App. No 27853/09
26 November 2013

The Grand Chamber held that the ECHR cannot be interpreted in a vacuum but must be applied in harmony with the general principles of international law, including the 1980 Convention and – in intra-EU cases – the applicable EU instruments. Article 8 requires the domestic courts to conduct a genuine examination of arguable allegations under the Convention's exceptions and to give reasoned decisions, without converting return proceedings into a full custody inquiry. This contextual, harmonious approach is itself a human-rights requirement: only by considering the full framework of available safeguards can the domestic courts satisfy their Article 8 obligation of genuine examination, adequate reasoning, and non-automatic decision-making.

The Charter of Fundamental Rights of the European Union applies when an EU institution acts and when a Member State applies EU law. In international child-abduction cases, this means that national courts and authorities must comply with the Charter when applying the Brussels IIb Regulation, including its rules on return proceedings, jurisdiction, recognition and enforcement.

CASE NOTE 2 | **CJEU** | C-400/10 PPU
5 October 2010

The case concerned an unmarried father whose children had been taken from Ireland to England by their mother. Under Irish law, the father did not automatically hold rights of custody and had not obtained a court order granting him such rights before the removal. He argued that interpreting the Brussels IIa Regulation in a way that treated the removal as not wrongful would be incompatible with his right to family life under Article 7 of the Charter and with the rights of the children under Article 24. The CJEU held that the Brussels IIa Regulation recognises the fundamental rights and principles contained in the Charter and seeks, in particular, to ensure respect for the rights of the child under Article 24. Its provisions could therefore not be interpreted in a manner that disregarded those rights.

The Charter does not replace the legal tests established by the 1980 Convention or Brussels IIb. In particular, Article 24 does not authorise the requested court to conduct a full custody or general welfare assessment in return proceedings. The child's best interests are protected through the structure of the return mechanism, the Convention's exceptions, the procedural safeguards in Brussels IIb and the jurisdiction of the courts competent to decide the substance of parental responsibility. The Charter therefore guides the interpretation and application of the governing rules, but it does not create an additional ground for refusing return.

Detailed treatment of the relationship between the ECtHR and the Charter of the EU with the return proceedings can be found in Chapter 5.2.

1.1.B. How do these instruments work together in practice?

International child abduction cases are rarely governed by a single instrument. Instead, the 1980 Convention, the Brussels IIb Regulation, and the 1996 Convention interact as a layered and sequential system, each operating at a different normative level and possibly at a different stage of the dispute. Understanding their relationship is essential for applying the correct rules in return proceedings, protective-measure proceedings, and parental-responsibility matters.

The layered interaction of the 1980 Convention and Brussels IIb Regulation

The 1980 Convention provides the global baseline. It establishes the duty to return abducted children to their State of habitual residence, unless narrowly defined exceptions apply, and entrusts implementation to domestic courts. Its strength lies in its universal reach and the relative simplicity of its structure. However, the Convention leaves significant procedural discretion to Contracting States and offers no rules on recognition or enforcement of return decisions.

The Brussels IIb Regulation builds upon this baseline for intra-EU cases. It does not replace the Convention but complements and specifies its application within the Union. This complementarity is explicitly confirmed in Article 96, which provides that the 1980 Convention "continues to apply" between Member States, while the Regulation adds detailed procedural and recognition rules. The Regulation, therefore, creates a regional layer aimed at strengthening the operation of the Convention through:

- Procedural guarantees: strict time limits for courts and Central Authorities, systematic consideration of mediation, genuine and effective opportunity for the child to express views, and obligations to hear the parties.

- Limits on exceptions: where the court is considering refusing return solely on the basis of Article 13(1)(b) of the 1980 Convention, it may not refuse return if the court is satisfied that adequate arrangements have been made to secure the child's protection after return.

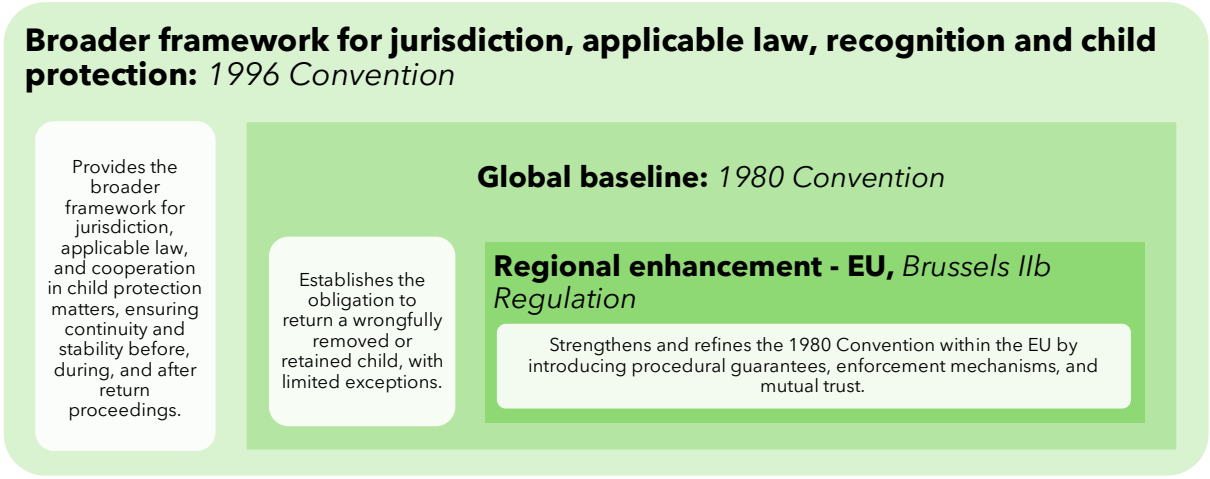
- Recognition and enforcement: return orders circulate automatically in the EU without exequatur; "privileged" decisions benefit from a reinforced regime.

— "Overriding mechanism": following a refusal based solely on Article 13(1)(b), Article 13(2), or both, Article 29 allows the court retaining jurisdiction, when seised in accordance with that provision, to conduct proceedings on the substance of rights of custody and to issue a certified decision entailing the child's return. For detailed explanation of the overriding mechanism see Chapter 6.4. and Handbook part 1, Chapter 6.4.A.

In this way, the Brussels IIb Regulation transforms the Convention's general framework into a more precise and enforceable regime within the EU, reflecting the principles of mutual trust and the protection of fundamental rights. The CJEU has also developed the concept that the Convention and Regulation provisions form a single, integrated framework. According to the Advocate General's Opinion in C-87/22, the provisions of Article 11 of Brussels IIa "either (i) are based on the rules of the 1980 Hague Convention or (ii) establish the consequences that are to follow when those rules are applied," and together they "form a unitary body of rules which applies to the procedures for returning children who have been wrongfully removed within the EU".[8]

The Advocate General in McB v L.E. emphasised that the overlap between Article 3 of the 1980 Hague Convention and Article 2(11) Brussels IIa gives the CJEU interpretative competence where the same or a similar definition is used in both instruments.[9] In that situation, the formulation may be regarded as having been "communitarised", allowing the Court to interpret it as part of EU law. At the same time, the Advocate General cautioned that the two instruments are not identical and that the Convention continues to operate alongside the Regulation, subject to the Regulation's precedence in intra-EU matters falling within its scope.

Figure 1: The layered legal framework governing international child abduction: interaction between the 1980 Convention, the 1996 Convention, and the Brussels IIb Regulation



The role of the 1996 Convention in international child abduction cases

The 1996 Convention operates in parallel but serves a different function. Within the EU, Brussels IIb largely takes precedence over the 1996 Convention, but the latter continues to play a residual role,

[8] Opinion of Advocate General Pikamäe delivered on 23 March 2023 in Case C-87/22 PPU, *TT v AK*, ECLI:EU:C:2023:248, §70.
[9] Opinion of Advocate General Jääskinen delivered on 22 September 2010 in Case C-400/10 PPU, *McB. v L. E.*, ECLI:EU:C:2010:544, §43.

particularly in relations with non-EU Contracting States. It thus ensures that abduction disputes are embedded in a coherent global regime of jurisdiction, applicable law, and cooperation.[10]

The following points present, in a nutshell, the role of the 1996 Convention in international child abduction cases:[11]

- The jurisdictional system of the 1996 Convention (Arts. 5–7) discourages forum shopping and wrongful removals by keeping jurisdiction with the child's habitual residence, even after abduction, until the cumulative conditions for a shift of jurisdiction under Article 7 are met.

- Article 7 contains a special rule for abduction: the authorities of the child's habitual residence before the wrongful removal retain jurisdiction, while the authorities of the State to which the child was taken may only take urgent measures under Article 11, not provisional measures under Article 12.

- The definition of wrongful removal or retention in the 1996 Convention is identical to that in the 1980 Convention, confirming their complementary nature and allowing case law under the 1980 Convention to guide interpretation under the 1996 Convention.

Overall, the 1996 Convention reinforces the 1980 Convention system by:

- safeguarding jurisdiction of the habitual-residence State,

- enabling urgent protective measures to ensure the child's safety during return,

- ensuring recognition by operation of law, subject to the grounds for refusal in Article 23(2), and providing a mechanism for declaration of enforceability or registration where enforcement is required,

- and providing a fallback framework for jurisdiction, applicable law, cooperation, and the recognition and enforcement of measures of protection when the 1980 Convention cannot be applied.

The practical role of the 1996 Convention in child abduction cases, however, depends on whether the 1980 Convention applies between the States concerned. Two distinct configurations may therefore arise.

Whenever the 1980 Convention is applicable between two States, it remains the primary instrument governing the assessment of wrongful removal or retention and the decision on return. In such cases, the 1996 Convention plays a supporting role by supplying the jurisdictional rules, protective-measure mechanisms, and cooperation framework that surround the return proceedings. However, where the 1980 Convention does not apply between two States, the 1996 Convention may function as a stand-alone source of remedies, providing the only international framework for dealing with the wrongful removal or retention of a child. These two situations must therefore be distinguished.

[10] For further discussion, see Boriana Musseva, *The 1980 Hague Convention: The Main Differences and the Added Value of the Brussels IIb Regulation and the Interplay with the 1996 Hague Convention* (In-Depth Analysis, European Parliament, Policy Department for Justice, Civil Liberties and Institutional Affairs, at the request of the Committee on Legal Affairs (JURI), 3 February 2026)<https://www.europarl.europa.eu/thinktank/en/document/IUST_IDA(2026)780256>.
[11] See HCCH, *Practical Handbook on the Operation of the 1996 Convention* (2014), in particular the sections addressing its interaction with the 1980 Hague Child Abduction Convention.

Scenario 1 – Both States are parties to the 1980 and the 1996 Conventions, and both apply.
(Example: A child is wrongfully removed or retained from State A (the State of habitual residence) to State B, and both States are Contracting Parties to both the 1996 and the 1980 Conventions.)

In such a situation, the 1980 Convention is the primary instrument governing the abduction. The court in State B must assess the return request exclusively under the 1980 Convention (where the case is between two EU Member States , complemented by Brussels IIb): the existence of wrongful removal or retention, the applicability of any exception, and the need for the child's prompt return to State A.

— The 1996 Convention does not alter or replace this mechanism. Its role is complementary. It ensures that jurisdiction in matters of parental responsibility remains with the authorities of State A; it enables State B to adopt urgent measures under Article 11 where the requirements of urgency and necessity are satisfied, while the return proceedings are pending; and it provides the cooperation and information-sharing framework necessary for the safe handling of the case. In this scenario, the 1996 Convention reinforces the functioning of the 1980 Convention but does not interfere with its operation.

— In practical terms, the 1980 Convention delivers the *return order*; the 1996 Convention supplies the *tools to protect the child* before, during, and after that return.

Table 1: Key Protective and Cooperation Mechanisms under the 1996 Convention in Child Abduction Cases (where the 1980 Convention also applies)

Type of measure or action	Legal basis under the 1996 Convention	Purpose and explanation	Example (State A = child's habitual residence immediately before the abduction / State B = State where the child is present)
Urgent protective measures	Article 11	Where the situation is urgent, the judicial or administrative authorities of State B may take any necessary measure for the protection of the child's person or property while State A retains jurisdiction. The measure lapses once the authorities having jurisdiction under Articles 5–10 take the measures required by the situation.	The child is wrongfully retained in State B and faces an immediate protection risk. State B orders temporary supervision and prohibits contact with the alleged abusive person pending further protective action by State A.
Urgent interim contact or access arrangements	Article 11, read with Article 3(b)	State B may regulate temporary contact where doing so constitutes an urgent and necessary measure for the child's protection. The measure remains subordinate to the jurisdiction of State A and lapses once the competent authorities take the measures required by the situation.	A complete interruption of contact would create an immediate risk to the child's emotional welfare. State B permits temporary supervised video contact pending a decision by the competent authorities in State A.
Recognition and enforcement of urgent	Articles 23, 26 and 28	Measures taken by State B under Article 11 are recognised by operation of law in other Contracting States, subject to Article 23(2). If	State B orders temporary supervision for a limited period following the child's return. The measure is

protective measures		enforcement is required in State A, the measure must be declared enforceable or registered there under Article 26 and is then enforced under Article 28 in accordance with State A's law.	recognised in State A and, where enforcement is necessary, is declared enforceable or registered there.
Retained jurisdiction and long-term protection	Articles 5 and 7	Article 7 preserves the jurisdiction of State A during the wrongful removal or retention until the conditions for a change of jurisdiction are fulfilled. Where the child remains or is again habitually resident in State A, Article 5 provides the general basis for long-term measures concerning custody, residence, contact and protection.	After the child's return, the authorities of State A determine long-term custody, residence, contact and therapeutic arrangements.
Request for information relevant to a contemplated protective measure	Article 34	Where a competent authority in one Contracting State is contemplating a measure of protection and the child's situation so requires, it may request an authority in another Contracting State to communicate relevant information. A State may require such requests to pass through its Central Authority under Article 34(2), and Article 37 limits transmission where disclosure would create danger.	Before deciding on protective arrangements following return, the court in State A asks the competent authority in State B to provide relevant social services reports and risk-assessment information.
Information following a refusal to return	Article 34	Following a refusal under the 1980 Convention, an authority in State A that is contemplating custody or protective measures may request relevant information from State B concerning the reasons for refusal and the evidence or assessments on which it was based, where the child's situation so requires.	Before deciding custody and protection, the court in State A requests the non-return decision and relevant risk-assessment material from the competent authority in State B.
Transfer or assumption of jurisdiction	Articles 8 and 9	By way of exception, an authority having jurisdiction under Article 5 or 6 may request an authority in another Contracting State listed in Article 8(2) to assume jurisdiction if that authority is better placed in the particular case and the transfer serves the child's best interests. Alternatively, such an authority may request permission to assume jurisdiction under Article 9. Both authorities must agree. Retention of jurisdiction does not by itself produce a transfer; the transfer mechanism has its own conditions.	The child remains habitually resident in State A and is a national of State B. State A, exercising jurisdiction under Article 5, asks State B to assume jurisdiction over a specific protection issue because State B is better placed to determine it.
Cooperation and communication between authorities	Articles 30(1), 31(a) and 34; direct judicial communication supported by HCCH practice	Central Authorities must cooperate and promote cooperation among competent authorities. They may facilitate communications and assistance under the Convention. Competent authorities may also	The authorities in States A and B communicate, directly or through their Central Authorities, to coordinate urgent protective measures and the practical

		communicate directly where permitted by domestic law and subject to appropriate procedural safeguards.	arrangements for the child's safe return.

Scenario 2 - both states are parties to the 1996 Convention, but the 1980 Convention does not apply.

This may arise because one State is not a party to the 1980 Convention, because it has not entered into force between them yet, or because the child is outside the Convention's material scope (for example, being over sixteen years of age). In these circumstances, the return mechanism of the 1980 Convention is not available, and there is no international return procedure for the authorities of State B to follow.

In such situations, the 1996 Convention operates as a stand-alone framework for jurisdiction, cooperation, and enforcement, allowing authorities to address wrongful removals or retentions through child-protection measures and recognition of custody orders.

Table 2: Mechanisms Available under the 1996 Convention in International Child Abduction Cases Where the 1980 Convention Does Not Apply

Mechanism under the 1996 Convention	Purpose and practical effect	Example (State A = child's habitual residence immediately before the abduction / State B = State to which the child is taken)
Retained jurisdiction of State A (Art. 7)	Prevents the person responsible for a wrongful removal or retention from obtaining a jurisdictional advantage. State A retains jurisdiction until the child acquires a habitual residence in another State and either each person, institution or other body having rights of custody acquiesces in the removal or retention, or all the conditions in Article 7(1)(b) concerning the one-year period, the absence of a pending return request lodged within that period, and the child's settlement are fulfilled. While State A retains jurisdiction, State B may take only urgent measures under Article 11.	The child is wrongfully removed from State A to State B within the meaning of Article 7(2). The authorities of State A retain jurisdiction and may issue a custody or delivery order requiring the child's return or determine residence and contact arrangements.
Discovery of the child's whereabouts (Art. 31(c))	On the request of a competent authority of State A, the Central Authority of State B must take appropriate steps, directly or through public authorities or other bodies, to assist in discovering the whereabouts of a child who may be present and in need of protection in State B.	A competent authority in State A asks State B's Central Authority to assist in locating the child.
Information about local law and services (Art. 30(2))	In connection with the application of the Convention, Central Authorities must take appropriate steps to provide information about the laws of, and services available in, their respective States relating to the protection of children.	State A's Central Authority asks State B's Central Authority for information about State B's child-protection laws, procedures and available services.
Recognition and enforcement of custody or	A measure taken in State A is recognised by operation of law in State B, subject to the grounds for refusal in Article 23(2). If the measure is enforceable in State A and enforcement is required in State B, an interested party	State A issues an enforceable custody or delivery order requiring the child's return. The parent seeks its declaration of

delivery orders (Arts. 23, 26 and 28)	must request that it be declared enforceable or registered there under Article 26. Once declared enforceable or registered, it is enforced in State B as if it had been made by the authorities of State B, in accordance with State B's law and taking into consideration the child's best interests.	enforceability or registration in State B. Once granted, State B enforces the order under its domestic enforcement rules.
Urgent protective measures in State B (Art. 11)	In a case of urgency, State B may take any necessary measure to protect the child while State A retains substantive jurisdiction. The measure lapses once the authorities having jurisdiction under Articles 5–10 take the measures required by the situation.	Pending action by State A, State B urgently orders supervised contact or another temporary safeguard necessary to protect the child. The measure ceases when State A adopts the protection measures required by the situation.
Facilitation of agreed solutions (Art. 31(b))	Central Authorities must take appropriate steps, directly or through public authorities or other bodies, to facilitate through mediation, conciliation or similar means agreed solutions for the protection of the child. The resulting agreement may require approval or incorporation into a formal measure under applicable law before it can be recognised or enforced under the Convention.	The authorities help the parents negotiate an agreement concerning the child's voluntary return, residence and contact arrangements, after which the necessary steps are taken to give the agreement legal effect.

1.1.C. Novelties in the Brussels IIb Regulation on abduction

As the 1980 Convention itself contains only limited procedural safeguards, already in 2003, the Brussels IIa Regulation introduced several EU-specific mechanisms intended to strengthen the effectiveness of return proceedings.[12] Two innovations were particularly significant. First, the Regulation introduced a six-week time limit for decisions on return, reflecting the urgent nature of child abduction cases. Second, it created an "override" mechanism allowing the courts of the child's habitual residence to order the child's return even after a refusal under the 1980 Convention. These rules were designed to reinforce the effectiveness of the return system and to safeguard the jurisdiction of the courts of the child's habitual residence.

Experience quickly showed, however, that these innovations did not always operate smoothly in practice. Proceedings in many Member States frequently exceeded the six-week timeframe, particularly at the appeal stage, and procedural practices diverged significantly. The obligation to hear the child was implemented unevenly and was sometimes reduced to a formal requirement rather than a meaningful participation of the child in the proceedings. The override mechanism was also used only rarely. Although certified Article 11(8) decisions entailing return already circulated under Brussels IIa without exequatur, the mechanism was used infrequently and could still encounter practical difficulties relating to certification, coordination and enforcement.

[12] Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 [2003] OJ L338/1.

In 2014, the European Commission evaluated the operation of the Brussels IIa Regulation and acknowledged these shortcomings.[13] The subsequent recast proposal called for stricter deadlines, limitations on appeals, stronger guarantees for the hearing of the child, the abolition of exequatur, and a clearer relationship between the grave risk defence and the possibility of adopting protective measures.[14] The proposal also encouraged the use of mediation, while emphasising that mediation should not delay return proceedings. The overall objective was to address the main concerns expressed by practitioners: excessive delays, legal uncertainty, and the ineffective enforcement of return orders.

Brussels IIb Regulation responded to these concerns with a series of novelties:

— The six-week time limit now applies not only at first instance but also at appeal level, and Member States are encouraged to limit the number of appeals.

— Member States are encouraged to concentrate jurisdiction in a few specialised courts to ensure expertise and consistency.

— Courts must ensure that the child is given a genuine and effective opportunity to express views, in line with Article 24 of the EU Charter and Article 12 UNCRC and not treat this as a mere formality.[15] A refusal to hear the child may now even constitute a ground to refuse recognition of a decision.

— The Regulation abolishes exequatur for all parental responsibility decisions and for 1980 Convention return orders requiring enforcement in another Member State. This means that a return decision taken in one Member State will be automatically recognised and enforceable throughout the Union. The intention was to close the loophole of re-abduction to another Member State, which had created delays and uncertainty under Brussels IIa.

— The override mechanism has also been strengthened. Following a refusal based solely on Article 13(1)(b), Article 13(2), or both, the court retaining jurisdiction may be seised under Article 29 of proceedings on the substance of rights of custody. In those proceedings, it may issue a decision on the substance of custody which entails the child's return. A properly certified decision of this kind benefits from the Regulation's privileged recognition and enforcement regime. In practice, this reinforces the principle that custody decisions belong to the courts of the habitual residence, while ensuring that the child is not left in a legal vacuum.

— The notion of "adequate arrangements" has been clarified. Under Brussels IIa, courts sometimes attached "safe return" conditions even when no grave risk was established. Brussels IIb makes clear that adequate arrangements are only relevant when the Article 13(1)(b) defence is raised. They are measures specifically intended to neutralise the risk identified by the requested court, for example, by ensuring temporary housing, protective

[13] European Commission, Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 COM (2014) 225 final.
[14] European Commission, Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) COM (2016) 411 final, 2016/0190 (CNS).
[15] Charter of Fundamental Rights of the European Union [2016] OJ C 202/389 art 24; Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 art 12.

orders, or medical care. This prevents protective measures from being misused as bargaining conditions in all cases.

— Finally, Brussels IIb Regulation reinforces enforcement. Return orders must be implemented quickly and effectively, but also in a manner sensitive to the child's needs. Enforcement authorities may use coercive measures such as penalty payments but must balance these with the imperative to avoid traumatising the child. Mediation is expressly encouraged, provided it does not delay the return timeframe.

Taken together, these changes show a clear trajectory: the EU legislator accepted that return proceedings needed greater procedural guarantees, both to protect children's rights and to ensure that the Convention's mechanism functions effectively within the Union. Brussels IIb Regulation builds on Brussels IIa's foundations but closes important gaps: it tightens deadlines, ensures genuine hearing of the child, abolishes exequatur, strengthens override, and clarifies the use of protective measures. In practice, this means that return proceedings in the EU are now subject to a much more robust procedural framework than in non-EU States.

1.1.D. Uniform application and divergence in 1980 Convention practice

> *"The procedure established, in that regard, by the Convention on the Civil Aspects of International Child Abduction […] and supplemented, in the EU, by certain provisions of Regulation (EC) No 2201/2003 […], which seeks to ensure the child's prompt return to their habitual residence, is already the subject of a wealth of case-law of the Court of Justice and of the European Court of Human Rights.* ***However, its implementation remains controversial, at the very least in certain States."***
>
> – *Opinion of Advocate General Emiliou*, Case C-638/22 PPU[16]

One of the cornerstones of the 1980 Convention is the uniform interpretation of its key concepts. Terms such as *habitual residence*, *rights of custody*, *grave risk of harm*, and *child's objections* are not defined by reference to any one national legal system. Rather, they are intended as autonomous concepts of international law, applied consistently across all Contracting States. As emphasised in the Pérez-Vera Report , mutual confidence and close cooperation between Contracting States are essential as the Convention's return mechanism depends on that.[17]

In theory, these shared definitions provide a stable foundation for the 1980 Convention's operation. In practice, however, divergence is inevitable. The 1980 Convention lacks a supranational court with global jurisdiction. Outside the EU (where the CJEU plays a harmonising role) each Contracting State

[16] *Opinion of Advocate General Emiliou*, Case C-638/22 PPU (2023) ECLI:EU:C:2023:22.
[17] Explanatory Report by Pérez-Vera, §§34–37, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction.*

applies the Convention through the lens of its own legal procedures, evidentiary standards, and cultural expectations. Even where courts affirm their commitment to autonomous interpretation, local norms and judicial culture can heavily influence outcomes.[18]

Divergence may also reflect different assumptions about the Convention's priorities: whether greater weight is placed on deterrence and prompt return, on the child's individual situation, on comity towards the State of habitual residence, or on the need for effective protection before return. As a result, the same Convention language may produce different outcomes depending on which objective the court treats as dominant.[19]

Variations can be significant. In some jurisdictions, return proceedings permit extensive live testimony or expert reports, while others adhere to a strictly summary process based on written documents. The requirement to hear the child "where appropriate" also varies widely in implementation, ranging from formal legal representation to brief interviews or even indirect consultation through guardians.

Among the exceptions to return, Article 13(1)(b) is arguably the most variably interpreted in practice. While the prevailing approach treats the "grave risk" defence as a high-threshold exception, limited to situations of serious physical or psychological harm that cannot be adequately mitigated, national courts do not apply this standard uniformly. In particular, some decisions adopt a broader, welfare-oriented reading, placing significant weight on factors such as the child's age, attachment to the primary carer, or the immediate consequences of return.

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Proceeding from the premise that "not all grounds for refusal should be interpreted restrictively", the Supreme Court held that the verification of a grave risk that the child, upon return, would be exposed to physical or psychological harm or otherwise placed in an intolerable situation must be interpreted in light of the primacy of the child's best interests, as recognised in Article 3 of the UN Convention on the Rights of the Child. A child aged between 11 and 16 months had lived exclusively with the mother, who removed the child from Spain to Portugal without the father's consent. Although wrongful removal was established, the Court refused return under Article 13(1)(b). It considered that, given the child's very young age and exclusive attachment to the mother, enforced separation resulting from return would in itself constitute psychological harm and place the child in an intolerable situation.

Within the EU, divergences are reduced to some extent by the Brussels IIb Regulation, which establishes procedural time limits, encourages Member States to consider limiting appeals, strengthens child-participation guarantees, and regulates protective arrangements. Relevant CJEU judgments include *Mercredi* on habitual residence, *Rinau* on certification and enforcement of a judgment entailing return under Brussels IIa, and *OL* on the role of parental intention in determining

[18] On the divergence across European States in Convention application rates and interpretive approaches, see P McEleavy, 'The European Court of Human Rights and the Hague Child Abduction Convention: Prioritising Return or Reflection?' (2015) 62 Netherlands International Law Review 365, at 369 (statistical analysis of judicial refusal rates). The article is open access at <https://link.springer.com/article/10.1007/s40802-015-0040-z>.

[19] See similarly Rhona Schuz, who argues that disparities in the implementation of the 1980 Convention may stem not only from procedural and administrative differences, but also from national ideology, legal culture, and the worldview of individual judges, particularly in relation to children's capacities, domestic violence, deterrence, and the balance between the Convention's competing objectives: Rhona Schuz, 'Disparity and the Quest for Uniformity in Implementing the Hague Abduction Convention' (2014) 9(1) *Journal of Comparative Law* 3, <https://www.academia.edu/9926575/Disparity_and_the_Quest_for_Uniformity_in_Implementing_the_Hague_Abduction_Convention> p 34–37.

habitual residence.[20] Even so, the implementation of these standards varies across Member States, influenced by national court structures, family law frameworks, and resource availability.

Beyond the EU, uniformity is encouraged but not enforceable. The HCCH Special Commissions, Guides to Good Practice, and the INCADAT case law database provide valuable guidance.[21] Courts are increasingly willing to engage with foreign judgments as persuasive authority, and professional networks promote shared understanding. Yet, differences remain a reality—reflecting the richness and complexity of diverse national traditions.

Arguments in 1980 Convention cases, thus, should be framed using the Convention's autonomous concepts rather than domestic legal categories. At the same time, procedural practices and judicial approaches may vary across jurisdictions. Comparative case law and supranational jurisprudence, particularly from the CJEU, can therefore play an important role in supporting a consistent interpretation of the Convention, even though outcomes may still diverge depending on the forum.

[20] Judgment of 22 December 2010, *Mercredi v Chaffe,* Case C-497/10 PPU, ECLI:EU:C:2010:829; Judgment of 11 July 2008, *Rinau*, Case C-195/08 PPU, ECLI:EU:C:2008:406; Judgment of 8 June 2017, *OL v PQ*, Case C-111/17 PPU, ECLI:EU:C:2017:436.
[21] HCCH, *Guides to Good Practice* <https://www.hcch.net/en/publications-and-studies/publications2/guides-to-good-practice> ; INCADAT, *Case Law Search* <https://www.incadat.com/en/search> .

1.2. Determining the applicable regime – which framework applies to the case?

In international child abduction cases, the first step is to determine which legal framework governs the proceedings.

The applicable rules are not universal but depend on the States involved. A removal or retention within the EU is governed by a different framework than one between an EU Member State and a third country, or between two non-EU States. Identifying the correct framework at the outset is essential because it determines both the legal basis for the return procedure and the procedural standards that the court must apply.[22]

The three instruments that are particularly relevant are discussed in Chapters 1.1.A. and 1.1.B.

Determining the applicable regime, therefore, begins with verifying the treaty status of the States concerned. For a 1980 Convention return application to be admissible, the Convention must be in force between the two States at the time of the alleged wrongful removal or retention (Arts. 35–38). The authoritative information on ratifications, accessions, and the entry into force of each Convention is published by the HCCH in the "Status Table" for each instrument.

It is important to note that the 1980 Convention is not automatically in force between all Contracting States. Where a State accedes to the Convention, the accession has effect only in relation to each Contracting State that has individually accepted it. Practitioners must therefore verify that the Convention was in force in the specific bilateral relationship at the time of the alleged wrongful removal or retention.

For the Brussels IIb Regulation, the verification is simpler: it applies to all EU Member States except Denmark. Its temporal scope must however be verified, as the recast Brussels IIb Regulation applies to proceedings instituted, authentic instruments formally drawn up or registered, and agreements registered on or after 1 August 2022. Brussels IIa continues to govern decisions arising from proceedings instituted, and the relevant instruments and agreements completed, before that date.

The figure illustrates the three principal legal frameworks: intra-EU abductions governed by the 1980 Convention and the Brussels IIb Regulation; 1980 Convention cases involving non-EU States; and non-treaty cases where no 1980 Convention return mechanism is available.

[22] See also Marilyn Freeman, *Parental Child Abductions to Third Countries* (European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, 2024) <https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2024)759359>, noting that the applicable legal framework depends on the combination of States involved and their participation in the relevant international instruments.

Figure 2: Legal regimes governing international child abduction

Intra-EU Abductions *1980 Convention + Brussels IIb cases*	Applies where a child is wrongfully removed or retained between EU Member States (except Denmark). The 1980 Convention provides the baseline framework, defining wrongful removal, requiring prompt return, and limiting the exceptions. The Brussels IIb Regulation operates in parallel, strengthening the Hague system through clearer jurisdiction rules, strict time limits, guarantees for hearing the child, and the override mechanism. The 1996 Convention may still play a complementary role, particularly in relations with third States. Human rights instruments (ECHR and the EU Charter) ensure respect for family life, the best interests of the child, and the child's right to be heard.
1980 Convention Abductions (Non-EU) *1980 Convention cases (outside Brussels IIb)*	Applies where the child is wrongfully removed or retained between two States that are parties to the 1980 Convention, but one or both are not EU Member States. The 1980 Convention is the primary framework: it defines wrongful removal, requires the prompt return of the child, and provides limited exceptions. It also ensures cooperation between Central Authorities and prevents courts in the State of refuge from deciding custody while return proceedings are pending. The 1996 Convention may complement the system, particularly jurisdiction, applicable law, recognition, enforcement, and cooperation regarding measures of protection of children Human rights guarantees under the ECHR continue to apply, requiring fair procedures and consideration of the child's best interests.
Abductions Outside the 1980 Convention *No 1980 Convention return mechanism + Brussels IIb not appllicable*	Applies when one or both States are not parties to the 1980 Convention. If both States are parties to the 1996 Convention, that treaty may still determine jurisdiction, applicable law, recognition, enforcement, and cooperation regarding measures of protection of children If the 1996 Convention is not applicable, then bilateral agreements or national law of the requested State governs. If both States are parties to the ECHR, Article 8 case law also imposes duties (swift proceedings, child's best interests, hearing of the child).

1.2.A. Intra-EU abductions: 1980 Convention and the Brussels IIb Regulation

This category applies where a child has been wrongfully removed or retained between two EU Member States bound by the Brussels IIb Regulation.

In such cases, the applicable framework is the 1980 Convention, supplemented by the Brussels IIb Regulation, while the 1996 Convention plays a supporting or residual role. The proceedings must also comply with the requirements of Article 8 ECHR and Articles 7 and 24 of the EU Charter.

The starting point remains the 1980 Convention. It provides the basic return mechanism: it defines wrongful removal or retention, requires the prompt return of the child, limits the grounds on which return may be refused, and prevents the courts of the State of refuge from deciding the merits of custody while return proceedings are pending.

Within the EU, however, the 1980 Convention does not operate in isolation. It is supplemented by the Brussels IIb Regulation which lays down specific rules for intra-EU abduction cases. In particular, the Regulation preserves jurisdiction in matters of parental responsibility with the courts of the child's habitual residence immediately before the wrongful removal or retention, introduces stricter procedural guarantees in return proceedings, and strengthens the effectiveness of return orders across the Union.

Chapter III of the Regulation (Articles 22–29) contains the key child-abduction provisions. These include a six-week time limit for decisions at each instance, the requirement that the child be given a genuine opportunity to be heard, restrictions on refusal based on grave risk where adequate protective measures are available, and the strengthened override mechanism. Under that mechanism, if the court in the requested Member State refuses return under Article 13(1)(b), Article 13(2), or both, of the 1980 Convention, the courts of the child's former habitual residence may still examine custody and order the child's return; that decision then circulates automatically within the Union without exequatur.

The 1996 Convention remains relevant in the background, particularly for questions of jurisdiction, recognition, enforcement, and protective measures outside the scope of Brussels IIb or in relations with third States. Within the intra-EU framework, however, Brussels IIb is the primary regional instrument.

Finally, intra-EU abduction proceedings must be conducted in conformity with fundamental rights. Article 8 *ECHR* requires a genuine and reasoned examination of the case, while Articles 7 and 24 of the Charter reinforce the protection of family life and the child's right to be heard and to have his or her best interests treated as a primary consideration.

1.2.B. Abductions involving non-EU states: 1980 Convention cases outside Brussels IIb

The middle layer covers abduction cases in which return proceedings are governed by the 1980 Convention, but the Brussels IIb Regulation does not apply as it is a situation where a child has been abducted to or has its habitual residence in a third State (non-EU country). This occurs where the 1980 Convention applies between the States concerned, but at least one of them is not an EU Member State bound by the Regulation.

In such situations, the 1980 Convention provides the primary legal framework for the return procedure. It defines wrongful removal or retention, establishes the obligation to secure the prompt return of the child, and limits the grounds on which return may be refused. The Convention also requires the authorities of the requested State to act expeditiously, to cooperate through their Central Authorities, and to refrain from determining the merits of custody while return proceedings are pending.

Alongside the 1980 Convention, the 1996 Convention may also play a role. Although the 1996 Convention does not establish a special summary return procedure comparable to the 1980 Convention, its jurisdiction, cooperation, recognition and enforcement provisions may be invoked to obtain the return of a wrongfully removed or retained child, as Article 50 expressly confirms.

Finally, fundamental rights obligations continue to apply in these situations. The ECtHR has emphasised under Article 8 of the ECHR that abduction proceedings must be fair, proportionate, and attentive to the best interests of the child, including the need to hear the child's views. These safeguards ensure that even outside the scope of Brussels IIb Regulation, the framework remains anchored in both international cooperation and respect for human rights.

1.2.C. Abductions outside the scope of the 1980 Convention

The 1980 Convention operates only between Contracting States. It applies only to children habitually resident in a Contracting State immediately before the alleged wrongful removal or retention and relies on reciprocal obligations between States. Where one or both of the States involved are not parties to the 1980 Convention, or where it is not in force between them, the return mechanism cannot be invoked.

In such situations, the case falls outside the 1980 Convention, and the special return regime in Chapter III of Brussels IIb is unavailable. Brussels IIb Regulation applies only to cases involving EU Member States and therefore does not govern removals to or from third States.[23] As a result, the response to the abduction must be sought in other applicable legal frameworks, in particular domestic law and, where relevant, other international instruments.

Some States rely on bilateral agreements addressing international child abduction or family-law cooperation, which may provide a specific legal basis for return or cooperation in non-Convention cases; an overview of instruments is maintained by the HCCH, complemented by a publicly accessible list of bilateral agreements on international child abduction.[24] Where a *bilateral or regional agreement* exists between the States concerned, that instrument may provide rules on jurisdiction, custody, or recognition of decisions. In the absence of such agreements, the matter is governed by the national private international law of the forum, supplemented where relevant by general principles of international law.

Other international instruments may still play a supporting role. The 1996 Convention, if both States are parties, regulates jurisdiction and the recognition and enforcement of parental responsibility measures. Although it does not create a return mechanism comparable to the 1980 Convention, it may facilitate custody or protection orders relating to the child.

Human rights law also remains applicable. The ECtHR has repeatedly held that States must handle international child abduction disputes in a manner consistent with Article 8 ECHR, ensuring

[23] This however does not necessarily exclude Brussels IIb from every related question: its jurisdictional rules on parental responsibility may still be relevant before a court of a participating Member State, subject to Article 97 and the relationship with the 1996 Convention.
[24] HCCH, *Non-Hague Convention child abductions* <https://www.hcch.net/en/instruments/conventions/specialised-sections/child-abduction#:~:text=Non%2DHague%20Convention%20child%20abductions%3A>; HCCH, *Non-Hague Convention Child Abductions* <https://www.hcch.net/en/publications-and-studies/details4/?pid=5215>.

procedural fairness, proper examination of the circumstances of the case, and respect for the best interests of the child.

In non-treaty situations, however, there is no automatic treaty-based right to return. Instead, the outcome depends largely on domestic law and the willingness of national courts to cooperate across borders. In practical terms:

— There is no treaty-based return procedure comparable to the 1980 Convention.

— The left-behind parent must rely on the domestic legal system of the requested State (for example, by initiating custody or return proceedings under national family law).

— Recognition of foreign custody orders depends on the applicable national rules or on instruments such as the 1996 Convention, where it applies.

— Proceedings are often slower and less predictable, and outcomes may vary significantly between jurisdictions.

Table 3: Determining the applicable legal framework in international child-abduction cases: return mechanism, jurisdiction, and recognition of parental-responsibility decisions

Scenario	Return mechanism	Jurisdiction on parental responsibility matters	Recognition and enforcement of parental-responsibility decisions
Both States are EU Member States bound by Brussels IIb	1980 Convention, supplemented by Chapter III of Brussels IIb (Articles 22–29)	Brussels IIb, Article 9: without prejudice to Article 10, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention retain jurisdiction until the child acquires a habitual residence in another Member State and the conditions in Articles 9(a) or 9(b) are satisfied.	Brussels IIb: recognition without any special procedure under Article 30 and enforcement without a declaration of enforceability under Article 34, subject to the applicable grounds for refusal. Certified decisions on the substance of rights of custody given under Article 29(6) and entailing return benefit from the privileged regime.
Denmark and another EU Member State bound by Brussels IIb	1980 Convention	Jurisdiction must be determined through the interaction of Article 97 Brussels IIb and the 1996 Convention. Brussels IIb may govern jurisdiction in the participating Member State, while Denmark applies the 1996 Convention. In an abduction case, the relevant retained-jurisdiction rule will therefore be Article 9 Brussels IIb or Article 7 of the 1996 Convention, depending on the court seised and the circumstances.	1996 Convention: recognition by operation of law under Article 23 and enforcement following a declaration of enforceability or registration under Articles 26 and 28.

The 1980 and 1996 Conventions both apply between the States, and Brussels IIb does not govern the case	1980 Convention	1996 Convention, Article 7: the authorities of the State where the child was habitually resident immediately before the wrongful removal or retention retain jurisdiction until the conditions in Article 7(1)(a) or 7(1)(b) are fulfilled.	1996 Convention: recognition by operation of law under Article 23 and enforcement under Articles 26 and 28.
The 1980 Convention applies between the States, but there is no common 1996 Convention regime and Brussels IIb does not govern the case[25]	1980 Convention	There is no common treaty regime governing jurisdiction. Jurisdiction must be determined separately under the rules applicable in each forum. A State bound by the 1996 Convention may nevertheless apply its jurisdictional provisions where their conditions are satisfied; otherwise national law or another applicable international or regional instrument governs.	No common 1996 Convention circulation regime applies. Recognition and enforcement are governed by national law or another applicable bilateral, regional or international instrument.
The 1996 Convention applies between the States, but the 1980 Convention does not apply to the case, and Brussels IIb does not govern jurisdiction	No special return procedure under the 1980 Convention. Return may be sought under national law or through measures adopted under the 1996 Convention. Article 50 expressly permits the Convention to be invoked for the purpose of obtaining the return of a wrongfully removed or retained child.	1996 Convention, Article 7: the authorities of the State of the child's habitual residence immediately before the wrongful removal or retention retain jurisdiction until the conditions in Article 7(1)(a) or 7(1)(b) are fulfilled.	1996 Convention: recognition by operation of law under Article 23 and enforcement following a declaration of enforceability or registration under Articles 26 and 28.
Neither the 1980 Convention nor the 1996 Convention applies between the States, and Brussels IIb does not govern the case	National law or an applicable bilateral or regional instrument; there is no 1980 or 1996 Conventions return mechanism.	National law or another applicable bilateral, regional or international instrument.	National law or another applicable bilateral, regional or international instrument.

[25] "Applies between the States" is intentional: for the 1980 Convention, it is not enough that both States appear in the status table; the Convention must be in force between them in the particular bilateral relationship.

1.3. Special scenarios and considerations

The regime-identification framework set out in Section 1.2 resolves most international child-abduction cases cleanly: an intra-EU case proceeds under the 1980 Convention supplemented by Brussels IIb, a non-EU case between Contracting States proceeds under the 1980 Convention alone (the 1996 Convention may additionally govern jurisdiction, urgent protective measures, cooperation, and the recognition and enforcement of parental-responsibility measures), and a case outside the Convention system falls to be handled under national law. In practice, however, a number of configurations do not fit into this tripartite structure and raise distinct questions that practitioners encounter recurrently. Each configuration requires the practitioner to step outside the default framework and apply a distinct set of rules — sometimes Convention-based, sometimes domestic, sometimes a hybrid of both.

1.3.A. Abduction from and to Denmark

Denmark occupies a special position within the EU because it is not bound by the Brussels IIb Regulation. Consequently, abduction cases involving Denmark do not fall within the intra-EU regime described in the lower layer in Section 1.2, where the 1980 Convention operates together with Brussels IIb. Instead, such cases fall within the middle layer: the 1980 Convention framework.

In practice, the return of the child is governed by the 1980 Convention, which provides the applicable rules on wrongful removal or retention, the obligation to secure the prompt return of the child, and the limited grounds on which return may be refused.

Questions relating to jurisdiction and the recognition and enforcement of parental responsibility measures may additionally be governed by the 1996 Convention, where it applies between the States concerned. In this respect, Danish cases operate in the same way as other 1980 Convention cases that fall outside the Brussels IIb system.

This applies equally to abductions from Denmark to another EU Member State and to Denmark from another EU Member State. In both situations, practitioners should not assume that the procedural mechanisms introduced by Brussels IIb, such as the overriding procedure, the reinforced time limits, or the automatic recognition and enforceability of certain return-related decisions, are available. Instead, the case proceeds under the 1980 Convention framework alone, supplemented where relevant by the 1996 Convention and the applicable rules of national law.

1.3.B. When the 1980 Convention does not apply: domestic-law and Convention-inspired rules

When international child abduction falls outside the scope of the 1980 Convention (for example, where the destination State is not a Contracting Party, where the child is over 16, where the Convention had not yet entered into force between the two States at the relevant time, or where the child was not habitually resident in a Contracting State before removal), the legal response is not

uniform and depends on the jurisdiction seized of the case. Courts are then confronted with the preliminary question of whether, and on what basis, a return request can be examined at all. [26]

In some instances, bilateral agreements are in place.[27] Where this is not the case, in practice, courts have developed different solutions to address international child-abduction cases that fall outside the scope of the 1980 Convention. Three broad approaches can be identified in national practice where the 1980 Convention does not apply and no alternative treaty or regional return mechanism exists: [28]

1. treating the return request as inadmissible;
2. applying the 1980 Convention by analogy; or
3. using the 1980 Convention as a point of reference when deciding the case under domestic law.

Treating the return request as inadmissible

First, some jurisdictions treat the *1980 Convention return application as inadmissible*. In such systems, the absence of a treaty framework means that courts decline to entertain a return request as such, leaving the parties to pursue custody or protective proceedings under general family law instead. These jurisdictions accept that the 1980 Convention operates only between Contracting States. It establishes reciprocal obligations, and a court in a Contracting State cannot apply the Convention "unilaterally" to order the return of a child to a non-Contracting country.

CASE NOTE 4 | **RO** | **Bucharest Tribunal** | Decision 171/2016
11 February 2016

The Bucharest Tribunal declared inadmissible a return request to Kuwait precisely because Kuwait had not acceded to the Convention. Even though the abducting parent and the child were habitually resident in Kuwait, the court held that the Convention mechanism could not be invoked in the absence of reciprocity.

Applying the 1980 Convention by analogy

By applying the 1980 Convention by analogy, the court treats the case *as if the 1980 Convention were applicable*, using its rules and structure as the governing framework. The 1980 Convention remains inapplicable, but the court *imports* its rules into the decision-making process, subject to necessary adjustments imposed by national law.

This can happen in two ways. In some jurisdictions, domestic legislation may extend the domestic implementation framework to non-Convention cases and expressly incorporate particular Convention concepts or grounds - for example, through a domestic implementation act that

[26] For a detailed comparative discussion of how courts and legal systems respond to international child abduction involving non-Hague Convention States see Jeremy Morley, *International Child Abduction and Non-Hague Convention Countries*, in Marilyn Freeman & Nicola Taylor (eds), Research Handbook on International Child Abduction: The 1980 Convention (Research Handbooks in Family Law series, Edward Elgar 2023), Part VI, ch. 17, pp. 245-[end]. ISBN 978-1-80037-250-4.
[27] HCCH, 'Bilateral Agreements' <https://www.hcch.net/en/publications-and-studies/details4/?pid=5215> accessed 12 May 2026.
[28] In some jurisdictions, particularly in England and Wales, courts may also rely on their inherent jurisdiction to order the return of a child in non-Convention cases, sometimes alongside Convention-based arguments, as explained in Family Procedure Rules, Practice Direction 12F – International Child Abduction, available at: <https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12f> accessed 14 April 2026. For further analysis see also Rob George and James Netto, 'Concurrent Convention and Non-Convention Cases: Child Abduction in England and Wales' (2023) 12 *Laws* 70 <https://doi.org/10.3390/laws12040070>.

authorises the use of Convention concepts in cases involving non-Contracting States. In others, the analogy is a matter of judicial method: the court has jurisdiction under ordinary domestic rules and chooses the 1980 Convention's framework because it offers the internationally accepted analytical structure for this type of dispute. What matters is that the analogy is a domestic policy or methodological choice, not an international obligation: the 1980 Convention binds the forum only where it formally applies.[29]

A statutory extension of this kind, however, reaches only as far as the implementing legislation itself extends. Where a domestic act authorises the analogical application of the Convention to non-Convention cases, it typically does so for children brought into the forum State and supplies no basis for the court to assume jurisdiction over a child who has been removed from it; in that situation, the analogy operates on the merits only once jurisdiction has been established on some other ground, and does not itself confer jurisdiction.[30]

The consequence is that the court follows the familiar 1980 Convention logic. Wrongful removal is assessed in line with Article 3, return remains the default remedy, and refusal is considered within the framework of Articles 12, 13 and 20, subject to any greater discretion permitted by domestic law. This brings the advantage of predictability as the legal arguments can be constructed on the basis of well-established jurisprudence.

CASE NOTE 5 | NL | The Hague Court of Appeal | ECLI:NL:GHDHA:2022:211
14 February 2022

A mother travelled with the two children from Suriname to the Netherlands in August 2021 for a holiday, with the father's consent, and did not return them. The father applied to the District Court of The Hague for their return. Because Suriname is not a Contracting Party to the 1980 Convention, the Convention could not be applied directly, and jurisdiction had to be assessed under ordinary Dutch rules of private international law rather than the jurisdictional rule developed for Convention cases. On the substance, the court explained that Article 2 of the Dutch Implementation Act (Uitvoeringswet internationale kinderontvoering) extends the Act to abduction cases not governed by a Convention, and Article 13(3) permits the court, in such cases, to refuse return on the grounds set out in Articles 12(2), 13 and 20 of the 1980 Convention. The legislative purpose of these provisions is to ensure that non-Convention cases are handled, as far as possible, on the same footing as Convention cases. The court therefore applied Articles 3 and 5 of the Convention by analogy to assess whether the retention was wrongful, while noting that in non-Convention cases the court retains greater latitude to depart from the Convention's framework where circumstances require.

Because the 1980 Convention does not bind the non-Contracting State, courts retain greater freedom to depart from its rules where required by domestic law or by international human-rights obligations, in particular Article 8 ECHR. The Convention supplies the analytical framework, but the decision is ultimately taken under domestic law and is subject to the forum State's own constitutional and human-rights commitments. Where the 1980 Convention applies, courts may take account of the availability of protection in the requesting State, but the Convention itself does not establish a general presumption that every Contracting State provides equivalent protection. In a non-Convention case, the court must assess the available protection under the applicable domestic and human-rights framework on the basis of the evidence before it. The forum court must therefore satisfy itself, on concrete evidence, that a return order is compatible with Article 8 ECHR, giving

[29] For example, Art. 2 of the Dutch Implementation Act *(Uitvoeringswet internationale kinderontvoering)* provides that the Act implements the conventions listed in Article 1 and is also applicable in cases of international child abduction not governed by a convention.
[30] For an example of this limit, see Hague District Court, 21 September 2012, ECLI:NL:RBSGR:2012:BX8692.

particular weight to the child's best interests and to the proportionality of the measure. The Convention's refusal grounds under Articles 12, 13 and 20 remain the relevant categories, but they are read through a human-rights lens that carries more operative weight than in a purely intra-Convention setting.

CASE NOTE 6 | NL | The Hague District Court | ECLI:NL:RBDHA:2015:11488
6 October 2015

The children had been brought to the Netherlands from Liberia. Because Liberia was party neither to the 1980 Convention nor to the ECHR, the Convention could not apply as treaty law. The court nevertheless applied the 1980 Convention by analogy under Articles 2 and 13(3) of the Dutch Implementation Act. It considered that there was no concurrence of treaties within the meaning of Article 30 of the Vienna Convention; rather, the case involved the interaction between the Dutch Implementation Act and the ECHR, with the latter taking precedence. The court therefore stated that, although it would apply the 1980 Convention by analogy, it would apply its standards less restrictively and give greater weight to the interests of the children than is usual under the Convention. It ultimately found that the alleged risks associated with return to Liberia did not establish Article 13(1)(b) and ordered return.

Applying the 1980 Convention as a point of reference

Application "as a point of reference/orientation" means that the 1980 Convention is not applied as law and not applied by analogy. Instead, the court refers to it for guidance only, to organise its assessment and to ensure consistency with international standards, while making clear that the decision is based on domestic law. [31]

Under this approach, the 1980 Convention has persuasive value only. The court may refer to its provisions when considering whether a return should be ordered or refused, but it is not limited to the Convention's grounds for refusal and may take into account broader considerations, including domestic law and the child's rights under Article 8 ECHR. This gives the court wider discretion, although it may reduce predictability for practitioners.

CASE NOTE 7 | NL | The Hague Court of Appeal | ECLI:NL:GHDHA:2023:2675
18 December 2023

Children who had been living with their parents in Nigeria travelled with the family to the Netherlands. After the father returned to Nigeria, the mother remained in the Netherlands with the children and refused to return. Because Nigeria is not a party to the 1980 Convention, the Convention could not apply as treaty law. The Dutch court therefore assessed the return request under domestic law while using the Hague Convention as a point of reference. The court explained that this approach reflects the intention of the Dutch legislature that international child-abduction cases should, as far as possible, be assessed according to the same principles as Hague Convention cases. Under the Dutch Implementation Act, the court may therefore structure its analysis around the Convention's concepts and refusal grounds even where the treaty does not formally apply. At the same time, because the Convention is not binding in such situations, the court retains discretion to depart from its framework where domestic law or the circumstances of the case justify doing so. (Also in ECLI:GHDHA:2021:1270 and ECLI:NL:GHDHA:2020:2020).

[31] This approach has also been developed in the Netherlands, both in parliamentary materials and in case law, e.g. Kamerstukken II 1987/1988, 20 462, nr. 3f.

1.3.C. "Outgoing abductions"

An outgoing abduction describes a situation in which a child has been taken from the State where proceedings are initiated to another country, and the left-behind parent asks the courts of that State to intervene even though the child is already located abroad.

This differs from the typical return scenario under the 1980 Convention. Under the 1980 Convention, return proceedings are normally brought before the courts of the State where the child is located, which decide whether the removal or retention was wrongful and whether the child must be returned.

In an outgoing abduction, however, the child is no longer present in the forum State. The court must therefore first determine whether it nevertheless has jurisdiction under its domestic law to examine the situation.

Outgoing abductions to another state party to the 1980 Convention

Where the child has been taken to another Contracting State, the Convention mechanism should be used - return decision sought from the authorities or courts of the State where the child is located. The Contracting States must comply with their treaty obligations and are bound to respect and apply the Convention's jurisdictional framework, which allocates competence to the State where the child is present. Courts in the State of habitual residence, therefore, lack jurisdiction to order 1980 Convention-based return once the child is abroad, and must comply with this allocation of authority. Recourse to the authorities of the State of the child's location is thus not optional but required under the 1980 Convention system.

CASE NOTE 8 | **BG** | **Sofia City Court** | 20161100116242
10 January 2017



A child habitually resident in Bulgaria was taken by the mother to Denmark without the father's consent. The father applied to the Bulgarian court requesting an order for the child's return. The Bulgarian court declined jurisdiction, holding that when the wrongful removal or retention occurred between states that are contracting parties to the 1980 Convention, only the authorities of the State where the child is present, in this case Denmark, may decide on return. The father must therefore submit a return application through the Bulgarian Central Authority to the Danish authorities, which are competent to examine the request and, if appropriate, order the child's return.

Outgoing abductions to a state that is not party to the 1980 Convention

A different situation arises when the child has been taken to a non-Contracting State. Because the Convention does not operate between the two States, the parent cannot rely on the return procedure abroad. In some legal systems, courts in the State of the child's former habitual residence may nevertheless examine the case under domestic law, sometimes applying the 1980 Convention's principles by analogy, and may issue a return order even though the Convention itself is not formally applicable. [32]

[32] The Dutch Supreme Court addressed this question in its judgment of 5 July 2019 (ECLI:NL:HR:2019:1085), holding that the exclusive-jurisdiction rule developed for Convention cases – under which only the court of the State where the child is present may decide on return –

Such decisions cannot be enforced through the 1980 Convention system in the foreign State. Nevertheless, they may have practical value: they formally establish that the removal or retention was unlawful, support efforts to locate the child or seek international assistance and may become relevant if the child later enters the territory of a Contracting State.

CASE NOTE 9 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2020:2020
19 October 2020

A family had lived for many years in the United Arab Emirates but later settled in the Netherlands. The father subsequently took the children from the Netherlands to the United Arab Emirates and did not return them. The mother, therefore, initiated return proceedings before the Dutch courts. Because the United Arab Emirates is not a party to the Hague Convention, the Convention return mechanism could not be used in the State where the children were located. The Dutch court nevertheless accepted jurisdiction under national procedural law, as the mother had her habitual residence in the Netherlands. The court used the 1980 Convention as a "point of orientation", while recognising that in non-Convention cases the return court has room to depart from the Convention framework where there is reason to do so.

CASE NOTE 10 | NL | The Hague District Court | ECLI:NL:RBDHA:2025:1988
21 January 2025

The mother left the family home in the Netherlands and travelled with the children to Iraq without returning. The father applied to the District Court of The Hague for their return. The court characterised the situation as an outgoing abduction, because the children had been taken from the Netherlands to another State. Although the children were no longer present in the Netherlands, the court held that it had jurisdiction under national law because the father had his habitual residence in the Netherlands. Since Iraq is not a party to the Hague Convention, the court examined the case under domestic law and applied the Convention's principles by analogy under the Dutch Implementation Act.

This approach is however jurisdiction-dependent and in many legal systems no such domestic analogue exists – the left-behind parent still may have recourse to bilateral cooperation, consular channels, or private-international-law routes, most notably the 1996 Convention.

Therefore, where the destination State is not a party to the 1980 Convention, the analysis does not end there. If both the State of habitual residence and the destination State are parties to the 1996 Convention, that instrument may offer an independent route: the courts of habitual residence retain jurisdiction under Article 7, and any parental-responsibility order they issue is recognised and enforceable in the destination State under Articles 23 and 26. The detailed operation of this machinery is set out in Chapter 1.1.B (Scenario 2) and Table 3. An applicant should therefore check the destination State's status against *both* Conventions before concluding that no international route is available.

Even where neither Convention applies, a declaratory finding of wrongful removal issued by the courts of habitual residence retains practical value. Should the child subsequently enter a 1980 Convention Contracting State, the prior judicial determination directly addresses the Article 3

cannot be transposed to non-Convention cases. That rule is grounded in reciprocity between Contracting States, and no such reciprocity exists when the destination State is outside the Convention system. Jurisdiction is therefore determined by the ordinary rules of Dutch private international law, in particular Article 3 of the Code of Civil Procedure, under which the applicant's habitual residence in the Netherlands can found jurisdiction. Only once jurisdiction is established does the analogical application of the Convention's substantive rules, under Articles 2 and 13(3) of the Implementation Act, come into play.

elements (the existence and exercise of custody rights under the law of habitual residence) and can accelerate any later return proceedings.

1.3.D. Abductions within a composite state: movement between territorial units of a single state

Some States contain several territorial units with different systems of family law and different courts. A child moved from one unit to another may therefore enter a different legal system even though the movement takes place within one State.

Article 31 of the 1980 Convention explains how references to habitual residence and applicable law operate in a State with different territorial systems of law. Article 33 addresses movement within such a State. It provides that a State whose territorial units have their own custody laws "shall not be bound to apply" the Convention where a State with a unified legal system would not be bound. As explained in the Pérez-Vera Report, §§141–142, the Convention operates at the international level and relationships arising within one State are internal.[33] Article 33 does not say that internal application is prohibited.

Where another State is involved, the practitioner should verify four separate matters: whether the Convention operates between the States concerned; whether it has been extended to the territorial unit where the child is located; any acceptance required under Article 38; and the territorially competent Central Authority. The relevant HCCH Status Table and list of designated Central Authorities should therefore be checked for the particular State and territorial unit.[34]

EU territorial scope must be checked separately. Article 22 Brussels IIb applies where a child has been wrongfully removed or retained in a Member State other than the Member State of the child's previous habitual residence. A territory does not fall within that regime merely because it is constitutionally connected with an EU Member State.

The Kingdom of the Netherlands as an example

The Kingdom of the Netherlands comprises four countries: the Netherlands, Aruba, Curaçao and Sint Maarten. The country of the Netherlands includes the European Netherlands and the three Caribbean public bodies of Bonaire, Sint Eustatius and Saba, collectively known as the Caribbean Netherlands. The Government of the Netherlands describes Bonaire, Sint Eustatius and Saba as public bodies of the Netherlands.[35]

[33] Explanatory Report by Pérez-Vera, §§34–37, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction*, §§141-142.
[34] Article 6 permits a federal or non-unified State to appoint more than one Central Authority and specify the territorial extent of their powers. Article 35(2) expressly addresses territorial units covered by declarations under Arts 39 or 40. Under Art 38, an accession operates in relation to another Contracting State only following acceptance. HCCH, Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Status Table, available at <https://www.hcch.net/en/instruments/conventions/status-table/?cid=24>; HCCH, Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Extensions, available at <https://www.hcch.net/en/instruments/conventions/status-table/extensions/?cid=24&mid=634>; HCCH, Netherlands - Central Authority, available at <https://www.hcch.net/en/states/authorities/details3/?aid=34>.
[35] Government of the Netherlands, "What are the different parts of the Kingdom of the Netherlands?", available at <https://www.government.nl/faq/what-are-the-different-parts-of-the-kingdom-of-the-netherlands>. The Government states that the Kingdom comprises Aruba, Curaçao, Sint Maarten and the Netherlands, and that the Netherlands includes the public bodies of Bonaire, Sint Eustatius and Saba.

From an EU law perspective, Aruba, Bonaire, Curaçao, Saba, Sint Eustatius and Sint Maarten are Overseas Countries and Territories associated with the EU, rather than territories forming part of the EU itself.[36]

For the 1980 Convention, the HCCH Status Table lists the Contracting Party as "Netherlands (Kingdom of the)", with entry into force on 1 September 1990.[37] The HCCH Table of Extensions records extension to Bonaire, Sint Eustatius and Saba with effect from 1 January 2011 and to Curaçao with effect from 1 February 2024.[38] Aruba and Sint Maarten are not listed. The current HCCH Central Authorities page identifies separate authorities for the European Netherlands, the Caribbean Netherlands and Curaçao.[39]

This creates a practical distinction. A removal from France (or another member State) to Curaçao is movement between two different Contracting States, with Curaçao being the relevant territorial unit of the Kingdom. A removal from the European Netherlands to Curaçao remains movement within the Kingdom. Article 33 therefore removes any assumption that the Kingdom is internationally obliged by the Convention to apply the return mechanism internally. At the same time, the provision does not state that internal application is prohibited.

Table 4: Identifying the applicable return regime: removals to Curaçao from the European Netherlands and France

Question	European Netherlands → Curaçao	France → Curaçao
1. Are the place of origin and place of refuge in different Contracting States?	No. The Netherlands and Curaçao are two countries within the Kingdom of the Netherlands. For the 1980 Convention, the HCCH lists "Netherlands (Kingdom of the)" as the Contracting Party; Curaçao is not a separate Contracting Party. Check the HCCH Status Table.	Yes. France and the Kingdom of the Netherlands are two different Contracting States. Both are listed separately in the HCCH Status Table.
2. Is the 1980 Convention in force for the territorial unit where the child is located?	Yes. The Convention was extended to Curaçao with effect from 1 February 2024. The HCCH Table of Extensions confirms the territorial extension; it does not make Curaçao a separate Contracting State.	Yes. For an international case involving the Kingdom, Curaçao is a territorial unit to which the Convention applies from 1 February 2024. Article 35(2) expressly takes territorial extensions into account. Check the HCCH Table of Extensions and Article 35.
3. Is the movement internal or international, and what does that change?	The movement is internal to the Kingdom. Article 33 states that a State with different territorial custody-law systems is not bound to apply the Convention internally where a State with a unified legal system would not be bound. It does not say that internal application is prohibited. In Case Note 11 a return proceeding under the Convention was already pending in	The movement is international: France and the Kingdom of the Netherlands are different Contracting States. The internal limitation in Article 33 does not arise. For a removal or retention after the Convention became effective for Curaçao, the Convention applies subject to its ordinary requirements, including Articles 3 and 4.

[36] Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, art 355(2), Annex II; European Commission, "Overseas Countries and Territories", available at <https://international-partnerships.ec.europa.eu/countries/overseas-countries-and-territories_en>. The Commission lists Aruba, Bonaire, Curaçao, Saba, Sint Eustatius and Sint Maarten as OCTs linked to the Netherlands and distinguishes OCTs from the EU outermost regions.
[37] HCCH, Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Status Table, available at <https://www.hcch.net/en/instruments/conventions/status-table/?cid=24>.
[38] HCCH, Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Extensions, available at <https://www.hcch.net/en/instruments/conventions/status-table/extensions/?cid=24&mid=634>.
[39] The Extensions table states that a territorial unit not mentioned is one to which the Convention has not (yet) been extended. HCCH, Netherlands - Central Authority, last updated 27 January 2026, lists separate Central Authorities for the European part of the Netherlands, the Caribbean part of the Netherlands and Curaçao. HCCH, Netherlands - Central Authority, available at <https://www.hcch.net/en/states/authorities/details3/?aid=34>.

Question	European Netherlands → Curaçao	France → Curaçao
	Curaçao, but the judgment did not explain the legal basis for applying the Convention internally. See Article 33 and Pérez-Vera, §§141–142.	
4. What return route should the practitioner examine?	Check the current framework and practice. The HCCH Status and Extensions tables establish treaty status and territorial extension, but do not themselves explain the legal basis for an intra-Kingdom return procedure. In Case Note 11, the father had already initiated return proceedings in Curaçao under the Convention, and the Hague District Court stayed the parallel Dutch proceedings so that the Curaçao authorities could decide first.	The ordinary Convention route is available, provided the Convention's requirements are satisfied. The applicant may seek assistance through a Central Authority under Article 8 or apply directly to the competent judicial or administrative authorities under Article 29. Because the child is in Curaçao, the return proceedings are dealt with there. See Articles 8, 12 and 29.
5. Does Brussels IIb supplement the return proceedings?	No. Article 22 Brussels IIb applies where the child has been wrongfully removed or retained in another Member State. Curaçao is an Overseas Country or Territory and is not part of EU territory. See Article 22 Brussels IIb and the European Commission OCT overview.[40]	No. France is a Member State, but Curaçao is not. The child has therefore not been removed to another Member State. Where the 1980 Convention applies, it operates without the Brussels IIb supplementary return regime. See Article 22 Brussels IIb.

The two situations are illustrated by recent case law. The first concerns parallel proceedings where a Convention return application was already pending in Curaçao; the second shows the alternative route used where the child was removed to Aruba, to which the 1980 Convention has not been extended.

Where a return proceeding under the 1980 Convention is already pending in Curaçao, a Dutch court may stay parallel parental-responsibility proceedings so that the Curaçao authorities determine the return issue first.

CASE NOTE 11 | NL | The Hague District Court | ECLI:NL:RBDHA:2026:11316
10 Apil 2026

The parents exercised joint custody over their six-year-old child. In December 2025 the mother took the child from the Netherlands to Curaçao. She maintained that the father had consented; he denied signing the consent form relied upon and alleged wrongful removal. The father had already initiated return proceedings in Curaçao under the 1980 Convention and, in parallel, brought proceedings in the Netherlands concerning the child's principal residence and return. The Hague District Court did not itself determine return. It held that the disputed consent should first be decided in the pending Curaçao proceedings and stayed the Dutch case to avoid prejudging that issue. It also used the liaison-judge mechanism under Article 24 of the International Child Protection Implementation Act to obtain information about the Curaçao proceedings. The judgment proceeded on the basis that the Convention return proceedings could take place in Curaçao but did not examine Articles 31 or 33 or explain the legal basis for applying the Convention to movement within the Kingdom.

[40] European Commission: Overseas Countries and Territories, available at <https://international-partnerships.ec.europa.eu/countries/overseas-countries-and-territories_en>.

The position is clearer where the Convention has not been extended to the territorial unit in which the child is present. Aruba provides a recent example.

Where the 1980 Convention has not been extended to the territorial unit where the child is present, return may still be ordered through another applicable legal route.

CASE NOTE 12 | NL | Court of First Instance of Aruba
ECLI:NL:OGEAA:2025:354
19 November 2025

The parents exercised joint custody over a child who had lived with them in the Netherlands. In July 2025 the mother took the child to Aruba. The father denied consenting and sought the child's return. The Aruban Court characterised the case as interregional and stated that the 1980 Convention did not apply to Aruba. For urgent jurisdiction it relied on Article 9 of the 1961 Child Protection Convention and applied Aruban law to the father's requests. The Court found that the mother had not established the father's consent and had acted contrary to his custody rights. It ordered the child's provisional return to the Netherlands pending merits proceedings, provisionally fixed the child's principal residence with the father, authorised re-registration in the Netherlands and imposed a penalty for non-compliance. The case shows that the absence of the 1980 Convention does not necessarily prevent a return order where another legal route is available.

Earlier Curaçao decisions likewise illustrate the use of interregional or domestic rules in disputes between Curaçao and the Netherlands before the 1980 Convention was extended to Curaçao.[41]

[41] See Gerecht in Eerste Aanleg van Curaçao 5 September 2018, ECLI:NL:OGEAC:2018:275, where the mother relied on the 1980 Convention but the Curaçao court treated the substance as concerning the exercise of custody and confirmed an urgent order requiring the children to be returned to Curaçao and handed to the father; and Gemeenschappelijk Hof van Justitie 14 December 2023, ECLI:NL:OGHACMB:2023:280, §§2.6-2.9, expressly describing the case as interregional, holding that the 1996 Child Protection Convention cited by the first-instance court was not applicable in that interregional case, and applying unwritten Curaçao interregional private international law to urgent jurisdiction.

1.4. Parties and other actors in 1980 Convention proceedings

International child abduction proceedings typically involve a limited circle of direct parties, yet the range of actors appearing before the court can be wider than in ordinary civil proceedings. Under the 1980 Convention and the Brussels IIb Regulation, the core dispute typically concerns two opposing parties – the applicant (most often left-behind parent) and the respondent (taking parent) – but the proceedings also involve the child, represented directly or through a guardian, and in most jurisdictions, public authorities or independent institutions entrusted with child-protection or public-interest functions. Each of these participants plays a distinct procedural role, and their participation must be organised in a manner that safeguards:

— Equality of arms between the opposing parties;

— Procedural rights of the child, including the right to be heard; and

— Judicial control over all measures affecting the course and enforcement of the proceedings.

1.4.A. Main procedural parties

In proceedings under the 1980 Convention, practitioners instinctively imagine a simple procedural model: one parent (the left-behind parent) files the application, and the other parent (the abducting parent) is the respondent. The 1980 Convention itself, however, is not built on that model. It regulates a breach of custody rights resulting in the child remaining outside the State of habitual residence, and not simply a conflict between two parents. This distinction matters because the identification of the parties (especially the respondent) does not depend on who behaved wrongly, but on *against whom the return obligation must operate*.

The following table identifies the two core procedural roles in return proceedings – applicant and respondent – and illustrates the categories of persons, institutions, and bodies that may occupy each role in practice under the 1980 Convention's framework.

Table 5: Procedural roles and potential occupants under the 1980 Convention

Procedural role	Who may occupy this role in practice
Applicant (person, institution, or body alleging a breach of rights of custody under the law of the State of the child's habitual residence immediately before the removal or retention)	— a parent exercising custody rights (sole or joint) — a court-appointed guardian or other legal holder of custody rights — a grandparent or relative granted custody by a competent authority — a foster carer vested with custody rights — a public authority or institution holding custody of the child — any other person, institution, or body – filing is not conditional on prior verification of custody rights; whether custody rights exist and were breached is determined on the merits

Respondent (a person against whom the return order may be directed because their conduct constitutes or maintains the alleged wrongful removal or retention)	— the parent who has taken the child to, or is keeping the child in, another State — both parents, where the child remains in another State due to their joint conduct — any other person in the requested State who, without holding custody rights, has assumed control of the child and refuses to hand the child over to the person entitled to determine the child's residence — a parent's partner or other adult who knowingly assists or participates in the retention

Applicant

Applicant is the *person, institution, or other body* that files the application and requests the return of the child.

Any person, institution, or body may trigger the return procedure – the 1980 Convention does not require prior verification of custody rights before an application is accepted. Whether the applicant is a mother, father, grandparent, guardian, or institution is therefore legally irrelevant at the point of filing. However, holding custody rights is a substantive condition for return to be ordered. If the applicant cannot demonstrate that they held custody rights immediately before the removal or retention, the return will be refused on the merits. Whether a particular arrangement actually constitutes custody rights in the Convention sense is a question the court must determine, and it is frequently the central contested issue in return proceedings. For details on custody rights see Chapters 2.5 and 2.6.

CASE NOTE 13 | NL | Court of Appeal 's-Hertogenbosch
ECLI:NL:GHSHE:2010:BM5997
27 May 2010

The paternal grandmother lodged a request with the Central Authority and return proceedings were filed on her behalf, even though she held only a substitute personal care order under Slovak law. No prior verification of whether that arrangement constituted custody rights in the Convention sense was required before the application was accepted and proceedings were brought. The question of whether she actually held custody rights was only determined by the court on the merits – where it was ultimately found that she did not.

Multiple holders of custody may apply jointly, and each has independent standing. The 1980 Convention also permits situations where more than one person or body may simultaneously have standing as applicants. Custody rights can be shared or split between parents, relatives, and institutions. Each right-holder is entitled to request the child's return, and the Central Authority may represent them either individually or together. The key rule is that all holders of custody rights have equal standing under the Convention**.** Where parents exercise custody jointly, they are both entitled to request the child's return, and they may do so together in a single application.

CASE NOTE 14 | NL | The Hague Court of Appeal | ECLI:NL:GHDHA:2020:710
25 March 2020

Both the father and the stepmother held parental authority under a 2011 Dutch order. They therefore filed the return application jointly. The court confirmed their standing as co-applicants, as both held rights of custody under the law of the child's habitual residence.

A public authority or institution may act as applicant under the 1980 Convention where it holds custody rights by virtue of an administrative or judicial decision under the law of the child's habitual residence. The Convention expressly extends its protection to custody rights held by authorities and institutions, not only by private individuals. Where a competent authority has been appointed as guardian or custodian and parental custody has been suspended or extinguished, that authority stands in the position of custody rights holder and is entitled to request the return of a child removed or retained in breach of those rights. The nationality or public character of the authority is irrelevant – what matters is that the custody rights were validly constituted under the law of the State of the child's habitual residence and were actually being exercised at the time of the removal or retention.

CASE NOTE 15 | AT | Supreme Court
ECLI:AT:OGH0002:2016:0060OB00123.16F.0627.000
27 June 2016

A Hungarian government office (Regierungsamt Hauptstadt Budapest) had been appointed as guardian by administrative decision, with parental custody suspended. Following the child's removal to Austria, the Hungarian authority brought return proceedings as applicant. The respondents argued that a State which had transferred custody rights to one of its own administrative bodies could not invoke the Convention. The Austrian court rejected this argument, holding that custody rights held by a public authority fall within the protection of the Convention, and that the public or administrative character of the applicant is irrelevant. What mattered was that the custody rights were validly constituted under Hungarian law and were being exercised at the time of the removal.

CASE NOTE 16 | NL | The Hague District Court | ECLI:NL:RBDHA:2018:15836
28 December 2018

The Juvenile Court in Italy restricted both parents' authority and placed the child under the custody of social services. Shortly after the mother moved the child to the Netherlands without consent, the Italian court suspended the parents' authority altogether and appointed a guardian (the municipal mayor pro tempore) to act as the child's legal holder of custody rights. The guardian, as the person now legally entitled to decide on the child's residence, lodged the return request in the Netherlands. The Dutch court confirmed that the guardian qualified as the rightful applicant, since the removal had violated the custody rights vested in them by the Italian court.

Return can be requested by any holder of custody rights when these rights were breached, even if others consented to the removal. Since any person or body holding rights of custody may act as an applicant, the 1980 Convention gives standing to a holder of custody rights who objects to the removal, even if other holders consented. The wrongful character of the removal arises from the breach of one holder's custody rights, and that holder is entitled to request return regardless of the position taken by the others.

Respondent

In proceedings under the 1980 Convention, the term "respondent" refers to any individual against whom a return application is directed. This encompasses not only parents or holders of custody rights but also any person whose conduct is materially linked to the wrongful removal or retention of the child.

While the applicant can be a public body, the respondent under the 1980 Convention is typically a *natural person* whose conduct is materially connected to the alleged abduction or retention.

Both parents may be respondents where the alleged breach of custody rights results from their joint conduct.[42] Even where the respondents are the child's parents, rights of custody may be vested in another person or authority, and the alleged breach may therefore concern the rights of a guardian, relative, or child-protection body rather than those of either parent. Abduction thus may occur where they together remove the child from the custody holder and take the child abroad, or where the child's continued stay outside the State of habitual residence results from the position taken by both parents. In such circumstances, the return application is directed against both because a return order must bind all persons whose authority or decisions determine whether the child can actually return to the State of habitual residence.

CASE NOTE 17 | AT | Supreme Court
ECLI:AT:OGH0002:2016:0060OB00123.16F.0627.000
27 June 2016

In an Austrian case concerning return to Hungary, a Budapest government office had been appointed guardian by administrative decision, with parental custody suspended. The child was subsequently taken to Austria by both parents. Because neither parent held custody rights as those having been transferred to the guardian, both parents were treated as respondents in the return proceedings brought by the guardian authority.

Individuals who assist in an abduction, such as helping to plan or finance the removal, concealing the child, providing housing or logistical support, or otherwise enabling the wrongful retention, may properly be named as respondents.[43] Such persons may also be held responsible for the reimbursement of the applicant's fees and costs under Article 26 of the Convention. Courts have applied a broad reading of "respondent" in U.S. Hague proceedings under the International Child Abduction Remedies Act (ICARA), especially where the joined party has material knowledge or influence over the child's whereabouts or retention.[44]

CASE NOTE 18 | US | Southern District Court of New York
Jacquety v. Baptista | 2020 WL 5946562
7 October 2020

A father petitioned for the return of his child to Morocco. He named not only the mother but also her romantic partner, alleging that the partner had helped plan the abduction, draft misleading communications, arrange transport, obtain counsel, and provide accommodation after the removal. The partner argued he had no parental role and could not comply with a return order. The court rejected this, holding that ICARA does not restrict respondents to custodial parents. Because the partner had actively assisted the mother and had knowledge of the child's location, he was properly joined. Even if he could not directly return the child, a judgment against him could help redress the wrongful act—for example, by

[42] See also Nationale Zorggids, *"Rechter staat getuigen toe in zaak Hengelose ouders die uithuisgeplaatste zoons ontvoerden"* (26 February 2025) <https://www.nationalezorggids.nl/jeugdzorg/rechter-staat-getuigen-toe-in-zaak-hengelose-ouders-die-uithuisgeplaatste-zoons-ontvoerden/>, reporting on Dutch criminal proceedings against parents who removed their minor children – who had been placed under the custody (*voogdij*) of the Willem Schrikker Stichting – from the Netherlands to Spain. The case illustrates a scenario in which both parents may be joint respondents, and in which the removal violates custody rights held by a public institution rather than by either parent. At the time of writing, the substantive judgment had not been published.
[43] This broad approach to identifying respondents is characteristic of U.S. practice under ICARA; in many other Contracting States, return proceedings are brought only against the person exercising actual control over the child.
[44] International Child Abduction Remedies Act, 42 USC 11601 et seq (1988).

1.4.B. The child as subject of the proceedings

In 1980 Convention proceedings, the child is the subject of the case rather than a litigating party in the ordinary sense. For the general concept of "child", see Handbook part 1, Chapter 5.1.A.

The 1980 Convention applies only where the child is under sixteen years of age (Art. 4), and within that framework the child has the right to express their views in a manner consistent with the law and procedure of the requested State, including the possibility under Article 13(2) that the child's objections may be taken into account.

The procedural position of the child varies across jurisdictions: in some systems, the child is formally made a party and may have independent legal representation, while in others, the child does not appear as a party but is heard through mechanisms such as a judicial interview, a social services report, or the appointment of a guardian ad litem.

In practice, the important distinction is between hearing the child and representing the child. Hearing the child gives the court the child's views; separate representation, where available under national procedure, allows the child's independent perspective on the legal and factual issues to be placed before the court. This may be particularly useful where the child's objections, settlement, grave risk, protective arrangements, timing of return, or a serious dispute about habitual residence are in issue, because the parents may not present the child's position separately from their own litigation interests.[45]

Under Brussels IIb Regulation (Art. 21 and 26), the right of the child to be given an opportunity to be heard is reinforced as a core procedural safeguard, ensuring that the child's perspective is considered even within the summary nature of return proceedings.

1.4.C. Institutional actors

Return proceedings are not a closed contest between private parties. They are built on a framework of international cooperation that necessarily involves institutional actors – bodies designated or recognised by States to facilitate the 1980 Convention's operation, ensure its procedural safeguards, and decide its substantive questions. These actors are distinct from the main procedural parties discussed in Chapter 1.4.A.

Institutional actors may participate in different capacities. Some perform only cooperative, administrative or evidentiary functions, while others may hold custody rights, initiate or facilitate return proceedings, act as a formal party under national law, or exercise powers as a competent judicial or administrative authority. Their procedural position must therefore be determined by the function they perform and the legal rights or powers they hold in the particular case.

Two institutional actors are inherent to the system and recognised in every Contracting State: the Central Authority, designated under Article 6 of the 1980 Convention to serve as the channel of

[45] See also Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) ch 15, p 389–396 and p 405–406, explaining that the child is usually the focus rather than a party to return proceedings, but that separate representation may give the child formal or de facto participation and may be especially important where settlement, child objections, grave risk, discretion following an established defence, or a serious dispute about habitual residence is in issue.

international cooperation; and the courts (both those of the State of habitual residence and those of the State where the child is located) which are typically the bodies empowered to decide on jurisdiction, wrongfulness, and return. Each performs a distinct and complementary function, and the boundary between them is one of the Convention's defining features: the Central Authority facilitates, the court decides.

Central authorities

Under Article 6 of the 1980 Convention, every Contracting State must designate a Central Authority. It does not decide the case and does not act as a litigating party; its function is administrative and cooperative, aimed at initiating the Convention process and maintaining communication with the State addressed. For the concept "Central Authority" see Handbook part 1, chapter 3.1.E.

The procedural powers of Central Authorities vary between Contracting States. In some jurisdictions, the Central Authority does not have the power to initiate judicial proceedings on behalf of the applicant.[46] This does not conflict with the 1980 Convention; articles 7 and 8 require Central Authorities to assist and transmit applications, but they do not oblige them to act as litigants before the courts. In such systems, the applicant must initiate the return proceedings directly, usually through legal representation in the requested State. Applicants should therefore verify at an early stage whether the Central Authority has the authority to commence proceedings or whether the application must be filed by the applicant personally.

When a child is wrongfully removed or retained, the Central Authority in the State of habitual residence functions as the Requesting Central Authority. Its role is to assist the left-behind parent in making an application for return and to ensure that the application is transmitted abroad promptly and in proper form. In line with Article 7(a)–(d), it helps secure the necessary information and documents, arrange translations where required, and forward the application to the State where the child is located.

The Central Authority in the State where the child is present becomes the *Requested Central Authority*. After receiving the application under Article 7, it is responsible for processing it within its own system, taking appropriate steps to discover the whereabouts of the child, if necessary (Article 7(a)), and ensuring that the matter is brought before the competent judicial authorities without delay. Consistent with Article 7(c), it must take all appropriate measures to secure the voluntary return of the child or to bring about an amicable resolution. Under Article 7(f), it must initiate or facilitate the institution of judicial or administrative proceedings. It must keep the Requesting State informed of the progress and outcome of the case, as required by Article 7(i). For further information on the role and duties of Central Authorities, including the procedure for submitting a return application, see Section 3.2.B.

[46] See, for example, Hague Conference on Private International Law (HCCH), *Questionnaire concerning the Practical Operation of the 1980 Child Abduction Convention*, response of the Czech Republic, prepared for the Eighth Meeting of the Special Commission on the Practical Operation of the 1980 and 1996 Hague Conventions, available at <https://assets.hcch.net/docs/1c68233f-1927-4dfc-8695-b457e2dbe31d.pdf>.

CASE NOTE 19 | **ECtHR** | **F.D. and H.C. v. Portugal** | App. No 18737/18
7 January 2025

The requesting parent submitted a return request under the 1980 Convention to the Portuguese authorities. However, the Central Authority did not transmit the request to the competent court and no return proceedings were initiated. Instead, the child was later located through a Schengen Information System alert and transferred directly to the mother. The ECtHR criticised the lack of coordination and action by the authorities responsible for handling the return request, emphasising that Central Authorities must actively facilitate the initiation of the 1980 Convention procedure once a request is received.

In proceedings under the 1980 Convention, Central Authorities are facilitators, not parties. Their function is to receive and transmit applications, assist in locating the child, and support cooperation between states. They are not defendants in judicial proceedings – whether they may initiate proceedings or act on behalf of the applicant depends on national law, but they themselves are not parties to the proceeding. The proper defendant is always the person alleged to have wrongfully removed or retained the child.

CASE NOTE 20 | **RO** | **Bucharest Court of Appeal** | Case No 2524/2014
2 March 2015

The father brought a return application against both the mother and the Romanian Ministry of Justice, which acts as Romania's designated Central Authority under the 1980 Convention. The court upheld the Ministry's objection of lack of passive procedural capacity and dismissed the claim against it. Its reasoning was that the substantive demand in return proceedings – an order requiring the child to be handed over – can only be directed against the person actually retaining the child. The Central Authority does not retain the child and has no power to return it; its role is administrative and cooperative, not adjudicative. The court added that although an earlier version of Romanian implementing law (Article 8(2) of Law 369/2004 before republication) had required the Ministry to be summoned, the current Article 9(3) removed this formality, confirming that the Ministry had never been a proper defendant.

The Central Authority's duty under Article 7 is one of "best efforts", not guaranteed outcome. Article 7 of the 1980 Convention lists the functions of Central Authorities, including the duties to "promote amicable resolution" of the dispute and to "take all appropriate measures" to secure voluntary return or facilitate the proceedings. These obligations require the Central Authority to act diligently and proactively, for example, by informing parties about mediation, forwarding expressions of willingness to its foreign counterpart, or following up on the parties' positions. They do not require the Central Authority to produce a particular result. Practical barriers that the Central Authority cannot control – a parent's detention, language obstacles, inability to travel, refusal of the other party to engage – do not constitute a failure under Article 7. Nor does an alleged shortcoming in the Article 7 duty affect the admissibility of the return application: the Central Authority remains a valid procedural channel through which the request can proceed, even where mediation ultimately does not take place.

CASE NOTE 21 | NL | Court of Appeal 's-Hertogenbosch
ECLI:NL:GHSHE:2010:BM5997
27 May 2010

After receiving the return request, the Dutch Central Authority informed the mother about the option of cross-border mediation, forwarded her willingness to mediate to the Slovak Central Authority, and twice asked the Slovak Authority to raise mediation with the grandmother. No agreement was reached, largely because the grandmother could not travel and the father was in detention. The court held that the Central Authority had nonetheless fulfilled its Article 7 obligation: it had acted diligently and proactively, and Article 7 did not require it to organise mediation abroad or to secure a particular outcome. The case illustrates the core of the best-efforts standard – a duty to try reasonably and in good faith, not a duty to succeed.

Central Authorities are required under Article 7(f) of the 1980 Convention to inform, assist and facilitate, but are not obliged to litigate on behalf of the left-behind parent or to initiate proceedings ex officio. Their role is fulfilled where they provide clear information on the return procedure, help prepare the necessary documentation, arrange translations and meetings, and follow up on the parents' intentions. The decision to file a return application remains with the applicant – the Central Authority's obligation ends where the applicant's own responsibility begins. However, the effective discharge of the Article 7 duty may be undermined where the Central Authority simultaneously holds another institutional role in the same case – such as acting as guardian of the children in domestic proceedings. Such dual roles create a structural conflict of interest between the obligation to facilitate return under the Convention and the obligation to protect the children's interests in domestic proceedings. Where the Central Authority fails to act proactively in this context, it may indirectly discourage the left-behind parent from pursuing the Convention procedure – an outcome that, while not attributable to any specific procedural failure, is nonetheless inconsistent with the Central Authority's functions under the Convention.

CASE NOTE 22 | ECtHR | P.N. v. Czech Republic | App. No 44684/14
8 June 2023

The mother took the children to the United States in the summer of 2012 without the father's consent. The Czech Office for the Protection of International Children, acting as Central Authority, provided the father with information, documentation and translation assistance to file a return application under the 1980 Convention, and followed up with him on multiple occasions. The father was repeatedly informed that he could still file even after the first domestic court decision. He never did. The ECtHR held that the Central Authority had fulfilled its Article 7(f) obligation and that the decision not to file remained the father's own responsibility. The same Office also acted as guardian of the children in the domestic proceedings. The dissenting judges considered that this dual role created a conflict of interest between the obligation to facilitate return under the Convention and the obligation to protect the children's interests in the domestic proceedings, and that the Office's failure to act more proactively in its capacity as Central Authority had contributed to the father's decision not to pursue the return procedure.

Courts of the requesting and requested state

Courts are typically the judicial authorities responsible for deciding return applications under the 1980 Convention and, in intra-EU cases, under the Brussels IIb Regulation. Their primary task is to determine whether the removal or retention of the child was wrongful within the meaning of the

Convention and, if so, whether the child must be returned to the State of habitual residence. While Central Authorities facilitate cooperation and access to the procedure, the determination of the return request lies exclusively with the competent judicial (or rarely, administrative) authority.

Courts may intervene at different stages of an international child abduction situation. Their involvement is not limited to deciding return applications but also includes jurisdiction over parental responsibility and the adoption of protective measures. Their main functions are:

First, the courts of the State where the child is located *decide the return application under the 1980 Convention*. They determine whether the removal or retention of the child was wrongful and whether the child must be returned to the State of habitual residence. In doing so, they are prohibited by Article 16 of the 1980 Convention from deciding on the merits of custody until the return application has been determined, or until it has been established that the child will not be returned. This separation is what prevents custody proceedings in the State of refuge from pre-empting the Convention's return mechanism.

Second, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention *retain jurisdiction over parental responsibility matters*. Under Article 9 of the Brussels IIb Regulation, that jurisdiction continues despite the abduction until the child acquires a habitual residence in another Member State under the conditions specified in the Regulation. This rule prevents an abducting parent from creating jurisdiction in another State through the wrongful relocation of the child.

Third, the courts of the child's habitual residence may intervene after a refusal to return issued by the court of the State where the child is located on specific grounds via the *overriding mechanism*. Under Article 29 of the Brussels IIb Regulation, those courts may subsequently examine custody and, in certain circumstances, issue a return decision that is automatically enforceable in the Member State where the child is present. For details on the overriding mechanism, see Chapter 6.4.

Courts of a Member State where the child is present may also adopt *provisional or protective measures* where necessary to safeguard the child while proceedings are pending, as provided for in Article 15 of the Brussels IIb Regulation (for details see Handbook 1, chapter 5.2.J.).

Only the judiciary may determine questions of jurisdiction, custody, return, or enforcement, and only through procedures that are reasoned, transparent, and subject to legal safeguards. While national law may allow public bodies (such as a Prosecutor General, a Children's Ombudsman, or a Commissioner for Children's Rights, depending on the jurisdiction) to participate in proceedings in order to protect the public interest or the welfare of the child, their role cannot intrude upon the judicial decision-making process itself. In practice, this means that such bodies may submit observations, provide information, or support the implementation of decisions, but they cannot exercise powers that would alter, override, or control the decisions of a court.

CASE NOTE 23 | CJEU | C-638/22 PPU
16 February 2023

In Poland, legislative amendments allowed certain public bodies—the Public Prosecutor General and the Commissioner for Children's Rights—to intervene in return proceedings. These authorities were granted the power to act after a court had already issued a final return order, enabling them to request procedural measures that effectively paused or interfered with the decision's enforcement, without judicial review or reasoning. The CJEU held that such involvement exceeded what public authorities may do under EU law. Although Member States may authorise these institutions to participate or express views in order to safeguard children's rights, they cannot exercise powers that affect or neutralise a court's decision. The return procedure must remain entirely judicial—supervised, reasoned, and compatible with the principles of expedition and effective remedy guaranteed by Article 11(3) of the Brussels IIa Regulation (now Article 24 Brussels IIb) and Article 47 of the Charter of Fundamental Rights of the EU. In practical terms, while public authorities can contribute to child-protection aims, the power to decide, modify, or control the course of proceedings under the 1980 Convention rests solely with the courts.

1.4.D. Potential or case-dependent participants

In addition to the main procedural parties and the core institutional actors, international child abduction proceedings may involve a range of participants whose role is not inherent to the 1980 Convention itself but depends on the domestic procedural framework of the requested State and on the needs of the concrete case.

These actors do not derive their authority directly from the 1980 Convention and are not uniform across Contracting States.

Government/ministries

Across Contracting States, return proceedings under the 1980 Convention are not designed as disputes between individuals and the State. Rather, they are framed as private law proceedings between the person or body alleging a breach of custody rights and the person responsible for the removal or retention.

The 1980 Convention deliberately limits the role of governmental actors, even where those actors exercise regulatory authority over children's matters at the domestic level. There is rarely a specific legal framework governing their involvement in child abduction cases. [47] The Convention is built around a system of cooperation between Central Authorities and does not directly regulate the role of ministries; instead, their involvement is derived indirectly from general cooperation duties and from broader frameworks such as consular and diplomatic law. [48] In practice, most EU Member States

[47] See Oreški and Drventić, The Role of the Ministry of Foreign and European Affairs in International Cases of Child Abduction, SEE Law Journal 2019 <https://www.academia.edu/43856056/The_Role_of_the_Ministry_of_Foreign_and_European_Affairs_in_International_Cases_of_Child_Abduction>. The authors identify Finland as an exception among EU Member States, with a specific statutory framework (Consular Services Act) regulating consular intervention in child abduction cases, subject to strict conditions and limited to supportive, non-adjudicative functions, in contrast to the generally unregulated and auxiliary role of foreign ministries in other States.

[48] See Oreški and Drventić, The Role of the Ministry of Foreign and European Affairs in International Cases of Child Abduction, SEE Law Journal 2019, <https://www.academia.edu/43856056/The_Role_of_the_Ministry_of_Foreign_and_European_Affairs_in_International_Cases_of_Child_Abduction>. Based on an analysis of Croatian practice (nine cases, 2013–2017) and a comparative survey of EU Member States, the authors show that ministries of foreign affairs play a predominantly auxiliary role in 1980 Convention cases, limited to consular assistance, communication, and support to parties, while the core functions remain with Central Authorities and courts; their role becomes more prominent mainly in cases involving non-Contracting States.

limit the role of foreign ministries to general consular assistance, usually based on the Vienna Convention on Consular Relations and national law.[49]

In 1980 Convention proceedings, governments, ministries, and state departments typically do not have standing as parties simply because they regulate children's matters, oversee adoption, or have a public interest in child welfare. The relevant question is whether the body has a legally relevant role in the return proceedings: for example, whether it itself holds *rights of custody* within the meaning of Articles 3 and 5, whether domestic procedural law gives it standing, or whether it acts through the Central Authority framework. Otherwise, its role remains administrative, protective or cooperative rather than adversarial. A foreign public authority's regulatory interest in adoption or child welfare does not, by itself, make it a party or interested party in return proceedings.

CASE NOTE 24 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2020:1627
5 August 2020

The father submitted that the Ghanaian Ministry of Gender, Children and Social Protection, the Department of Social Welfare or the Central Adoption Authority should be regarded as an interested party, because the child had been adopted in Ghana and the Ministry's consent was allegedly required for relocation. The Court of Appeal rejected the argument. It agreed with the District Court that none of these Ghanaian bodies had to be treated as an interested party in the Dutch return proceedings and held that no facts or circumstances justified another conclusion.

Public prosecutor

The role of the public prosecutor in return proceedings varies significantly across Contracting States and is not prescribed by the 1980 Convention itself. Three models can be identified.

In some jurisdictions, the public prosecutor initiates return proceedings on behalf of the State. After receiving the application through the Central Authority, the prosecutor examines it, attempts to secure voluntary return where appropriate, and – if no voluntary resolution is reached – files the return application before the competent family court. In this configuration the prosecutor acts as an independent party to the proceedings whose function is to safeguard the State's compliance with its international obligations under the Convention, not to represent the left-behind parent. [50]

In other jurisdictions, the prosecutor participates in the proceedings without initiating them. The prosecutor may attend hearings, submit observations on the public interest or on the child's welfare, or be heard on specific procedural questions, but does not drive the case. [51]

In a third group of jurisdictions, *the prosecutor has no procedural role at all*. Return proceedings are conducted as strictly private-party litigation between the applicant (or the Central Authority, where national law permits) and the respondent. [52]

[49] Vienna Convention on Consular Relations (adopted 24 April 1963, entered into force 19 March 1967) 596 UNTS 261.
[50] This is the model adopted in France, where the prosecutor acts under the Code of Civil Procedure, and in Turkey, where the Chief Public Prosecutor's Office initiates proceedings on the application of the Central Authority.
[51] This model is found in a number of civil-law systems, including parts of Germany, Poland, Spain, and Italy.
[52] This is the position in most common-law systems and in several civil-law systems, including the Netherlands.

In proceedings concerning parental responsibility, the public prosecutor's role is not determined autonomously by EU law but by the procedural law of the Member State seised. This may also be relevant in child abduction return proceedings in States where the prosecutor is given a procedural role, although return proceedings remain distinct from proceedings on the merits of parental responsibility. Where that law gives the prosecutor the capacity of a party to the proceedings, the prosecutor must be treated as a party for the purposes of EU rules that attach legal consequences to the agreement, acceptance, or opposition of the parties. The prosecutor's position cannot therefore be excluded merely because the prosecutor acts in the interests of the child rather than as representative of one of the parents.

CASE NOTE 25 | **CJEU** | C-565/16
19 April 2018

The proceedings concerned prorogation of jurisdiction under Article 12(3) Brussels IIa. Greek law gave the public prosecutor the capacity of a party in proceedings concerning parental responsibility, and the prosecutor acted to protect the interests of the child. The CJEU held that, in those circumstances, the prosecutor was a "party to the proceedings" within the meaning of Article 12(3)(b). As a result, the prosecutor's opposition to prorogation could not be disregarded (§29).

When the public prosecutor initiates the case based on a request from a foreign Central Authority, the prosecutor normally acts as an independent party to the proceedings and not as the legal representative of either parent. The prosecutor's role is to ensure that the State fulfils its international obligation under the 1980 Convention, and for that reason, the prosecutor does not speak or act on behalf of the left-behind parent. Since the parent is not regarded as having been "represented" by the prosecutor, the parent retains their own procedural rights, including the possibility to intervene directly, to file appeals, or even to bring a third-party opposition. In short, the prosecutor functions as the guardian of the Convention's enforcement, not as the parent's lawyer.

CASE NOTE 26 | **FR** | **Supreme Court** | ECLI:FR:CCASS:2022:C100263
16 February 2022

A Canadian father sought the return of his daughter, who had been taken by the mother from Canada to Guadeloupe. The French prosecutor, acting under Article 1210-4 of the Code of Civil Procedure, initiated the return proceedings before the family court. After the Court of Appeal refused to order the child's return, the father lodged a third-party opposition against that judgment. The mother argued that he was inadmissible, claiming he had already been represented in the proceedings through the prosecutor. The Cour de Cassation rejected this argument, holding that the prosecutor acts as a party in their own right to safeguard France's international obligations, not as the representative of either parent. As a result, the father was entitled to bring his own action and preserve his procedural rights independently of the prosecutor's involvement.

Child protection or social services authorities

Social services have no formal decision-making role under the legal framework governing international child abduction, but they play a central practical role in shaping evidence, facilitating child participation, and supporting protective measures.

Neither the 1980 Convention nor the Brussels IIb Regulation assigns social services a procedural function in return proceedings. Their functions are usually evidentiary, protective or supportive. A child-protection authority may, however, hold custody rights, act as an applicant, participate formally under national procedural law, or exercise powers as a competent administrative authority. The role of each body must therefore be determined under the applicable law and by reference to the capacity in which it participates.

In practice, however, they are key providers of evidence, particularly in cases involving allegations of harm under Article 13(1)(b). Courts often rely on their reports to assess risk, parental capacity, and the child's situation. The quality of such assessments varies significantly across jurisdictions, which can directly affect outcomes. They also play an important role in facilitating the child's participation, as social workers or related professionals are often involved in obtaining and conveying the child's views. The way this is done influences how those views are assessed and weighted. Social services are also central to the operation of protective measures, especially under the Brussels IIb framework. Their involvement is often decisive in determining whether safeguards in the State of habitual residence are sufficient to enable a safe return.

The Conclusions and Recommendations of the 2023 Special Commission (HCCH) underline this practical importance indirectly through their emphasis on protective measures, support services and appropriately trained professionals.[53] The document stresses that safe return, particularly in cases involving risks under Article 13(1)(b), depends on the availability of services such as housing, health care, and support for victims of domestic violence, which are typically delivered by social services. It also recognises that competent authorities responsible for child protection measures may include welfare agencies and social workers and highlights the need for reliable information on available protective arrangements before ordering return. In addition, the requirement that children be heard by appropriately trained professionals further points, in practice, to the involvement of social services. Taken together, this framework shows that, although not formally part of the return mechanism, social services are essential to the assessment of risk and the practical feasibility of safe return.

A child protection authority is normally not treated as an interested party in return proceedings merely because it has investigated the child's situation, advised the court, or initiated related child-protection measures. Its involvement must be assessed according to whether the return order would directly affect its own legal rights or obligations. An advisory or protective role is therefore insufficient by itself; interested-party status requires a direct legal responsibility for the child or for complying with the possible return order.

[53] HCCH, *Conclusions & Recommendations of the Eighth Meeting of the Special Commission on the 1980 Child Abduction Convention and the 1996 Child Protection Convention* (October 2023), Nos 23–34, 37(a).

CASE NOTE 27 | **NL** | **The Hague Court of Appeal** | ECLI:NL:GHDHA:2020:710
25 March 2020

The parents argued that the District Court had wrongly failed to regard the Child Protection Board and the State of the Netherlands, represented by the Central Authority, as interested parties. They submitted that, if these bodies were not treated as interested parties, it would appear that no one was responsible for returning the child to her habitual residence. They also argued that the Dutch State, as a Contracting State, had an obligation to return an abducted child. The Court of Appeal held that a return order would not concern the rights or obligations of the State of the Netherlands, the Central Authority, or the Child Protection Board as such. The Child Protection Board had been summoned because of its advisory role under Article 810 of the Dutch Code of Civil Procedure, and the fact that it had also requested child-protection measures did not make it an interested party in the return proceedings.

Guardian ad litem

In international child-abduction proceedings, the court may appoint a *guardian ad litem* (or another independent representative of the child) to protect the child's procedural rights when these may not coincide with the parents' interests.

The guardian ad litem acts as an autonomous participant in the proceedings, representing the child's perspective and ensuring that the process respects the child's fundamental rights under Article 24 of the EU Charter of Fundamental Rights, the 1980 Convention, and the Brussels IIb Regulation.

The guardian's precise function depends on national law and the terms of the appointment, but typically it is procedural rather than substantive: they do not advocate for a particular outcome but safeguard the child's effective participation in the proceedings and the fair administration of justice. They may express the child's views, provide observations on the impact of return or non-return, and draw the court's attention to factors affecting the child's welfare or safety.

Importantly, the guardian ad litem also acts as a neutral safeguard between conflicting parental narratives. Their presence helps the court to assess the facts impartially, to balance the Convention's objective of prompt return with the individual rights of the child, and to ensure that decisions are made with due regard to both the best interests of the child and the rule of law. By doing so, the guardian ad litem strengthens the procedural guarantees of international abduction cases and helps align national practice with the child-centred standards developed by the CJEU and the ECtHR.

The guardian ad litem role varies significantly across jurisdictions. In some States, appointment is mandatory in abduction cases when the child is over a certain age, either to represent the child's best interests (as a typical guardian ad litem) or to represent the child's own views (as a separate lawyer).[54]

A guardian ad litem acts as the child's independent procedural representative, ensuring the child's rights are protected and that the case is conducted before the proper forum, without

[54] For example, under Dutch procedural practice, in return proceedings before the District Court of The Hague the judge will, if a return decision is to be made, immediately appoint a "curator ad litem" for all children aged three and above. The curator conducts interviews with the child, reports to the court on the child's wishes and concerns, and may explain the judgment to the child after the decision has been issued <https://www.rechtspraak.nl/English/Dutch-legal-proceedings/International-child-abduction/Pages/procedure.aspx#fc81c58f-d17f-4503-bd47-b535866cea7f681fb73b-3a17-4c7e-9eef-c8d680cdf6797>.

aligning with either parent. When the parents' interests conflict or their positions could affect the forum or outcome, the guardian ad litem (or other independent representative) safeguards the child's procedural rights and ensures that their interests are not subordinated to either parent's litigation strategy. The guardian acts autonomously, may make legal submissions, and can influence procedural questions—including competence and jurisdiction—but does not determine custody or the merits of return.

CASE NOTE 28 | IT | Court of Turin | Case No 19900/2024
6 June 2025

Two children were wrongfully retained in Italy, being habitually resident in the Czech Republic. The court appointed a guardian ad litem (curatore speciale dei minori) to represent them independently, recognising a conflict between the parents' interests. The guardian actively participated, filing submissions that opposed Italian jurisdiction and supported the Public Prosecutor's view that the case should proceed before the designated return court and that custody remained within the Czech courts' competence. The tribunal accepted these arguments, holding that wrongful retention cannot establish jurisdiction.

In return proceedings, the guardian ad litem's role may be to convey the child's own voice in the context of the refusal grounds under the Convention, insofar as the child is capable of expressing views. When a child is very young and cannot form or express an independent view, there may be no need to appoint a guardian ad litem because the guardian's core function cannot meaningfully be performed.

CASE NOTE 29 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2019:3878
6 November 2019

In a return case involving a child under the age of two, the mother requested the appointment of a guardian ad litem to assess what would be in the child's best interests. The court refused the request, holding that in child-abduction proceedings, the guardian ad litem's role is primarily to convey the child's own voice in relation to the refusal grounds under the 1980 Convention. Given the child's very young age, the court found that the child could not yet have an independent opinion or viewpoint capable of being articulated and saw no exceptional circumstances justifying a departure from the general approach of not appointing a guardian ad litem for children below that age.

A guardian ad litem must act within the scope of the role for which they have been appointed. Where a child is exceptionally joined as a party, the guardian's function is to ensure that the child's voice and procedural position are properly before the court. The guardian may report the child's wishes and feelings and may give evidence based on their own dealings with the child. However, the guardian should not be treated as an independent expert on legal questions as the authenticity of the child's objections, the extent of parental influence, or the welfare implications of return. Those questions remain for the court, informed where appropriate by independent professional evidence or equivalent report.

CASE NOTE 30 | **UK** | **England and Wales Court of Appeal** | Re D (A Child) [2023] EWCA Civ 1047
14 September 2023

The solicitor-guardian gave opinions about the strength and authenticity of the child's objections and the degree of influence exercised by the father. The trial judge described this evidence as "extremely unhelpful", gave it negligible weight, and preferred the evidence of the Cafcass officer. The Court of Appeal accepted that there are difficulties when a solicitor-guardian gives evaluative evidence of this kind, particularly because the solicitor-guardian is also advancing the child's case. However, it held that the trial judge had gone too far in treating the evidence as inadmissible or negligible as a matter of principle. The evidence was admissible insofar as it conveyed matters personally perceived by the solicitor-guardian, but its weight remained for the court to assess, especially in light of independent professional evidence.

The guardian ad litem may answer specifically formulated questions on the authenticity and context of the child's views. When a court suspects that a child's expressed views may be influenced by pressure, loyalty conflict, or emotional burden, it may appoint a guardian ad litem (special curator) to conduct an independent inquiry. The guardian's task is to assess whether the child's stated wishes are authentic, freely formed, and sufficiently mature to be taken into account under Article 13(2) of the 1980 Convention. This inquiry typically includes exploring what the child says, how freely the child can speak, whether the child understands the consequences of living in each country, and whether any external influences affect the reliability of the child's objections.

CASE NOTE 31 | **NL** | **The Hague District Court** | ECLI:NL:RBDHA:2021:14705
29 December 2021

The court recognised that the children were potentially caught in a loyalty conflict and appointed a special curator to independently assess their situation. The guardian was asked to answer specific questions: what the children themselves said about staying in the Netherlands or returning to the UK; whether they could express their views freely, without parental influence; whether they understood the consequences of living in either country; whether they wished to speak to the judges; and whether other factors–such as pressure, emotional burden, or loyalty conflict–were affecting their ability to form an authentic view. After speaking with each child, the guardian reported that both were heavily burdened by the parental conflict, influenced by the mother's negative views, and unable to form an independent or authentic objection. This assessment played a central role in the court's conclusion that the children's preferences, though articulated, did not amount to a genuine "objection" within the meaning of Article 13(2).

A guardian ad litem or special curator may continue representing the child after the first-instance decision to ensure continuity of representation throughout possible appeal proceedings and the implementation phase of the return order. This practice prevents gaps in the child's procedural protection and maintains an independent representative who can monitor developments, explain the outcome to the child, and safeguard the child's interests until the case is fully concluded and the return decision has been executed.

CASE NOTE 32 | **NL** | **The Hague District Court** | ECLI:NL:RBDHA:2025:18942
9 September 2025

Following its decision in a return case, the court held that it was in the child's interests, if an appeal was lodged, the special curator's appointment to continue during the appeal proceedings. If no appeal was lodged, the special curator's work in the procedure would end one month after the decision.

CASE NOTE 33 | **NL** | **The Hague Court of Appeal** | ECLI:NL:GHDHA:2026:113
30 January 2026

After ordering the child's return, the court decided that the special curator would remain in office until the return was actually carried out. The curator was tasked with explaining the decision to the child and remaining available during the transfer process. At the same time, a child-protection institution held temporary guardianship solely for the purpose of supervising the execution of the return. Both mandates ended once the child had been returned.

A guardian ad litem may also assist in communicating the outcome of the proceedings to the child in an age-appropriate and comprehensible manner. Explaining the decision helps the child understand what has been decided and supports trust in the judicial process, fulfilling the right to information and participation under Article 24 of the EU Charter and the principles of child-friendly justice.

CASE NOTE 34 | **NL** | **The Hague District Court** | ECLI:NL:RBDHA:2025:18942
9 September 2025

The court held that it was "in the best interests of the child" that the special curator *(bijzondere curator)* explains the court's decision to him, and, if an appeal were to be lodged, also any decision of the Court of Appeal. The court therefore explicitly instructed the curator to discuss the outcome of the proceedings with the child so that he would understand what had been decided.

Mediators

Mediators operate alongside, rather than inside, return proceedings. They are not parties to the case and do not take part in the judicial decision-making, but they may be invited—by the court, the Central Authority, or the parents themselves—to help explore whether a voluntary, workable agreement can be reached.

Their role is facilitative: supporting dialogue, reducing conflict, and helping parents consider practical arrangements such as return logistics, contact, or post-return planning. Mediation may run in parallel to the proceedings, and in some jurisdictions, the court may briefly adjourn to allow mediation to be attempted, provided this does not compromise the Convention's requirement of speed.

Mediators do not address the court, provide evidence, or advise on the legal merits of the case. If mediation leads to an agreement, it may later be recorded or formalised by the court, but the mediator has no role in that process. Communications in mediation are generally confidential and separate from the litigation.

In essence, mediation can be a valuable adjunct to the return procedure, offering a space for cooperative solutions, while the formal proceedings continue to determine the legal questions if no agreement is reached. Details on mediation and agreements in return proceedings can be found in Chapter 5.10.

Court guardians

In some Contracting States, courts may rely on court guardians or equivalent domestic judicial auxiliaries to assist in proceedings under the 1980 Convention. This actor is not provided for by the Convention and does not exist in a uniform form across jurisdictions. Its role is defined entirely by domestic procedural law and by the specific instructions of the court in the individual case.

The court guardian is not a party to the proceedings and does not act as the child's legal representative. In particular, the court guardian must be distinguished from a guardian ad litem or a child's lawyer. Unlike such representatives, the court guardian does not advance an autonomous legal position on behalf of the child, does not submit pleadings, and does not exercise procedural rights independently. Rather, the court guardian functions as a court-directed auxiliary, acting within the limits of the mandate given by the judge.[55]

Where appointed, the court guardian may perform a range of practical and supportive tasks, which can include:

- gathering factual information on the child's living situation and care arrangements at the request of the court;
- conducting background inquiries or home visits and reporting observations to the court;
- supervising interim contact between the child and a parent during the proceedings;
- assisting in the implementation or enforcement of return orders, including participation in the compulsory collection of the child where domestic law so provides.

These tasks often place the court guardian in direct contact with the child, sometimes making the guardian the first or only state official to meet the child during the proceedings. However, any information obtained from the child through the court guardian is filtered through a reporting function and does not amount to formal representation of the child's views under Article 13(2) of the 1980 Convention or under EU law.

Accordingly, the existence, powers, and weight of court guardians' contributions vary significantly between States. Practitioners should therefore verify the domestic legal basis, the scope of the guardian's mandate, and the procedural status of any reports produced, and should avoid assuming that the presence of a court guardian equates to independent child representation.

[55] For a detailed empirical and doctrinal analysis of the tasks performed by court guardians in proceedings under the 1980 Convention in Poland see A.N. Schulz, *The role of court guardians in proceedings under the 1980 Convention on the civil aspects of international child abduction*, Contemporary Central & East European Law (2023), based on case-file research <https://www.researchgate.net/publication/396657486_The_role_of_court_guardians_in_proceedings_under_the_1980_Hague_convention_on_the_civil_aspects_of_international_child_abduction_Issues_selected_in_the_light_of_a_case_files'_research>.

Intervening third parties

Intervening third parties are individuals or institutions who are not parents, but who may have a direct legal interest in the child's situation under national law - for example, relatives caring for the child, foster carers, or a body holding temporary guardianship or custody responsibilities. They are not automatic parties to return proceedings; their involvement depends entirely on the procedural rules of the requested State and on whether their rights or obligations are directly affected by the outcome.

Where domestic law allows, such third parties may be joined to the proceedings, heard, or permitted to submit evidence if their cooperation or legal responsibilities are relevant to the child's potential return, for example, when foster carers or a guardian must facilitate return, or when a provisional custody holder bears statutory duties. Their role remains limited to the scope of their legal interest and does not displace the central position of the applicant and respondent. If no rights or obligations of the third party are engaged, they typically have no standing to intervene.

Actual carers may be considered interested parties in 1980 Convention proceedings. Where a child is placed in the care of relatives or foster parents under a child protection order, those carers may be treated as "interested parties" in return proceedings. The reason is practical: if a return order is granted, the carers will be required to cooperate in its execution, so the decision directly affects their rights and obligations.

CASE NOTE 35 | NL | The Hague Court of Appeal | ECLI:NL:GHDHA:2020:710
25 March 2020

An uncle and aunt were caring for the child in the Netherlands under a provisional custody arrangement. If the court ordered the child's return under the 1980 Convention, they would be the ones required to cooperate in handing the child over and facilitating her return. Since the return decision would directly determine their legal obligations as actual caregivers, the court held that they are interested parties. Their status is based not on family relationship alone, but on the fact that the return order would legally require them to act.

1.5. Procedural roadmap of a return case

International child-abduction proceedings follow a recognisable sequence, but the applicable rules differ depending on whether the case is governed only by the 1980 Convention or also by the Brussels IIb Regulation. The table below presents the principal stages of a return case, setting out the Convention framework alongside the additional or complementary rules that apply in intra-EU cases. It also identifies the main actors involved and indicates, in broad terms, where the burden of proof or a procedural duty lies. The detailed operation of these rules is examined in the relevant sections of the Handbook.

Table 6: Procedural roadmap of a return case under the 1980 Convention and the additional rules applicable under Brussels IIb

Stage	1980 Convention	Brussels IIb: additional or complementary rules	Main actors	Burden of proof / court's duty
Seising and applicability	The Convention applies to a child under the age of 16 who was habitually resident in a Contracting State immediately before the alleged breach of custody rights. The Convention must apply between the States concerned. An application for assistance may be made through a Central Authority under Article 8, while Article 29 preserves direct access to the competent judicial or administrative authorities.	Chapter III applies where an application is made to a court in a Member State, on the basis of the 1980 Convention, for the return of a child under 16 who has been wrongfully removed or retained in a Member State other than the Member State of the child's previous habitual residence. Articles 23–29 and Chapter VI complement the Convention (Art. 22).	Applicant; Central Authorities; court.	The applicant initiates the procedure, and the court verifies that the applicable requirements are satisfied.
Right of the person seeking return to be heard	The Convention contains no equivalent express provision requiring that the person seeking return be heard before return is refused.	A court cannot refuse to return the child unless the person seeking return has been given an opportunity to be heard (Art. 27(1)).	Court; applicant.	The court must ensure that the person seeking return has been given that opportunity before refusing return.
Wrongfulness	Removal or retention is wrongful where it breaches rights of custody under the law of the State in which the child was habitually resident immediately before the removal or retention and those rights were actually exercised, or would have been exercised but for the removal or retention (Art.	The Convention test remains applicable. Separately, Article 9 preserves jurisdiction over parental responsibility in the Member State of the child's habitual residence immediately before the wrongful removal or retention until the conditions for a	Applicant; respondent; court.	The applicant establishes the elements of wrongfulness under Article 3, subject to the applicable rules of procedure and evidence.

	3). Rights of custody are defined in Article 5.	transfer of jurisdiction laid down in that provision are satisfied.		
Obligation to return	Where proceedings commence less than one year after the wrongful removal or retention, the authority must order the child's return forthwith. Where proceedings commence after one year, return must still be ordered unless it is demonstrated that the child is now settled in the new environment (Art. 12(1)–(2)).	Brussels IIb does not create a separate substantive return test; the return obligation continues to be governed by the 1980 Convention.	Applicant; respondent; court.	Where Article 12(2) applies, the person opposing return will ordinarily seek to establish that the child is now settled, subject to the applicable rules of procedure and evidence.
Grounds for non-return	Return may be opposed on the basis of non-exercise of custody rights, consent or acquiescence (Art. 13(1)(a)); grave risk of physical or psychological harm or an intolerable situation (Art. 13(1)(b)); the child's objections, subject to age and maturity (Art. 13(2)); or the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms (Art. 20). Article 12(2) additionally permits non-return where the child is now settled after the one-year period.	A court considering refusal **solely** under Article 13(1)(b) may not refuse return if the person seeking return satisfies the court by sufficient evidence, or the court is otherwise satisfied, that adequate arrangements have been made to secure the child's protection after return (Art. 27(3)). For this purpose, the court may communicate with the competent authorities of the Member State of the child's previous habitual residence (Art. 27(4)).	Respondent; child; court.	Under Article 13(1), the person, institution or body opposing return must establish the invoked ground. The court determines whether the requirements of Article 13(2), Article 20 or Article 12(2) are satisfied in accordance with the applicable rules of procedure and evidence.
Provisional and protective measures	Article 7(b) requires Central Authorities to take, or cause to be taken, appropriate provisional measures to prevent further harm to the child or prejudice to interested parties. The Convention does not itself establish the cross-border protective-measures regime found in Brussels IIb.	Where the court orders return, it may take provisional, including protective, measures under Article 27(5), in conjunction with Article 15, to protect the child from the grave risk referred to in Article 13(1)(b), provided that considering and taking those measures does not unduly delay the return proceedings. The court may also examine whether contact between the child and the person seeking return should be ensured	Court; parties; Central Authorities and other competent authorities.	The court determines whether such measures are appropriate and necessary within the limits of Articles 15 and 27.

		while proceedings are pending (Art. 27(2)).		
Child participation and objections	Article 13(2) permits the court to refuse return where 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.	Articles 21 and 26 require a child capable of forming his or her own views to be given a genuine and effective opportunity to express them. The court must give due weight to those views in accordance with the child's age and maturity (Art. 21(2)).	Court; child; child's representative or interviewer, where applicable.	The court must ensure that the opportunity required by Articles 21 and 26 is provided.
Discretion after a ground is established	Establishing a ground under Article 13 does not compel refusal; the court retains discretion whether nevertheless to order return (Art. 13; Pérez-Vera Report, §113).	Brussels IIb constrains that discretion in specific circumstances. In particular, Article 27(3) precludes refusal solely under Article 13(1)(b) where the requirements concerning adequate arrangements for the child's protection are satisfied.	Court.	Where a ground is established, the court determines whether return should nevertheless be ordered, subject in intra-EU cases to the constraints imposed by Brussels IIb.
Decision and speed	Judicial or administrative authorities must act expeditiously. If no decision has been reached within six weeks from commencement of the proceedings, the applicant or the relevant Central Authority may request a statement of the reasons for the delay (Arts. 2 and 11).	Except where exceptional circumstances make this impossible, a first-instance court must give its decision no later than six weeks after it is seised. A higher court has six weeks after all required procedural steps have been taken and it is in a position to examine the appeal (Art. 24). A return decision may be declared provisionally enforceable notwithstanding an appeal where return before the appeal is decided is required by the best interests of the child (Art. 27(6)).	Court.	The court must conduct the proceedings expeditiously and comply with the time requirements applicable to its instance.
Enforcement	The Convention requires the use of expeditious procedures but does not establish a separate system for the cross-border recognition and enforcement of return orders. Enforcement of the	Article 28 requires the authority competent for enforcement to act expeditiously and permits a statement of reasons to be requested if enforcement has not occurred within six	Court; enforcement authorities; parties.	The authorities competent for enforcement must act expeditiously and apply the relevant national enforcement

	return decision is therefore governed principally by the law of the State in which it is to be carried out.	weeks. An ordinary 1980 Convention return order falls within Chapter IV where it has to be enforced in a Member State other than the Member State in which it was given (Art. 2(1)(a)); in that situation, no declaration of enforceability is required (Art. 34). Separately, a decision on the substance of rights of custody entailing return under Article 29(6), if certified in accordance with Articles 42 and 47, benefits from the privileged recognition and enforcement regime.		procedures consistently with the Regulation.
Costs	When ordering return, the judicial or administrative authority may, where appropriate, direct the person who removed or retained the child to pay the necessary expenses incurred by or on behalf of the applicant, including travel expenses, costs of locating the child, legal representation and the child's return (Art. 26).	Brussels IIb does not add a specific rule governing the allocation of costs in the return proceedings.	Court; applicant; respondent.	The court determines whether to make an order for necessary expenses under Article 26, subject to the applicable national framework.

Unit 2: Qualification of the Case - Determining Whether the Removal or Retention Falls Within the 1980 Convention

> *24. The world would be a simpler place if the Convention had provided that all removal or retention of a child outside the country where he or she is habitually resident without the consent of the other parent or the authority of a court is wrongful. But it does not.*
>
> *Opinions of the Lords of Appeal for Judgment in the Cause in re D (a child)*[56]

2.1. Sequence for qualifying the case under the 1980 Convention

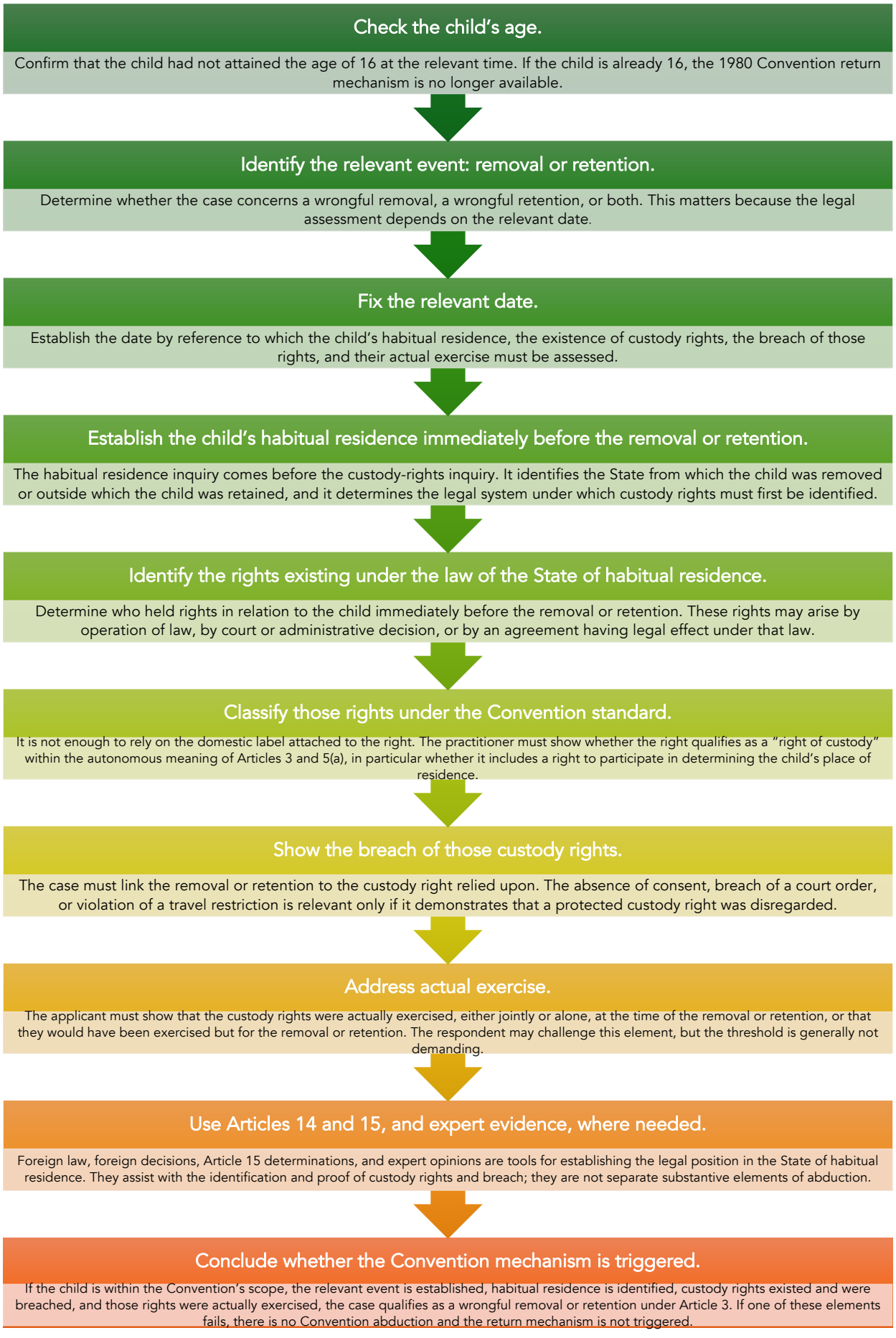
The starting point in any 1980 Convention case is to determine whether the factual circumstances amount to a wrongful removal or wrongful retention within the meaning of Article 3 of the Convention. This is a threshold question: if there is no wrongful "removal" or "retention" as defined, the return mechanism of the Convention is not triggered, and the application for return will fail at the outset.

In the intra-EU context, the same assessment is required. Although intra-EU abduction cases are also governed by the Brussels IIb Regulation, the determination of whether a removal or retention is "wrongful" continues to be governed by Article 3 of the 1980 Convention. The Regulation adopts the same definition and does not modify the Convention test.

The qualification of a case under the 1980 Convention should follow a structured sequence. The practitioner must first identify the relevant factual event and its date, then determine the child's habitual residence immediately before that event, and only then assess the custody rights relied upon, their breach, and their actual exercise. The following figure summarises the order in which these issues should be addressed.

Figure 3: Analytical sequence for qualifying a case as an abduction governed by the 1980 Convention

[56] Opinions of the Lords of Appeal for Judgment in the Cause in re D (a child) [2006] UKHL 51.


Check the child's age.
Confirm that the child had not attained the age of 16 at the relevant time. If the child is already 16, the 1980 Convention return mechanism is no longer available.
Identify the relevant event: removal or retention.
Determine whether the case concerns a wrongful removal, a wrongful retention, or both. This matters because the legal assessment depends on the relevant date.
Fix the relevant date.
Establish the date by reference to which the child's habitual residence, the existence of custody rights, the breach of those rights, and their actual exercise must be assessed.
Establish the child's habitual residence immediately before the removal or retention.
The habitual residence inquiry comes before the custody-rights inquiry. It identifies the State from which the child was removed or outside which the child was retained, and it determines the legal system under which custody rights must first be identified.
Identify the rights existing under the law of the State of habitual residence.
Determine who held rights in relation to the child immediately before the removal or retention. These rights may arise by operation of law, by court or administrative decision, or by an agreement having legal effect under that law.
Classify those rights under the Convention standard.
It is not enough to rely on the domestic label attached to the right. The practitioner must show whether the right qualifies as a "right of custody" within the autonomous meaning of Articles 3 and 5(a), in particular whether it includes a right to participate in determining the child's place of residence.
Show the breach of those custody rights.
The case must link the removal or retention to the custody right relied upon. The absence of consent, breach of a court order, or violation of a travel restriction is relevant only if it demonstrates that a protected custody right was disregarded.
Address actual exercise.
The applicant must show that the custody rights were actually exercised, either jointly or alone, at the time of the removal or retention, or that they would have been exercised but for the removal or retention. The respondent may challenge this element, but the threshold is generally not demanding.
Use Articles 14 and 15, and expert evidence, where needed.
Foreign law, foreign decisions, Article 15 determinations, and expert opinions are tools for establishing the legal position in the State of habitual residence. They assist with the identification and proof of custody rights and breach; they are not separate substantive elements of abduction.
Conclude whether the Convention mechanism is triggered.
If the child is within the Convention's scope, the relevant event is established, habitual residence is identified, custody rights existed and were breached, and those rights were actually exercised, the case qualifies as a wrongful removal or retention under Article 3. If one of these elements fails, there is no Convention abduction and the return mechanism is not triggered.

CASE NOTE 36 | **CJEU** | C-111/17 PPU
8 June 2017

The CJEU held that, when assessing an application for return, the determination of the child's habitual residence must precede the identification of the custody rights allegedly infringed. This follows from Article 2(11) Brussels IIa and Article 3 of the 1980 Hague Convention, under which the legality or illegality of a removal or retention depends on the rights of custody awarded under the law of the State where the child was habitually resident immediately before the removal or retention (§53).

The determination of whether a removal or retention is "wrongful" is not governed by domestic concepts of illegality but by the autonomous definition contained in Article 3 of the 1980 Convention and within the EU, by Article 2(2)(11) of the Brussels IIb Regulation. According to these provisions, a removal or retention is wrongful if it breaches rights of custody actually exercised at the time. This means that the focus of the court is limited to the existence and breach of custody rights, rather than to any national prohibitions or sanctions that might apply to the act of expatriation. Details on the wrongfulness can be found in Chapter 2.7.

Therefore, the starting point in identifying an abduction under the 1980 Convention is not to ask whether the parent was free to travel, but whether the departure disregarded an existing custody right, in its autonomous meaning (see Chapter 2.5). The key practical test is whether someone held a legal right to participate in decisions about the child's residence and did not consent. If such a right existed and was being exercised at the time of departure, and the child was removed or kept abroad without that person's agreement or authorisation, the 1980 Convention treats the situation as a wrongful removal or retention. In other words, "abduction" is triggered by the breach of custody rights—not by the appearance of misconduct, illegality, or disobedience under domestic law.

A parent may appear to act entirely "within their rights" under domestic law (such as holding the passport, having day-to-day care, facing no travel restriction), yet the removal can be still wrongful under the 1980 Convention. This is because the 1980 Convention is not concerned with whether the departure was permitted, legal, or even authorised by a national court, but with whether the move disregarded another person's custody rights. If a parent with joint custody has the right to participate in decisions about the child's residence, that right cannot be bypassed simply because the travelling parent was otherwise allowed to leave the country. In abduction cases, permission to travel is irrelevant if the required consent of a custody right-holder was missing: the breach of that right alone renders the removal wrongful.

CASE NOTE 37 | **BG** | **Sofia Court of Appeal** | 20201000503982
22 February 2021

A mother removed her child from Italy to Bulgaria without informing or obtaining the consent of the father, who held joint parental responsibility under Italian law. During the proceedings, the parties debated whether the removal had also violated an Italian court order prohibiting the child's expatriation. The court clarified that this issue was not decisive for the purposes of determining wrongfulness. Whether the mother had breached the Italian prohibition was a matter of her personal responsibility under Italian law and did not affect the assessment under the 1980 Convention. The relevant point was that the child had been taken abroad without the consent of the other parent, who held custody rights, which was sufficient to establish the wrongful removal.

Whether a domestic travel restriction is relevant to the wrongfulness assessment depends on its function under the law of the State of habitual residence, not on the bare fact of its breach. Where the restriction protects custody in the Convention sense – for example, a statutory dual-consent requirement for the child's departure, or a prohibition on expatriation attached to a joint-custody arrangement – its breach will usually coincide with, and evidence, the breach of custody rights that Article 3 requires. Where, by contrast, the restriction was imposed for purposes unrelated to custody – migration control, criminal-procedure safeguards, the protection of third parties – its violation remains a purely domestic offence unrelated to the Article 3 analysis. In some legal systems, the restriction itself constitutes a right of custody: a right of veto over the child's removal from the country (a "ne exeat" right) qualifies as a right of custody under Article 5(a), so that removal in breach of it is wrongful without more (see Chapter 2.5.C). For practitioners the lesson is symmetrical: when seeking return, do not rest the case on the bare existence of a violated travel ban but plead and evidence the custody right the ban protected, the absence of consent, and its actual exercise; when defending, it is equally insufficient to show that the removing parent complied with, or was merely sanctioned under, national travel rules, since the court will look independently at whether custody rights in the autonomous sense were violated.

Wrongful removal or retention does not always require precise identification of a specific "abductor". For the purposes of Article 3 of the 1980 Convention, international child abduction is an objective legal situation, not a moral or criminal accusation. A wrongful removal or retention exists whenever a child is not returned in breach of existing custody rights, irrespective of intent, fault, or the identity of a single perpetrator. The 1980 Convention does not require courts to identify who "abducted" the child. Where a child remains outside the State of habitual residence after parental consent has been withdrawn, and this non-return objectively conflicts with custody rights protected by the Convention, the situation qualifies as abduction even if responsibility for the non-return lies with several actors, shifts over time, or cannot be attributed to one specific person or institution, including public authorities.

CASE NOTE 38 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2020:710
25 March 2020



The child remained in the Netherlands after the parents withdrew their consent for her stay and requested her return to the United States. At different stages, the child lived with relatives and was subject to interim child-protection measures implemented by a certified institution. The Court of Appeal held that these circumstances did not prevent a finding of wrongful retention under Article 3 of the 1980 Convention. It stated that the question whether the relatives or the certified institution had carried out factual acts preventing the child's return could be left open. The court found it sufficient that the parents continued to hold custody rights under U.S. law and that the child was not returned after their consent to her stay in the Netherlands had ended.

2.2. Age of the child - Article 4

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. ***The Convention shall cease to apply when the child attains the age of 16 years.***

In practice, questions about age arise more often than might be expected, particularly in cases involving pregnancy, delayed proceedings, siblings of different ages, or strategic arguments based on an approaching sixteenth birthday. Article 4 of the 1980 Convention defines the personal scope of the return mechanism by setting strict age limits.

First and foremost, the 1980 Convention applies only to children who are already born. Article 4 requires that the child has a habitual residence immediately before the wrongful removal or retention. Following the Convention's logic, because an unborn child cannot have a habitual residence, unborn children fall outside its scope. If a pregnant woman moves to another country, this does not constitute a "wrongful removal" under the Convention, since there is no "child" yet within the meaning of Article 4.

CASE NOTE 39 | NL | Court of Appeal Leeuwarden
ECLI:NL:GHLEE:2010:BN2042
24 June 2010

When a pregnant woman travels to another country, the 1980 Convention is not applicable. Article 4 says that the Convention shall apply to any child who has habitually residence in a Contracting State immediately before any breach of custody or access rights. Considering this text and taking into account the purpose of the 1980 Convention, an unborn child is not to be considered a child as meant by the Convention.

Under Article 4 of the 1980 Convention, the age limit applies separately to each child, not to the sibling group as a whole. In cases involving siblings, the court must determine for each child whether the Convention still applies at the time it is required to make a decision. If one child has already turned sixteen, the Convention ceases to apply for that child alone, while proceedings may continue under the Convention for the younger sibling who is still under the age threshold (see Case Note 41)

For the purposes of Article 4, the 1980 Convention applies only while the child is under sixteen. Once the child has reached the age of sixteen, no judicial or administrative authority may take a new action or decision based on the Convention, regardless of when the application was filed or when the wrongful removal or retention occurred. In practice, this creates significant pressure to expedite proceedings involving children approaching sixteen and a risk that delay may prevent a Convention-based return decision from being made. This age limit is more restrictive than that adopted in several other international instruments concerning children.

CASE NOTE 40 | NL | The Hague Court of Appeal
ECLI:NL:GHSGR:2012:BW9796
27 June 2012

The mother argued that the 1980 Convention no longer applied because her child would soon turn sixteen and had no valid travel documents. The court rejected this, holding that since the child had not yet reached sixteen at the time of the decision, the Convention still applied. The fact that the birthday was approaching did not matter. Return was ordered, as the 1980 Convention ceases to apply only once the sixteenth birthday has actually been reached.

A return order made under the 1980 Convention may no longer be enforced under the Convention once the child reaches sixteen. Neither the 1980 Convention nor the HCCH Guide to Good Practice on Enforcement expressly resolves whether a return order made before the child turns sixteen remains enforceable after that birthday. This uncertainty is practically significant: where national law treats the age limit as ending Convention-based enforcement, delay in implementing the order may ultimately defeat the return remedy altogether, even though the order was validly made while the child was still under sixteen. Enforcement however is part of the Convention process: it consists of the practical or coercive implementation of a return order made pursuant to the Convention. Since Article 4 provides that the Convention ceases to apply when the child turns sixteen, enforcement measures based on the Convention should also cease at that point. [57] This follows from the Pérez-Vera Report (para 77), which states that *no action or decision* based on the Convention may be taken after the child's sixteenth birthday.[58]

Table 7: Operation of the child's age requirement under Article 4 of the 1980 Convention

Scenario	Legal Consequence under Art. 4	Illustration
1. Return order issued *before* the child's sixteenth birthday	The Convention applies when the return decision is made. The child's subsequent sixteenth birthday does not retrospectively invalidate the return order. Whether the order may still be enforced after that date depends on the applicable enforcement law.	*A return application is filed when the child is 15 years and 10 months old, and the court orders return one month later. If enforcement has not been completed when the child turns 16, the effect of the birthday on the existing order must be determined under the applicable enforcement law.*
2. Child turns sixteen *before* the court issues a decision	The Convention no longer applies, and the court cannot order return under the Convention. Any other available remedy must have a different legal basis.	*A return application is filed when the child is 15 years and 11 months old. The child turns 16 before judgment. The court can no longer determine the application by making a return order under the Convention.*

[57] See for example Finland, Act on Child Custody and Right of Access (361/1983, amendments up to 352/2019), s 46(3). The provision states that, although a 1980 Convention return order is generally to be enforced regardless of any custody decision or decision to take the child into care, "no measures for returning the child shall be undertaken after the child has attained the age of 16 years."
[58] It should be noted that this reading, while supported by the Explanatory Report, is not universally applied. A competing view treats enforcement not as a new "action or decision based on the Convention" but as the implementation of an obligation that crystallised while the Convention still applied: on that approach, a return order validly made before the sixteenth birthday remains executable afterwards under the ordinary enforcement law of the requested State, since the judicial determination the Convention required has already been completed. Some enforcement systems have proceeded on this basis, particularly where the order became final shortly before the birthday and the delay is attributable to the respondent's own conduct.

Once the child turns sixteen, the 1980 Convention no longer provides a basis for return, but this does not exclude remedies available under another applicable legal framework. Articles 18, 29 and 34 confirm that the Convention is not an exclusive remedy: Article 18 preserves the authority's power to order return on another available basis; Article 29 allows a person claiming a breach of custody or access rights to apply directly to the competent authorities, whether or not under the Convention; and Article 34 preserves the application of other international instruments and of the law of the requested State for obtaining return or organising access. These provisions do not themselves create a post-sixteen remedy–the legal basis must be found in the other applicable law or instrument.[59]

CASE NOTE 41 | UK | High Court of England and Wales
Re H (Abduction: Child of 16) | [2000] 2 FLR 51
14 February 2000

The return proceedings concerned two siblings. By the time the court was required to decide the case, the older child had already reached the age of sixteen, with the result that the 1980 Convention no longer applied to her under Article 4. The court considered her position outside the framework of the Convention, relying on its inherent jurisdiction to address the issues raised in her case. The 1980 Convention continued to apply only to the younger sibling, who was still under sixteen.

2.2.A. Different age limits under the 1980 Convention and Brussels IIb

A practical difficulty arises from the fact that the two instruments do not use the same age limit. The 1980 Convention ceases to apply when the child turns sixteen, while Brussels IIb continues to apply to parental-responsibility matters until the age of eighteen. This means that, for a sixteen- or seventeen-year-old, the special return procedure is no longer available, even though questions of jurisdiction, custody, residence, recognition and enforcement may still fall within Brussels IIb. The practitioner must therefore distinguish carefully between the end of the return mechanism and the continued application of the Regulation to the wider parental-responsibility dispute.

Where the child has reached 16, return can no longer be ordered through the 1980 Convention procedure as complemented by Brussels IIa/b, since the Regulations do not create an autonomous return regime with a different age limit. The limitation in Article 4 of the 1980 Convention continues to apply in intra-EU cases governed by the Brussels IIb Regulation even though it applies to parental responsibility matters over children until the age of 18. In matters of wrongful removal or retention, the EU Regulations do not create an autonomous return regime detached from the 1980 Convention but operate in conjunction with it. As a result, the Convention's age limit constitutes a substantive boundary of the return system and cannot be circumvented by relying on EU law.

[59] See further *James D Garbolino, The 1980 Hague Convention on the Civil Aspects of International Child Abduction: A Guide for Judges (3rd edn, Federal Judicial Center 2023), Section III.G, 'Age of the Child'*, available at <https://www.fjc.gov/content/309626/1980-hague-convention-civil-aspects-international-child-abduction-guide-judges>, pp 94–95. The Guide explains that the Convention ceases to provide the return remedy once the child reaches sixteen, including where the child turns sixteen while proceedings are pending, but that Article 29 does not prevent resort to other applicable laws capable of providing remedies for children over sixteen.

CASE NOTE 42 | **PT** | **Supreme Court** | 687/16.2T8TMR-H.E1.S1
15 February 2022



In proceedings concerning the return of a child wrongfully retained within the EU, the Portuguese courts were asked to give effect to a return decision issued by a French court under the Brussels IIa framework. By the time the matter reached the final stage, the child had already reached the age of 16 and later 17. The Supreme Court examined whether the absence of an age limit in the Brussels IIa Regulation affected the return to proceed notwithstanding Article 4 of the 1980 Convention. It held that the Regulation does not establish an autonomous return regime but must be applied in conjunction with the Convention. Since the Convention ceases to apply once the child reaches 16, that limitation also governs return proceedings conducted under the Regulation. On that basis, the Court concluded that, once the child had reached 16, the legal conditions for obtaining return were no longer met.

2.3. Removal or retention - international character and relevant timeframe

Many threshold questions under the 1980 Convention turn on one fixed point: the date the child was removed or retained. This moment anchors the entire analysis, as it determines whether the removal was wrongful, which custody rights were in force, whether consent was given, which law applies, when the one-year period under Article 12 begins, and whether defences may be raised. Without a clear and accurate fixation of this date, the legal framework cannot function as intended.

An abduction under the 1980 Convention is necessarily international; previous breaches of a domestic travel or expatriation ban do not, by themselves, establish wrongful removal. It is tempting to treat the breach of a domestic travel restriction or a prohibition on expatriation as automatically amounting to wrongful removal. The Convention and the Regulation, however, work with an autonomous definition of wrongfulness that does not simply mirror domestic rules. A removal is wrongful only where it breaches existing custody rights, where those rights were being exercised at the time. A domestic ban may reinforce that analysis but does not replace it. Where the ban is closely tied to custody rights – for instance, where it protects a right to participate in determining the child's residence – its breach will usually support a finding of wrongful removal; where it was imposed for unrelated reasons, such as migration control, the breach may remain a domestic matter without establishing international wrongfulness. The practical lesson is to focus, when seeking a return, on evidence of lack of consent and interference with custody rather than on the bare existence of the ban.

CASE NOTE 43 | **BG** | **Sofia Court of Appeal** | 20201000503982
22 February 2021

The mother had taken the child abroad despite an Italian prohibition on expatriation. The court treated her compliance or breach of that Italian prohibition as a matter of her personal responsibility under Italian law. For the purposes of the Regulation, the decisive fact was that she had removed the child without the father's consent and in breach of his custody rights: it was the absence of consent that made the removal wrongful, not the formal breach of the Italian order, which merely reinforced the factual context.

Wrongful removal and wrongful retention are mutually exclusive triggers under Article 3 of the 1980 Convention. If the child was taken from the State of habitual residence in breach of custody rights at the moment of departure, the case concerns wrongful removal, and that event fixes the starting point of the Convention analysis. The same situation cannot later be re-characterised as wrongful retention, because retention presupposes that the initial transfer of the child was lawful. The 1980 Convention distinguishes two different mechanisms through which custody rights may be violated:

1. Wrongful *removal* – the breach occurs at the moment the child leaves the State of habitual residence. The taking itself violates custody rights.

2. Wrongful *retention* – the child initially travels lawfully (for example, with consent or under an agreement), but the breach occurs later, when the child is not returned as required.

Because retention assumes that the child was lawfully taken abroad, it cannot arise where the departure was already unlawful. Once a court determines that the child was wrongfully removed, the legal analysis must proceed on that basis. Allowing a removal to later "become" a retention

would undermine the structure of the 1980 Convention, particularly the calculation of time limits under Article 12, which depends on identifying a single triggering event–either the removal or the retention, but not both.

CASE NOTE 44 | NL | The Hague Court of Appeal | ECLI:NL:GHDHA:2025:952
1 May 2025

The mother took the child from the United States to the Netherlands on 11 August 2023 without the father's consent. The father argued that this was a wrongful removal. Later, when arguing about the one-year period under Article 12, the father attempted to characterize the situation as wrongful retention, suggesting that the relevant moment should be when the child was not returned. The court rejected this argument. Since the father himself maintained that the departure was already unlawful, the situation could only be characterised as wrongful removal, and it could not later be reclassified as wrongful retention. The one-year period, therefore, ran from 11 August 2023.

2.3.A. Relevant date for the wrongfulness assessment

The wrongfulness of a child's removal or retention under Article 3 of the 1980 Convention must be assessed exclusively by reference to the circumstances existing at the time of the removal or retention. Both elements of the wrongfulness test - the child's habitual residence and the existence and exercise of custody rights - are fixed at that moment.

Where a child is taken through several States, the relevant removal is the initial departure from the State of habitual residence, not each subsequent border crossing. Habitual residence and the existence and exercise of custody rights are assessed at that initial point; later onward travel does not reset the wrongfulness analysis.

CASE NOTE 45 | NL | The Hague Court of Appeal | ECLI:NL:GHDHA:2026:113
30 January 2026

A father took the child from Egypt to Turkey and later travelled with the child through Greece and Belgium before arriving in the Netherlands. The court held that the relevant date of removal was when the child was first taken from Egypt to Turkey. The subsequent journey through other States did not affect the assessment of wrongfulness. The court also confirmed the removal date relied upon by the first-instance court because the father, although objecting to that date, failed to identify or substantiate an alternative date. (Because Egypt is not a Contracting State, the Convention did not apply directly; the Dutch court used its framework as a point of orientation under domestic law.)

Conflicts between the parents that occurred within the State of habitual residence before the child left that State do not determine whether a removal is wrongful under the 1980 Convention. The Convention focuses on the international act that disrupts the existing custody arrangement – namely the child's departure from the State of habitual residence. The court must therefore assess wrongfulness by reference to the circumstances existing at the moment when the child leaves that State. Earlier disagreements between the parents, disputes about care arrangements, or tensions within the family may explain the background to the removal, but they do not in themselves establish a breach of custody rights under Article 3. What matters is whether, at the moment the child was taken across the border, the removal violated rights of custody that were actually exercised under the law of the State of habitual residence.

CASE NOTE 46 | DE | Court of Munich | 567 F 7440/21
23 September 2021

A mother left Ukraine with the children and travelled to Germany without the father's consent. The father argued that earlier disputes between the parents in Ukraine concerning the care and residence of the children already rendered the departure unlawful. The court rejected this argument and emphasised that the 1980 Convention focuses on the international transfer of the child. The decisive moment for assessing wrongfulness was therefore when the children left Ukraine and crossed the border into another State. Earlier conflicts between the parents within Ukraine did not determine whether the removal was wrongful under Article 3 of the Convention.

Conversely, later developments are legally irrelevant for the purpose of determining wrongfulness. It is immaterial whether the child subsequently acquires a habitual residence in the State of refuge, or whether parental responsibility is later modified. A later judicial or administrative decision cannot create custody rights retroactively. Even if a new habitual residence were established post-removal, this would not retroactively alter the legal character of the initial act (see also Section 2.4.A).

CASE NOTE 47 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2017:0315.17UF37.17.0A
15 March 2017

A child was taken from France to Germany by the mother without the father's consent. During the return proceedings, the mother argued that the child had since become socially integrated in Germany and might even have acquired a new habitual residence there. The court held that this question was irrelevant. For the purposes of Article 3 of the 1980 Convention, wrongfulness must be assessed at the moment of the removal, when the child was habitually resident in France, and both parents exercised joint custody. Any later integration in the State of refuge, or even the establishment of a new habitual residence there, cannot retroactively alter the wrongful character of the removal.

CASE NOTE 48 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2020:1021
29 May 2020

In proceedings concerning the retention of a twelve-year-old child from Italy to the Netherlands, the mother argued that the child's habitual residence should follow that of the parents, who were by then living in the Netherlands and exercising parental authority from there. The court rejected this argument. It held that the child's habitual residence must be assessed on the basis of the child's own social and family environment at the time of the alleged removal. The relevant question was the child's social and family environment at the time of the removal, not the parents' later residence in the State of refuge.

2.3.B. Wrongful removal

A clear distinction must be made between wrongful removal and wrongful retention, because the legal consequences – especially the one-year period under Article 12 – depend on the exact date on which the wrongful act occurred.

In cases of wrongful removal, the trigger date is usually straightforward: the child is physically taken out of the State of habitual residence in breach of existing custody rights. Since removal is a single, identifiable act, the one-year period almost always begins on a clear, undisputed date. For the

purposes of Article 3, the alleged wrongful removal must be assessed exclusively by reference to the custody rights that existed when the child actually left the State of habitual residence. This date fixes the entire legal analysis:

— Custody rights must exist on that date, and

— They must be exercised (or would have been exercised) on that date, otherwise no wrongful removal can be established.

Under the 1980 Convention, the date of removal is the factual moment when the child leaves the State of habitual residence. Domestic classifications or later domestic measures (such as exit bans, police orders, protective orders, or custody modifications) cannot shift, redefine, or retroactively alter that date.

CASE NOTE 49 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2023:2113
11 October 2023



The parents disputed the exact day on which the mother left Türkiye for the Netherlands with the children. The father argued that the removal occurred on 18 May, the same day a Turkish court issued an exit ban, and that this ban made the departure wrongful. The Court of Appeal rejected that argument. It accepted the mother's evidence that she and the children had already left Türkiye on 17 May, and held that this was the legally relevant date of removal. Because the 1980 Convention requires the judge to assess custody rights as they existed immediately before the actual departure, a travel ban issued the next day could not retroactively change that moment or influence the Article 3 analysis.

2.3.C. Wrongful retention

Retention can arise in several factual patterns, and the moment it becomes wrongful depends on the circumstances of the case. The 1980 Convention does not define retention as a single act, but as a point in time at which a lawful stay turns into an unlawful one. The *general rule* is that retention becomes wrongful when the taking parent's behaviour first becomes objectively inconsistent with the basis on which the child was permitted to travel or remain abroad. This moment marks the end of the left-behind parent's consent and fixes the date from which custody rights must be assessed, the one-year period under Article 12 begins to run, and all subsequent analysis is anchored.

If a parent initially consents to the child's stay abroad, wrongful retention begins only when the child's continued stay first falls outside the scope of the consent, agreement or other lawful basis on which the child remained abroad. The practical application of this rule varies depending on the factual scenario:

In fixed-return-date cases, the identification of the retention date is straightforward. The agreed return date - evidenced for example by a return ticket - normally provides the relevant temporal marker. Retention becomes wrongful when the agreed period ends and the child is not returned. The consensual basis for the stay ends automatically when the agreed date passes without the child being returned. Once the deadline has expired and the taking parent fails to return the child, the retention becomes wrongful. Courts consistently treat this category as clear-cut, because the end of consent is tied to an objective external marker: the agreed date of return.

CASE NOTE 50 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2023:2535
4 December 2023

The father had consented to the child's temporary stay abroad until 6 May 2023. The court held that this was the precise date on which the consent lapsed, and from which point it should have been clear to the mother that keeping the child outside Brazil was unlawful. Because the mother failed to return the child on 6 May 2023, the court found that wrongful retention commenced exactly on that date.

In open-ended-stay cases, by contrast, there is no defined end point to the stay abroad, and the moment when retention becomes wrongful must be inferred from the parties' conduct. In these situations, wrongful retention arises when it becomes clear that the taking parent will not return the child in accordance with the original understanding. The decisive moment may be an explicit communication ("I am not coming back"), or it may emerge from conduct which demonstrates a shift from a temporary stay to a permanent relocation, such as enrolling the child in school, initiating custody or divorce proceedings in the State of refuge, securing housing or social benefits, or avoiding discussions about the return. Retention becomes wrongful at the moment the temporary nature of the stay collapses, and it becomes apparent that the taking parent no longer intends to honour the agreed basis of the child's presence abroad.

CASE NOTE 51 | NL | The Hague District Court | ECLI:NL:RBDHA:2025:18246
25 September 2025

The mother travelled with the child from Israel to the Netherlands with the father's consent for what both parties understood to be a temporary stay. Because there was no agreed return date, the court had to identify when the lawful visit turned into a refusal to return, which is the moment at which retention becomes wrongful under Article 3. The court reconstructed the timeline from the parties' communications. Although the parents had not agreed on an explicit return date, the evidence showed that the father expected the mother and child to return around one month later. The key moment was 22 January 2025, when the mother informed the father that she would not return at all, and the father objected immediately. The court relied on the parties' WhatsApp messages from that date, as this was the first time the father understood that the trip was no longer temporary and that the mother refused to return with the child. From that moment onward, the child's continued stay in the Netherlands was inconsistent with the scope of the original consent, and, therefore, retention became wrongful.

Both models apply the same underlying principle, but the evidential route to identifying the date differs. Fixed-date cases rely on a clear temporal marker, while open-ended-stay cases require the court to determine the moment when consent ended or was refused.

Unlawful retention for the purposes of Art. 12 is a single, one-time act, and its date remains fixed even if the abducting parent subsequently relocates the child to other Contracting States. Once the parent's intention not to return the child becomes outwardly apparent and exceeds the initially agreed stay, the unlawful retention occurs at that moment, and that same date triggers the one-year period under Article 12(1). A subsequent relocation of a child who is already being wrongfully retained does not, merely because the child is moved to another Contracting State, create a new wrongful removal or retention or restart the one-year period under Article 12.

CASE NOTE 52 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2023:1116.17UF205.23.00
16 November 2023



The mother initially travelled with the child from Hungary to Romania for a one-month visit, but failed to return after the agreed period. The court held that unlawful retention occurred in August 2021, when her intention not to return became outwardly apparent. This date triggered the one-year period under Article 12(1). Her later moves with the child—from Romania to Germany—did not constitute a new removal or a fresh act of unlawful retention, and therefore did not restart the one-year clock. Even though a new return application was filed in Germany in 2023, the relevant timeframe remained tied to the original retention in 2021, because the initial wrongful act was not "renewed" by subsequent relocations.

Wrongful retention can only arise if, at the moment consent ends or the left-behind parenobjects, the child is still habitually resident in the State of origin. Once the child has already acquired a new habitual residence in the State of refuge, retention is no longer legally possible: the Convention simply cannot operate. A parent's later demand for return cannot "revive" habitual residence in the original State, nor convert an agreed long-term stay into a wrongful retention.

CASE NOTE 53 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2014:1103.17UF210.14.00
3 November 2014



The parents jointly authorised their two children to live with their grandparents in Germany "until further notice," giving the grandparents full authority over daily care, schooling, and residence. The children lived in Germany for more than six months, attended kindergarten, received child benefits, had health insurance, spoke German, and were socially integrated. When the mother later asked the father to agree to their return to the United States, he refused. The court held that no wrongful retention occurred. By the time the mother objected, the children had already established habitual residence in Germany. Because habitual residence had shifted before any disagreement arose, retention could not arise at all, and Article 12 return proceedings were unavailable.

Where the taking parent communicates an intention not to return before the agreed return date has passed, it is disputed whether this earlier declaration already constitutes wrongful retention, or whether retention only begins when the return date actually passes. The distinction matters for the calculation of the one-year period under Article 12(1) – and, consequently, for whether the settlement defence under Article 12(2) becomes available. The precise date may be decisive both for habitual residence and for calculating the one-year period under Article 12. Where an earlier repudiatory retention is recognised and its date is established, the Article 12 period runs from that date.[60]

[60] See also Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing, 2013) p 143–146, analysing two opposing approaches in the case law: one treating a clear pre-return-date declaration of non-return as sufficient to constitute wrongful retention immediately, allowing the left-behind parent to file at once; the other holding that retention only occurs on the planned return date regardless of earlier declarations. Schuz supports a split approach under which the anticipatory declaration triggers the right to file immediately under Article 12(1), while the one-year period under Article 12(2) runs only from the planned return date – so that the left-behind parent is not penalised for waiting, and is not pressured into premature litigation on the basis of threats that may not materialise.

2.4. Habitual residence before removal or retention

Article 4

The Convention shall apply to ***any child who was habitually resident in a Contracting State*** *immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.*

Habitual residence performs an important systemic function within the 1980 Convention framework. By identifying the State with which the child has the closest connection immediately prior to the alleged abduction, the concept helps ensure that questions of custody are decided by the courts best placed to evaluate the child's circumstances. The return mechanism is designed to restore the child to the State of habitual residence so that questions of custody can ordinarily be determined by the authorities competent to decide them there.[61]

The discussion below draws on both case law under the 1980 Convention and CJEU case law on habitual residence. In intra-EU cases, the latter forms part of the applicable EU framework. Outside that context, CJEU decisions are cited where they provide useful interpretative guidance on the same factual concept. This reflects the close interaction between the instruments and the broadly convergent approach to habitual residence, while recognising that EU case law does not become directly applicable merely because it is persuasive. The Finnish Supreme Court expressly adopted this approach in *ECLI:FI:KKO:2025:102*, using CJEU interpretations of habitual residence as guidance when applying the 1980 Convention even though EU law did not govern the case.

The CJEU has stated that the concept of 'habitual residence' within the meaning of the Brussels IIa Regulation reflects essentially a *question of fact*.[62] It must be assessed in light of the concrete circumstances of each case rather than the parents' intentions alone. Parents cannot establish or alter a child's habitual residence merely by agreement or by including such a designation in a custody order.[63] Consequently, neither the temporary character of a stay abroad nor the original intention regarding its duration is decisive in itself; what matters is *whether the child has remained integrated in the original environment or has developed integration in a new one*.

The concept of habitual residence was originally assumed to be a straightforward factual determination. In practice, however, it has become one of the most contested issues in 1980 Convention litigation.[64]

[61] See for further analysis P. Beaumont and J. Holliday, *"Habitual Residence" in Child Abduction Cases: Hybrid Approach Is Now the Norm but How Much Weight Should Be Given to Parental Intention?*, Liber Amicorum Monika Pauknerová <https://www.stir.ac.uk/media/stirling/services/faculties/arts-and-humanities/research/documents/Beaumont_Holliday-.pdf>.
[62] Judgment of 8 June 2017, *OL v PQ*, Case C-111/17 PPU, ECLI:EU:C:2017:436 §51.
63 See also Barzilay v Barzilay 600 F.3d 912, 920–21 (8th Cir. 2010), where the court rejected the argument that parents could establish a child's habitual residence by agreement alone, observing that "[t]o allow parents simply to stipulate to any habitual residence they choose would render these factual considerations irrelevant" and that "[a]ny idea that parents could contractually determine their children's habitual residence is also at odds with the basic purposes of the Hague Convention", which seeks to prevent the creation of "artificial jurisdictional links". The decision is discussed further in James D. Garbolino, The 1980 Hague Convention on the Civil Aspects of International Child Abduction (2nd ed) 46–47, https://www.fjc.gov/sites/default/files/2015/Hague%20Convention%20Guide.pdf
[64] See R. Schuz, *Habitual Residence: Review of Developments and Proposed Guidelines, Laws* (2023) <https://www.mdpi.com/2075-471X/12/4/62> 12:62, noting that the assumption that habitual residence would be easy to determine has proven unrealistic and that the concept has become one of the most litigated issues under the Convention.

There is no presumption in favour of finding habitual residence merely so that the 1980 Convention can apply. Habitual residence should not be constructed in favour of the applicant where the evidence does not establish that the child was habitually resident in the requesting State immediately before the alleged removal or retention. In cases of genuine doubt, the Article 3 threshold is not met and the return application must fail on that basis.[65]

Whether a return application is legally well founded depends first and foremost on establishing that the child actually had habitual residence in the State to which return is sought immediately before the alleged wrongful act. If this condition is not met - if the child was not habitually resident there at that time - there is no "wrongful removal or retention" within the meaning of the Convention, and the return request cannot succeed.

CASE NOTE 54 | CJEU | C-111/17 PPU
8 June 2017

CJEU has clarified that the concept of habitual residence is central to the assessment of a return application. The national court must therefore verify whether the child was habitually resident, immediately before the alleged removal or retention, in the Member State to which return is sought. If that condition is not met, the application for return cannot succeed.

Habitual residence must be determined primarily on the basis of objective circumstances reflecting the child's actual life immediately before the alleged wrongful removal or retention. Evidence must be directed to the child's circumstances immediately before the alleged wrongful act. Earlier events may be relevant to the history and quality of the child's integration, while later events cannot retrospectively alter habitual residence but may sometimes assist in establishing the circumstances that already existed at the relevant time. While the intentions of the parents regarding the child's residence may be relevant, they function only as supporting indicators and cannot displace the factual assessment of the child's social and family integration at the relevant time.

CASE NOTE 55 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2024:1981
23 September 2024

In a case concerning two children allegedly wrongfully removed to the Netherlands, the father relied on documents such as childcare records and medical data from the Netherlands to argue that the children's habitual residence had remained there. The court rejected this evidence because the documents referred either to periods before the family moved to Serbia or to events after the children had already been taken to the Netherlands and, therefore, did not reflect the children's life immediately prior to the removal. The father also argued that the parents intended to relocate in the future. The court held that such intentions, even if established, could not determine habitual residence on their own. After examining the objective circumstances of the children's daily life, the court concluded that their habitual residence was in Serbia, where their social and family environment had been centred before the transfer.

Temporary travel or exploratory stays abroad do not by themselves change a child's habitual residence. Even where a family plans an extended journey or considers living in another country,

[65] See also Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) ch 8, 205–206, criticising the view that habitual residence should be determined so as to make the Convention applicable and noting that, in cases of doubt, the applicant fails to establish the threshold conditions for return.

habitual residence remains in the State where the child's social and family life is centred unless there is a genuine and stable relocation resulting in integration in a new environment.

CASE NOTE 56 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2023:2675
18 December 2023

A family living in Nigeria travelled with their children to the Netherlands with plans to stay temporarily and possibly continue travelling in Europe. When the father returned to Nigeria, the mother refused to return with the children. The mother argued that the children's habitual residence had changed because the family had planned a year-long trip through Europe. The court rejected this argument, holding that the travel plans were temporary and uncertain and did not amount to a settled relocation. Since the children's life had been centred in Nigeria before the trip, their habitual residence remained there, and the children were therefore wrongfully retained abroad. The court emphasised that even an extended journey abroad remains temporary in nature and does not by itself change habitual residence. (Because Nigeria is not a Contracting State, the Convention did not apply directly; the Dutch court used its framework as a point of orientation under domestic law.)

Conversely, a new habitual residence may arise even where the stay in a State was initially intended to be temporary. The determination of habitual residence depends on the child's factual integration into a social and family environment, not merely on the parents' original intention. Even where a family's stay in a State was linked to a fixed-term posting or temporary arrangement, habitual residence may still be established if the child has developed lasting connections there. Factors such as school attendance, friendships, language acquisition, and daily life weigh more heavily than the temporary character of the parents' relocation.

CASE NOTE 57 | FI | Supreme Court | ECLI:FI:KKO:2019:37
17 April 2019

The Court held that a child who lived with her parents in Belgium for about 2.5 years had acquired habitual residence there. Although the father argued the stay was temporary due to his work posting, the Court emphasized the child's schooling, friendships, and ability to speak Dutch alongside English as clear indicators of integration. The "temporary" intention of the parents did not prevent Belgium from becoming the child's habitual residence.

Where a child moves to another State pursuant to a provisionally enforceable decision that is under appeal, those circumstances may weigh against finding that habitual residence has already transferred. This uncertainty is a factor suggesting that the stay was temporary and that the child's habitual residence may not yet have changed. However, if the child has already become factually integrated in the new environment, a new habitual residence may still arise.

CASE NOTE 58 | CJEU | C-376/14 PPU
9 October 2014

A child was taken from France to Ireland under a first-instance judgment permitting the mother to relocate. When that decision was later overturned on appeal, the father sought the child's return. The CJEU held that the existence of the appeal and the provisional nature of the judgment were relevant factors suggesting that the stay in Ireland might have been temporary, although the national court still had to assess the child's factual integration in the new State.

2.4.A. Timeframe for assessment of the habitual residence

Habitual residence is assessed exclusively at the time immediately before the removal or retention. This corresponds to the moment at which wrongfulness is evaluated under Article 3 (See Section 2.3.A).

CASE NOTE 59 | **CJEU** | C-376/14 PPU
9 October 2014

A child was taken from France to Ireland under a first-instance French judgment permitting the mother to relocate. After that judgment was overturned, the father sought the child's return. The CJEU held that, in order to determine whether the subsequent non-return was wrongful, the court first had to establish whether the child was habitually resident in France immediately before the alleged wrongful retention. Only that habitual residence at the relevant moment could connect the case to French custody law for the purposes of Article 2(11) of the Brussels IIa Regulation.

While the habitual residence for the purposes of the 1980 Convention is fixed at the time of the alleged wrongful removal, habitual residence may subsequently change for the purposes of jurisdiction and child-protection proceedings. Habitual residence is a factual concept, not a fixed legal status, and reflects the child's actual centre of life at a given moment in time. Because it is grounded in lived reality rather than formal declarations, habitual residence can evolve as the child's circumstances change. The 1980 Convention, therefore, "freezes" habitual residence only for the limited purpose of determining whether a removal was wrongful at the moment it occurred.

This explains how a child may be considered habitually resident in the requesting State for the purposes of return proceedings yet later acquire a new habitual residence for jurisdictional or welfare purposes. Such differences arise from the fact that return proceedings under the 1980 Convention and custody or child-protection proceedings under Brussels IIb or domestic law may run in parallel (for parallel proceedings, see Chapter 5.7). Because these proceedings serve different functions and assess the facts at different moments in time, they may lead to differing conclusions on habitual residence. This does not necessarily create a legal conflict but reflects the distinct purposes and temporal focus of each procedure.

CASE NOTE 60 | **UK** | **High Court of England and Wales** | EWHC 1476 (Fam)
8 June 2020

The children were wrongfully removed from Belgium, which was accepted as their habitual residence at the time of removal. During the proceedings, the children remained in England for almost a year and were placed in state care under ongoing child-protection proceedings, for which the English court assumed jurisdiction. The court determined that the children had lost their habitual residence in Belgium for the purposes of the parallel child-protection proceedings. It expressly rejected reliance on Article 12 settlement but refused return because the Article 13(1)(b) exception was established.

In return proceedings, it is normally unnecessary to determine whether the child subsequently established a habitual residence in the country of refuge. Later integration in the refuge State cannot retroactively change or displace the child's earlier habitual residence. This follows from the structure of the 1980 Convention: the court is required to assess whether the removal or retention was wrongful by reference to the child's habitual residence immediately before the alleged removal

or retention. The inquiry is therefore strictly time bound. Developments occurring after that moment—such as the child's adaptation, schooling, or social integration in the State of refuge—are, in principle, irrelevant to the determination of wrongfulness.

As a result, arguments that the child has become settled or integrated in the requested State cannot displace the original habitual residence for the purposes of Article 3. At most, such factors may become relevant at a later stage of the analysis, for example under specific exceptions to return (such as settlement after the lapse of time – see Chapter 4.5.B), but they do not alter the initial jurisdictional anchor of the case.

CASE NOTE 61 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2017:0315.17UF37.17.0A
15 March 2017

A child who had lived with his parents in France for several years was taken by the mother to Germany without the father's consent. During the return proceedings, the mother argued that the child had by then become integrated in Germany and may even have established a new habitual residence there. The court held that it was unnecessary to determine whether the child had subsequently acquired a habitual residence in Germany. Because wrongfulness must be assessed at the moment of the removal, when the child was habitually resident in France, any later establishment of habitual residence in the State of refuge could not affect the return obligation under the 1980 Convention.

2.4.B. Age of the child in determining habitual residence

> *"52 In the main proceedings, the child's age, it may be added, is liable to be of particular importance."*
>
> *CJEU, Mercredi v Chaffe,* (2010) C-497/10 PPU[66]

The age of the child may play a significant role in the determination of habitual residence. As the CJEU has observed, the factors relevant for identifying a child's social and family environment (and thus the place of habitual residence) vary depending on the child's stage of development. For this reason, the assessment of habitual residence must consider the child's age and the corresponding nature of the child's social integration.

Infants and older children: conceptual distinction

Very young children are typically entirely dependent on their primary caregiver and cannot establish independent social connections, whereas older children may develop their own social environment through school, friendships, and daily activities. For this reason, courts often distinguish between infants and older children when identifying the relevant factors for determining habitual residence.

[66] Judgment of 22 December 2010, *Mercredi v Chaffe,* Case C-497/10 PPU, ECLI:EU:C:2010:829.

Advocate General Saugmandsgaard Øe, in his Opinion in UD v XB (C-393/18 PPU), discussed the distinction between a child and an infant to clarify terminology and the developmental context of very young children.[67] He observed that the term "child" in EU and international law is broad, encompassing any person under the age of eighteen, as reflected in the UNCRC and the Brussels IIa Regulation. However, he noted that this general category does not account for the significant developmental differences that exist within childhood.

He proposed using the English term *"infant"* to encompass both categories (children from birth up to roughly two years) to capture their shared characteristics of total dependence and early development. This is not redefining legal capacity but recognising that within the broad legal category of a "child," there exists a subcategory of *infants* whose age and dependency make them distinct in both factual and legal assessment.

Habitual residence of infants

For infants and very young children, habitual residence is determined through the social and family environment of the persons on whom the child depends. Because an infant cannot establish independent social ties, the child's integration necessarily mirrors the circumstances of the parent providing daily care.[68] Courts must therefore examine the reasons, duration, and conditions of the caregiver's stay in the State, as well as the family and social connections established there. The decisive question is whether the caregiver and the child were genuinely integrated into a shared social environment. At the same time, the position of the other parent and the child's relationship with that parent must also be taken into account. This approach recognises that an infant cannot form independent social ties; their habitual residence is necessarily linked to the circumstances of the parent providing daily care.

CASE NOTE 62 | **CJEU** | C-497/10 PPU
22 December 2010

The CJEU considered the habitual residence of a very young child who had been taken by the mother to another Member State shortly after birth. The Court held that, because the child was an infant, the assessment of habitual residence had to focus on the mother's social and family environment, including the reasons for her move, her family and geographic connections, and the stability of her stay in the State concerned. The national court was required to determine whether those circumstances showed that the child was integrated into that environment.

CASE NOTE 63 | **IT** | **Supreme Court** | R.G. No 17474/2022
2 November 2022

The Supreme Court considered the habitual residence of a baby only a few months old. The Court held that to establish habitual residence, judges must focus on the situation of the caregiving parent, in this case, the mother, including why she was living in the child's State of birth, the duration and stability of her stay, and her family and social links there. The Court emphasised that the assessment must examine whether the mother and child were genuinely integrated into that State's environment, while not ignoring the continuing role of the father.

[67] Opinion of Advocate General Saugmandsgaard Øe delivered on 20 September 2018, *UD v XB*, Case C-393/18 PPU, ECLI:EU:C:2018:749. For terminological purposes, the Advocate General distinguished between the French *nouveau-né* and *nourrisson* and used the English term "infant" to encompass both. See also *Larousse Médical*, entry "nouveau-né" (a child from birth to the 28th day of life), and *Dictionnaire de français Larousse*, entry "nourrisson" (a child from the end of the neonatal period until approximately two years of age).
[68] See also P. Beaumont and J. Holliday, *"Habitual Residence" in Child Abduction Cases: Hybrid Approach Is Now the Norm but How Much Weight Should Be Given to Parental Intention?*, Liber Amicorum Monika Pauknerová, <https://www.stir.ac.uk/media/stirling/services/faculties/arts-and-humanities/research/documents/Beaumont_Holliday-.pdf>.

Habitual residence of older children

For older children, habitual residence is determined primarily by the child's own social and family environment and cannot automatically be inferred from the habitual residence of the parents. While the habitual residence of infants or very young children may largely follow that of their primary caregiver, this approach becomes less relevant as the child grows older and develops an independent social life through school, friendships, and daily activities.

CASE NOTE 64 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2020:1021
29 May 2020

The case concerned a twelve-year-old child who had lived in Italy continuously since 2015. Relying expressly on the CJEU judgment in *Mercredi v Chaffe*, the Court of Appeal held that the child's habitual residence was not inseparably linked to that of his parents. At twelve, he attended school and had a social life that developed largely independently of them, which justified determining his habitual residence autonomously. The court relied in particular on his continuous residence in Italy, schooling, hobbies and social contacts there, and the fact that his visits to the Netherlands had been limited to holidays. His habitual residence was therefore in Italy, notwithstanding the mother's argument that both parents were by then habitually resident in the Netherlands.

2.4.C. Determining the child's habitual residence

> *"93. It is important not to lose sight of the fact that the sole objective of determining the habitual residence of a child is to identify the court which, in accordance with the principle of proximity and in the best interests of the child, is deemed to be closest to the child. That examination, as has already been pointed out, must be carried out from the point of view of the child and never from the point of view of the parents, whatever the legitimacy of their application concerning the child.*
>
> *View of Advocate General Cruz Villalón, Mercredi v Chaffe, C-497/10 PPU* [69]

The habitual residence assessment must be genuinely factual and case-specific; a court that relies on formal criteria such as registered domicile, or that transposes CJEU authorities without assessing the factual differences of the case before it, violates Article 8 ECHR. Habitual residence is a question of pure fact, distinct from domicile, and the requested court must explain why it gives precedence to one set of indicators over another. Citation of the CJEU's habitual-residence case law is not a substitute for that analysis: the ECtHR reviews whether the domestic court weighed the concrete elements of the child's integration, and a mechanical application of precedent is itself a ground for finding a violation. Conversely, where the domestic courts conduct a thorough, multi-factor assessment in line with the CJEU's indicative criteria, the ECtHR will not second-guess

[69] View of Advocate General Cruz Villalón of 6 December 2010 (ECLI:EU:C:2010:738) in Judgment of 22 December 2010, *Mercredi v Chaffe*, Case C-497/10 PPU, ECLI:EU:C:2010:829.

the outcome – even where a single factor, such as the comparative length of stay in each State, might have pointed the other way.

CASE NOTE 65 | ECtHR | Michnea v. Romania | App. No 10395/19
7 July 2020

The child was born and integrated in Italy, where both parents lived and jointly exercised parental authority; the mother took her to Romania without the father's consent. The Romanian Court of Appeal refused return, holding that the child's habitual residence was in Romania because the couple remained *registered as resident* there, and relied on the CJEU's *Mercredi* judgment without addressing the contextual differences between the two cases. The ECtHR found a violation of Article 8: the court gave precedence to the parents' formal domicile over the clear factual elements showing the child's integration in a social and family environment in Italy, and failed to explain that choice.

CASE NOTE 66 | ECtHR | Giannakopoulos v. Greece | App. No 20503/20
3 December 2024

The Greek courts declined jurisdiction over the father's custody application, finding that the children had become habitually resident in Germany. The ECtHR found no violation of Article 8: the domestic courts had based their assessment on a thorough examination of a variety of factors, including those listed indicatively by the CJEU, and had applied that case law with due regard to the contextual differences. The fact that the children had spent less time in Germany than in Greece could not outweigh the overall assessment that their new environment had become the centre of their lives.

The table below summarises the principal indicators used in determining a child's habitual residence. It presents a shortened overview of the most relevant factors discussed in the case law. A more extensive version of this table, with additional authorities and extracts, is available in Handbook part 1, chapter 5.2.B.[70]

Table 8: Key indicators for determining a child's habitual residence in the case law of the CJEU

Indicator	Explanation	Judgment
HR is an autonomous concept shaped by the best interest of the child and the criterion of proximity.	The concept of habitual residence must be interpreted uniformly across the EU, independently of national law. Its interpretation is shaped by the Regulation's aim to serve the child's best interests, prioritizing proximity–meaning the closest connection between the child and the court best placed to decide.	C-497/10 Mercredi (§46) C-393/18 UD (§48)
HR of a spouse is not the same as HR of a child.	The criteria for determining a spouse's habitual residence differ from those applied to children. While both are factual, a spouse's residence reflects adult-specific factors such as professional, social, and financial ties, whereas a child's is more closely linked to their family environment and care arrangements.	C-289/20 IB (§54)
HR is a factual concept.	Habitual residence is not defined by legal presumptions but must be determined based on the specific facts of each case. Courts	C-111/17 PPU OL v PQ (§51)

[70] For reasons of clarity and comparability, the table refers primarily to the case law of the CJEU, which has developed a coherent set of principles for identifying a child's habitual residence. National case law remains equally important in practice, but because it is often closely tied to the specific facts of individual cases, it is referred to further in this chapter as illustrative examples.

	assess actual circumstances rather than relying on formal status or declared intentions alone.	
HR has a consistent meaning across the Regulation	The concept of a child's habitual residence is uniform across different provisions of Brussels IIa. Whether applied in return proceedings (Article 11), jurisdiction rules (Article 8), or wrongful removal cases (Article 10), the definition and criteria for determining habitual residence remain the same.	C-376/14 C v M (§54)
Provisional or uncertain relocations may not establish HR	The provisional nature of the decision authorising a move and the existence of a pending appeal may weigh against finding that habitual residence was transferred, but they are not conclusive. The court must still assess the child's factual integration and all the circumstances of the stay.	C-376/14 C v M (§55)
HR must be assessed individually based on specific facts	The determination of a child's habitual residence requires a holistic assessment of all factual circumstances unique to the case. Precedents may inform but cannot be automatically applied to different cases, as each child's integration and living situation is distinct.	C-497/10 Mercredi (§47) C-512/17 HR (§54)
HR reflects integration in a stable social and family environment	Habitual residence is linked to the child's stable and regular presence in a Member State and must indicate meaningful integration in their social and family environment. Factors such as duration of stay, schooling, language, and relationships are critical for this assessment.	C-523/07 A (§39) C-497/10 Mercredi (§44, §47) C-512/17 HR (§42)
Age of the child	The child's age determines which social and family factors are most relevant when assessing habitual residence. Infants, school-aged children, and adolescents each engage with their environment differently, requiring the court to adjust its focus accordingly.	C-497/10 Mercredi (§§52-53)
Nationality of the child	The child's nationality, along with cultural ties and linguistic knowledge, can support the identification of habitual residence. However, these elements must not override objective geographic and social integration factors. Courts must assess nationality alongside physical presence and daily life circumstances to avoid misrepresenting the child's true centre of life.	C-499/15 W and V (§60) C-512/17 HR (§57, §60) C-501/20 MPA (§77)
Nationality of the parent	The nationality or prior residence of a parent before the child's birth does not constitute a relevant factor in assessing the child's habitual residence under Article 8(1) Brussels IIa.	C-501/20 MPA (§76)
The physical presence of the child alone is not enough, but is a mandatory element for the establishment of HR.	Physical presence in a Member State must be more than temporary or intermittent, but is not sufficient alone to establish habitual residence.	*C-523/07 A* (§33) *C-393/18 UD* (§§52-53, §59)
Additional factors must confirm stability of the child's presence	Factors beyond physical presence, such as duration, regularity, conditions, and reasons for stays, are essential to prove the permanence of residence.	C-393/18 UD (§50)
A young child's environment is defined by primary caregiver	For infants and very young children, habitual residence is closely tied to the family environment, especially to the reference person(s)–typically a parent–who provides daily care and supervision.	C-497/10 Mercredi (§54)

Infant's habitual residence is assessed via the caregiver's integration	For infants, who are entirely dependent, habitual residence is determined through the integration of the parent or caregiver who provides daily care. Relevant factors include the caregiver's social and family ties, reasons for residence in a Member State, language, and duration of stay. If both parents are involved, the broader environment—including both households—must be assessed.	C-497/10 Mercredi (§55) C-512/17 HR (§§44-45, §48)
Parental intention to relocate must be supported by tangible actions	The mere intention of a parent to relocate with the child to another Member State is not sufficient to establish a change in habitual residence. Such intention must be demonstrated through concrete and verifiable steps—like securing housing or applying for social services. Future plans or personal wishes alone cannot override the child's actual current integration.	C-523/07 A (§40) C-512/17 HR (§65)
Parental intentions must reflect the views of both holders of custody	When both parents hold custody rights, the child's habitual residence cannot be determined solely based on the intentions of the parent with physical custody. The assessment must incorporate the expressed intentions of both parents, provided they both actively intend to exercise their custody rights.	C-512/17 HR (§63)
Geographical origin of the parent	The parents' origin or the child's ties to relatives in a particular Member State cannot override concrete, factual indicators of the child's actual place of habitual residence.	C-512/17 HR (§56)
Duration of Stay	A sufficient length of stay may suggest a transfer of habitual residence, but no minimum period is defined in the Regulation. What matters is the quality and context of the stay, evaluated in light of all relevant facts—especially the intention to settle with lasting effect.	C-497/10 Mercredi (§51)
Holidays spent in another place	Temporary stays, including holidays—even those lasting weeks or months—are generally seen as interruptions to daily life and cannot, on their own, determine habitual residence.	C-512/17 HR (§51)
"Few-days" stay in another place	A brief stay—especially one lasting only a few days—cannot alone establish habitual residence. Even for infants, relevant factors such as the reason for the stay, family and social links, and the circumstances of the accompanying parent must be assessed. Transient or unsettled living arrangements suggest absence of habitual residence.	C-497/10 Mercredi (§56) C-523/07 A (§41)
Cultural ties and language	While cultural affiliation and language may suggest a connection to a Member State, they are not determinative for establishing habitual residence. Objective geographic and social factors must take precedence over cultural markers when identifying the child's true centre of life.	C-512/17 HR (§52)
Parental Intentions and Plans	The parents' intentions regarding the child's place of residence are not decisive for establishing habitual residence. They may support the factual analysis, but cannot override concrete evidence of where the child is actually integrated. Objective circumstances must remain central to the assessment.	C-111/17 PPU OL v PQ (§47, §51, §56) C-512/17 HR (§46, §64)
Unlawful conduct by a parent does not create habitual residence elsewhere	Even serious misconduct (e.g., coercion) by a parent cannot justify attributing habitual residence to a Member State the child has never been to. Habitual residence must be established based on objective presence and integration, not speculative alternatives or rights violations.	C-393/18 UD (§§60-61, §69)

Impossibility to determine habitual residence	Where the child's habitual residence cannot be established and jurisdiction cannot be determined under the relevant rule of the Brussels IIa, the courts of the Member State in which the child is present have jurisdiction.	C-523/07 A (§43)

2.4.D. Children with no habitual residence

In some cases, a child may temporarily be without a habitual residence because the family has definitively left the previous country of residence but has not yet established a new centre of life elsewhere. This situation may arise when parents jointly decide to relocate internationally, and the move involves a transitional phase in another State. During such a period, the child's previous habitual residence may already have been abandoned, while the short or clearly temporary stay in the new country may not yet be sufficient to establish a new habitual residence. In such circumstances, the child may be considered to be in an intermediate situation between habitual residences.

If the child *had no habitual residence* immediately before the alleged removal or retention, the return mechanism of the 1980 Convention cannot be triggered. Article 4 of the Convention presupposes that the child was habitually resident in a specific State whose custody law was breached by the removal or retention.

This situation must be distinguished from cases where a child may have connections to more than one State (see Chapter 2.4.E) or where the court is unable to determine the habitual residence on the evidence (see Chapter 2.4.F). Here, the issue is different: the child did not possess a habitual residence at the relevant time.

CASE NOTE 67 | FI | Supreme Court | ECLI:FI:KKO:2025:102
4 December 2025

A child who had lived since birth in Australia travelled with both parents to Finland as part of a planned relocation to China. The parents had jointly decided to leave Australia permanently and had taken concrete steps to implement that decision. Two weeks after arriving in Finland, the father left the family home with the child and the mother sought the child's return to Australia under the 1980 Convention. The Court held that Australia was no longer the child's habitual residence because the family had definitively left the country. At the same time, the child had been in Finland for only two weeks, and the stay was intended to be temporary before the move to China, so Finland could not yet be regarded as the child's habitual residence. The Court therefore concluded in § 18 that the child was in an *intermediate situation between habitual residences*, meaning that the conditions for a return order under the 1980 Convention were not met.

2.4.E. Children with more than one residence

> *"71. For it to be held that there has been a change of habitual residence, there should have been a 'loss' of the first habitual residence and 'acquisition' of a new habitual residence. Although one person can effectively have more than one 'de facto' residence, that person cannot have more than one habitual residence. "*
>
> *View of Advocate General Cruz Villalón, Mercredi v Chaffe, C-497/10 PPU* [71]

A child may have homes, residences and substantial connections in more than one State, but whether the 1980 Convention permits more than one simultaneous habitual residence is not entirely settled. The predominant approach in the case law is that, for the purposes of the Convention, the court must identify a single habitual residence immediately before the removal or retention. This should be distinguished from the factual possibility that the child divides their life substantially between two States.

In such situations, the requirements of Article 3 of the 1980 Convention cannot be met, because wrongful removal or retention presupposes that the child was habitually resident in one specific State immediately before the move. If the court concludes that no single habitual residence can be established, the mechanism of the 1980 Convention cannot operate, since the Convention presupposes a removal or retention from one identifiable habitual residence.

Factors indicating that the child's factual life is divided between two States may include:

- Both parents maintaining legal registration, residence, and benefits in different States.
- The child spending substantial and regular time in both countries over a significant period.
- Schooling, language, and cultural integration occurring in both States.
- Ambivalence or lack of clarity on the part of the parents regarding permanent settlement.
- Ongoing legal or social ties in both jurisdictions (e.g. family networks, housing, employment).

Under the predominant approach, a return order under the 1980 Convention presupposes that the child has been wrongfully removed from, or retained away from, a single identifiable State of habitual residence. If, on the facts, the court concludes that the child is genuinely and durably integrated in two States at the same time, and it is not possible to determine with which of the two States the child has a closer or more lasting bond, the court cannot establish that the child's habitual residence "immediately before the removal or retention" was in the requesting State. As a result, there is no "removal from" or "retention away from" that State within the meaning of Article 3 of the Convention, and the return request must be refused.

[71] View of Advocate General Cruz Villalón of 6 December 2010 (ECLI:EU:C:2010:738) in Judgment of 22 December 2010, *Mercredi v Chaffe,* Case C-497/10 PPU, ECLI:EU:C:2010:829.

CASE NOTE 68 | **NL** | **The Hague District Court** | ECLI:NL:RBDHA:2024:4859
4 April 2024

Two children and their parents had lived for years between the Netherlands and Turkey. One child was registered in the Dutch population register from birth, while the other had been deregistered in order to obtain a Turkish ID. The older child began school in Turkey in September 2023 and spoke Turkish more fluently than Dutch, but the mother had retained Dutch benefits, the family regularly returned to the Netherlands, and both parents maintained family and social ties in both countries. The court concluded that the children were genuinely integrated in both environments. Since it was not possible to establish that Turkey alone was the children's habitual residence prior to the mother's departure to the Netherlands, the 1980 Convention test under Article 3 was not satisfied. The return request was therefore denied. On appeal, the court however reached the opposite factual conclusion, holding that the children's habitual residence was in Turkey and ordered their return.

CASE NOTE 69 | **NL** | **The Hague Court of Appeal** | ECLI:NL:GHDHA:2019:758
3 April 2019

The case concerned two very young children born in Spain whose parents maintained connections with both Spain and the Netherlands. After the mother took the children from Spain to the Netherlands, the District Court rejected the father's return application on the basis that the children could have habitual residences in both States. The Court of Appeal rejected that conclusion and held that, for the purposes of the 1980 Convention, a child cannot have two habitual residences simultaneously. It referred to point 71 of Advocate General Cruz Villalón's Opinion in *Mercredi v Chaffe*, according to which a person may have more than one de facto residence but cannot have more than one habitual residence. The Court acknowledged that some academic writers support the possibility of multiple habitual residences under the Convention. It nevertheless considered that the predominant approach in the case law of Contracting States was against such recognition. The Court therefore expressly departed from its own 2016 judgment in ECLI:NL:GHDHA:2016:2502, in which it had accepted the possibility of two alternating habitual residences.

The underlying parental-responsibility dispute may nevertheless be determined under another applicable jurisdictional framework. Within the EU, where the child's habitual residence cannot be established and jurisdiction cannot be determined under the preceding provisions of Brussels IIb, Article 11 may confer jurisdiction on the courts of the Member State in which the child is present. In other cases, jurisdiction may arise under the 1996 Hague Convention or the applicable national rules.

2.4.F. Children whose habitual residence cannot be established

A different situation arises where the evidence does not point to competing habitual residences, but to the absence of any sufficiently stable centre of life from which a habitual residence can be established. If the child's habitual residence *cannot be identified*, the Convention return mechanism cannot be triggered. The 1980 Convention does not provide for a "default" solution in situations where the facts show no stable centre of life, no settled integration, and no country with sufficient social or family ties to qualify as habitual residence. If no habitual residence can be established, there

can be no "removal from" or "retention away from" a habitual residence within the meaning of Article 3, and the return request is refused.

CASE NOTE 70 | **NL** | **The Hague District Court** | ECLI:NL:RBDHA:2023:9419
23 June 2023

A very young child had lived in multiple countries with both parents, among them the Netherlands, the United Arab Emirates, the United States, Jamaica, and the United Kingdom, sometimes for short periods and sometimes longer, depending on the parents' itinerant lifestyle. The parents never lived together as a family in a single stable location, frequently moved across borders, and were still discussing the child's future residence at the time of the alleged abduction. Although the father argued that the child's habitual residence was in the UAE, the court found that the child's presence there had been irregular, temporary, and insufficiently integrated into any stable environment. At the same time, the evidence did not support habitual residence in the Netherlands or the United Kingdom either. Given the absence of any country to which the child was sufficiently connected, the court concluded that *no habitual residence could be established*. Since the 1980 Convention applies only where a child has been removed from or retained away from a single identifiable habitual residence, the Convention could not be used. The court therefore dismissed the return request without examining the other elements of Article 3 or the Article 13 defences.

2.5. Existence and scope of rights of custody – Article 3(a) and 5(a)

Article 3

The removal or the retention of a child is to be considered wrongful where –

a) ***it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention;***

[...]

Before any analysis whether the removal or retention as wrongful, it must be established that the person, institution or other body invoking the Convention held a "right of custody" under the law of the child's habitual residence immediately before the removal or retention. This is not presumed from biological parenthood, family involvement, or the fact that the applicant is the left-behind parent. It must be shown by reference to the legal source from which the alleged custody rights arise.

Proof of custody rights is required for return to be ordered, regardless of biological parenthood or statutory entitlement. The applicant must provide a sufficient legal and factual basis from which the court can establish that those rights existed at the relevant time. Depending on the source of the rights, this may require evidence of the legal relationship that gives rise to parental responsibility, such as a birth certificate, marriage certificate, acknowledgement of parentage, custody decision or legally effective agreement. Without sufficient proof, the court cannot establish the existence of rights of custody and the return request must fail.

CASE NOTE 71 | RO | Bucharest Tribunal | Civil decision No 170/2016
11 February 2016

A father sought the return of his child from Romania to the United Kingdom under the 1980 Convention. Despite being given several opportunities, he failed to submit the child's birth certificate. The court held that he had not proven that he was vested with custody rights and therefore lacked procedural standing as a party. The application was dismissed as inadmissible.

The assessment of "rights of custody" under Article 3 of the 1980 Convention follows a structured, sequential analysis. This sequence is not a matter of presentation but reflects the legal logic of the Convention itself. Each step answers a distinct question, and each must be completed before the next can be meaningfully addressed.

This section is structured around a three-step analysis that corresponds to the three elements the court must establish: (1) which law applies, (2) what rights the parent held under that law, (3) whether those rights qualify as custody under the Convention's autonomous definition.

1. First, the court must identify *the applicable law governing parental responsibility immediately before the removal or retention.* Article 3 refers to "the law of the State" of the child's habitual residence, but this concept encompasses the entire legal system of that State, including its

private international law rules. Without first identifying the correct legal system, it is impossible to determine whether any custody rights existed at all.

2. Second, once the applicable law has been established*, the court must determine what concrete rights the applicant actually held under that law at the decisive moment***.** This is a question of domestic law. The court examines whether parental responsibility arose by operation of law, by judicial or administrative decision, or by a legally effective agreement, and what powers those rights conferred, in particular with respect to decisions on the child's residence.

3. Third, the court must assess *whether the rights identified under domestic law qualify as "rights of custody" within the autonomous meaning of the 1980 Convention*, as defined in Article 5(a). This classification is governed by the Convention itself, not by national terminology. Rights that amount only to access or contact do not suffice, even if their exercise is affected by the child's relocation.[72]

This sequence is essential. Applying the Convention's autonomous definition of custody before identifying the applicable law risks mischaracterising domestic rights. Conversely, analysing domestic law without first establishing which legal system applies may lead the court to rely on the wrong law altogether. Only by following this step-by-step approach can the court correctly determine whether rights of custody existed and whether their breach renders the removal or retention wrongful within the meaning of Article 3.[73]

The HCCH has emphasised that difficulties arising from unfamiliar or mistranslated legal concepts may be reduced if the requesting Central Authority provides a brief summary of the relevant law concerning rights of custody.[74] Such a summary, provided in addition to copies or translations of the applicable legislation, may assist the requested court in understanding the legal framework of the child's habitual residence when determining whether rights of custody existed.

2.5.A. Step 1: identify the applicable law

For the purposes of Article 3 of the 1980 Convention, custody rights must be assessed under "the law of the State" where the child was habitually resident immediately before the removal or retention. However, the Convention does not define how to determine *what that law is*.

Usually, the law under which rights of custody must be determined is the internal law of the State of the child's habitual residence immediately before the removal or retention. This is not always the case, and the applicable law requires careful verification.

[72] For further analysis, see Edwin Freedman, *Rights of Custody: State Law or Hague Law?* (2014) 9 *Journal of Contemporary Law* 147 <https://www.edfreedman.com/wp-content/uploads/2014/09/Journal-of-Contemporary-Law-Hague-Abduction-Convention.pdf>.
[73] See Ilaria Queirolo, 'International Child Abduction and the 1980 Convention in Practice: The Biran Case' (2022) *Italian Review of International and Comparative Law* <https://brill.com/view/journals/iric/2/1/article-p191_011.xml?language=en&srsltid=AfmBOoryuDcdDRcKhEm4kTkFolHHzD4GSyfD9CFTyMZqFL5bXaqETRLm>, noting that courts typically resolve the interaction between Articles 3 and 5 by first identifying custody rights under the law of the child's habitual residence and then assessing whether those rights fall within the Convention's autonomous definition.
[74] See for example Hague Conference on Private International Law (HCCH), *Table of Conclusions and Recommendations of previous Meetings of the Special Commission on the Practical Operation of the 1980 Convention and the 1996 Child Protection Convention*, prepared for the Seventh Meeting of the Special Commission (October 2017), referring to 2006 SC C&R No 1.1.1 <https://assets.hcch.net/docs/a093695a-5310-42df-92bb-068abfde67c2.pdf>.

Article 3 of the 1980 Convention refers broadly to "the law of the State" of habitual residence. The term "law" is not defined in the Convention and must therefore be understood to include the *entire* legal system of the habitual-residence State, including its rules on private international law.

Under the 1996 Convention, parental responsibility arising by operation of law is in principle governed by the internal law of the child's habitual residence (Article 16(1)); the reference is to that State's internal substantive law, since Article 21 excludes renvoi (more on the concept of renvoi can be found in Handbook part 1, chapter 3.2.C). In many cases, therefore, the court will simply apply the internal parental-responsibility law of that State. But the 1996 Convention also allows situations in which parental responsibility acquired under the law of a *former* habitual residence subsists after the child moves (Article 16(3)), so that the habitual-residence State must recognise rights arising under another legal system. In those situations, the law relevant for Article 3 may be a law other than the current internal law of the habitual residence.

This approach is broadly consistent with the drafting history of the 1980 Convention, though the 1996 Convention narrows it rather than simply confirming it. The Pérez-Vera Report explains in §68 that custody rights may arise, for the purposes of Article 3, not only from internal law but also from *"the law which is indicated as applicable by [the habitual residence's] conflict rules."*[75] The Report emphasises a "wide interpretation" of the phrase "law of the State of habitual residence" and makes clear that it is for the authorities of that State to choose between applying their internal law or the foreign law designated by their conflict rules. The underlying principle is to favour the solution which, in the circumstances of the case, best reflects that custody was actually exercised. This broad approach also extends to custody agreements: any agreement that has "legal effect" under the law (including the conflict-of-laws rules) of the habitual residence can generate rights of custody for the purposes of Article 3.

Table 9: Scenarios illustrating how the "law of the State of habitual residence" may differ from the internal law of the State of habitual residence under the 1996 Hague Convention

Scenario	Which law applies?	Example
Example 1: Automatic attribution in the current habitual residence	Internal law of the current habitual residence (Article 16(1))	A child is habitually resident in State A, with no prior status from elsewhere. To decide whether rights of custody existed, the court applies State A's internal parental-responsibility law.
Example 2: Status subsisting from a former habitual residence	Law of the former habitual residence, whose rights survive the move (Article 16(3))	A parent acquired parental responsibility by operation of law under the law of State C, the child's former habitual residence. The child later becomes habitually resident in State A. The rights acquired in State C subsist despite the move, and the court in State A must give effect to them, even if State A's own law would not have granted them.
Example 3: Later attribution after a change of habitual residence	Internal law of the new habitual residence, from the time of the change (Article 16(4))	A child becomes habitually resident in State A, and a new ground for automatic parental responsibility arises there. State A's law governs that attribution from the date of the change, while any responsibility already vested under a former law continues under Article 16(3).

[75] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction*.

Thus, although habitual residence is the anchor point, the applicable law is not always the internal law of that State. A court deciding a return application must consider the entire legal system of the habitual residence—including the relevant rules of the 1996 Convention—to determine whether parental responsibility is governed by its own internal law or by another legal system that must be recognised. Only after that inquiry can the court determine whether rights of custody existed and whether they were breached for the purposes of Article 3.

For the purposes of Article 3 of the 1980 Convention, the relevant law is the law of the State where the child was habitually resident immediately before the alleged wrongful removal or retention. As noted, this law must be identified using the entire legal system of that State, including its private international law rules, such as those found in the 1996 Convention. Earlier or later laws are not decisive unless the applicable legal system requires recognition of parental responsibility acquired under a prior regime.

CASE NOTE 72 | NL | The Hague Court of Appeal | ECLI:NL:GHDHA:2018:25
10 January 2018

The court had to determine whether a child's removal from Portugal to the Netherlands in October 2016 was wrongful. The child had moved to Portugal with the mother in mid-2015 and had become habitually resident there. When the mother later travelled with the child to the Netherlands in October 2016, the court had to examine whether the father held custody rights that were breached by that move. The father did not possess custody rights under Dutch law, which had governed the family's situation before the relocation to Portugal, but this was not decisive. Since the child's habitual residence had already shifted to Portugal before the removal, the applicable law was Portuguese law. Applying Article 16(4) of the 1996 Convention, the court confirmed that once a child acquires a new habitual residence, the law of that State governs whether parental responsibility arises by operation of law. The court therefore focused exclusively on whether the father had acquired parental responsibility under Portuguese law at the time of the removal.

In rare situations, however, custody rights for the purposes of Article 3 may derive from parental responsibility acquired before the child's move to the latest habitual-residence State, if those rights continued after the change of habitual residence. This issue arises where the child moved from one State to another before the alleged removal or retention, and the applicant argues that parental responsibility had already been acquired under the law of the earlier habitual residence. In such cases, the court should not decide wrongfulness only by asking whether the applicant would acquire parental responsibility under the internal law of the child's latest habitual residence. It should examine whether the earlier-acquired rights continued, including under Article 16(3) of the 1996 Convention. Only after addressing that issue can the court conclude whether the applicant had "rights of custody" and whether the removal or retention was wrongful under Article 3.[76]

[76] See Župan and Drventić Barišin, 'Continuity of Parental Responsibility in Child Abduction Cases: Lesson Learned from the Case of *Z. v. Croatia*' (2023) 12 *Laws* 82 <https://www.mdpi.com/2075-471X/12/5/82>, especially on the need to consider whether parental responsibility acquired under the law of an earlier habitual residence continued after a change of habitual residence under Article 16(3) of the 1996 Hague Convention when assessing wrongfulness under Article 3 of the 1980 Hague Convention.

CASE NOTE 73 | ECtHR | Z. v. Croatia | App. No 21347/21
1 September 2022

The parents were unmarried Croatian nationals and the children were born in Croatia. The mother consented to the father taking the children to Germany and caring for them there. She later took the children back to Croatia and refused to return them. The Croatian courts refused return, as they treated German law as decisive because the children were considered habitually resident in Germany immediately before the retention. Under German law, an unmarried father did not have parental responsibility unless joint custody had been agreed or ordered by a court. On appeal, the father argued that he had already acquired parental responsibility automatically under Croatian law and had not lost it merely because the children moved to Germany. He relied on Article 16(3) of the 1996 Hague Convention. The appellate court upheld the refusal but addressed only German law, and the Constitutional Court also failed to engage with the continuity argument. The ECtHR did not decide whether the father had custody rights or whether return should have been ordered, but held that the domestic courts had to give a specific and express reply to the father's argument before concluding that Article 3 of the 1980 Convention was not satisfied.

Rights of custody are determined objectively and not by parental intentions or expectations. The court looks only at the *legal* custody position at that specific moment in time and at whether those rights were actually being exercised. The Convention does not allow the court to revisit the parents' intentions, expectations, or hypothetical claims about what they would have agreed to had they known more. Article 3(b) adds only the requirement of actual exercise of custody at the time of removal or retention; it does not open the door to examining subjective motives or reconstructing what the parents might have intended when they agreed to a custody arrangement. The custody analysis under the 1980 Convention is therefore fixed, legal, and time-specific, and it excludes subjective or retrospective considerations.

CASE NOTE 74 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2023:2113
11 October 2023

The father argued that the removal should be considered wrongful because he would never have agreed to giving the mother sole custody during the divorce if he had known she intended to take the children to the Netherlands. He claimed that the court should interpret "rights of custody" in light of what he believed the parents jointly intended: that the children would remain in Turkey. The Court of Appeal rejected this view. It held that the 1980 Convention required it to look only at the custody rights the mother held under Turkish law at the exact moment she left Turkey with the children. On that day, she had full, unrestricted sole custody and was legally entitled to travel with them. Because the 1980 Convention focuses exclusively on the legal custody situation at the time of removal, the father's intentions or expectations were irrelevant and could not retroactively convert a lawful sole-custody departure into a wrongful removal.

When determining the existence of rights of custody, courts should apply the law of the territorial unit where the child was habitually resident. In federal or multi-jurisdictional States (e.g. the United States, Canada, Spain, the UK), family law may vary between regions. Article 31 of the 1980 Convention ensures that "law of the State of habitual residence" in such cases means the law of the relevant territorial unit, not national or federal law.

CASE NOTE 75 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2013:0710.17UF137.13.0A
12 July 2013

In proceedings concerning a child habitually resident in the Canary Islands, the court had to determine whether local Canarian law or the national Spanish Civil Code governed parental responsibility. Given that the Canary Islands lack their own regional family law, Article 156 of the *Código Civil*—which regulates the exercise of parental authority by both parents—applied. Consequently, custody rights were assessed under common Spanish law.

Although custody is assessed at the moment immediately before removal, the court may need to look back to the law under which parental responsibility originally arose in order to determine whether custody existed at that moment. The creation of parental responsibility may have been governed by the law applicable at the time of birth or at another legally relevant moment, pursuant to an earlier instrument such as the 1961 Hague Child Protection Convention[77] or under national conflict-of-laws rules designating a foreign law. These rules may differ from the framework applicable at the time of the removal, for example, under the 1996 Convention. In such cases, the court must reconstruct the origin and continuity of parental responsibility, recognising that the applicable legal regime for determining the existence of custody is not necessarily the one currently in force. Only after this inquiry can the court determine whether rights of custody existed immediately before the removal within the meaning of Article 3.

CASE NOTE 76 | NL | District Court of Midden-Nederland
ECLI:NL:RBMNE:2018:4679
27 June 2018

A child was born in 2011 with Polish and Dutch nationality. At that time, the 1996 Convention was not *yet* in force for the Netherlands, but the 1961 Convention was. Under Article 3 of the 1961 Child Protection Convention, Dutch authorities must recognise parental responsibility that arises automatically under the law of the child's nationality. Because Polish law grants automatic parental authority to the father after he acknowledges the child, the father acquires parental responsibility at birth, and this status must be recognised in the Netherlands. When the mother removed the child to Poland in 2015, Article 3 of the 1980 Convention required the court to determine whether the father had custody immediately before the removal. To answer this, the court must look back to the 1961 Child Protection Convention and Polish law as they applied in 2011. Since the father's parental responsibility arose validly at birth and continued thereafter, he held custody at the decisive moment in 2015, making the removal wrongful.

2.5.B. Step 2: determine what rights the parent actually had under domestic law

Once the applicable law has been identified, the court must determine how the parent obtained parental responsibility and what that responsibility actually allows the parent to do under that law.

First, the court examines the legal source of parental responsibility. Parental responsibility may arise:

[77] HCCH, *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants* (1961).

— by operation of law, for example, automatically at birth, through marriage, or through legal recognition of the child;

— by judicial or administrative decision, such as a custody order or a decision granting joint parental authority;

— by agreement, where the parents have concluded a binding arrangement that has legal effect under the applicable law, even if it is not incorporated into a formal court order.

Second, the court examines the content of the rights conferred by that parental responsibility. This requires identifying the concrete powers attached to those rights, rather than relying on labels such as "joint custody" or "sole custody." In particular, the court must determine whether the parent had authority to decide, or to participate in decisions, about the child's place of residence, including relocation to another State.

This distinction is crucial because under the 1980 Convention, only rights that include decision-making power over the child's residence qualify as "rights of custody." Parental responsibility that is limited to care, contact, or supervision—without any control over residence—does not suffice, even if relocation significantly affects the parent–child relationship.

A parent who has the right to determine the child's residence does not necessarily have an unrestricted right to relocate the child abroad. In some legal systems, the right to choose residence may include international relocation; in others, it may be limited by the other parent's remaining custody rights, by duties to preserve the child's relationship with that parent, or by a requirement of prior judicial authorisation for relocation abroad. Where the domestic law of the child's habitual residence treats international relocation as exceeding the residence-holder's authority, a unilateral move may breach custody rights for the purposes of Article 3. The removal is then wrongful not because the residence-holder lacked parental responsibility, but because the relocation exceeded the legal limits of that responsibility.[78]

CASE NOTE 77 | NL | Supreme Court | ECLI:NL:HR:2021:1513
15 October 2021

The Dutch Supreme Court held that even a parent with sole custody is required to promote the child's relationship with the other parent. A relocation abroad that effectively eliminated contact with the father could therefore justify restrictions on the mother's freedom of movement, including a relocation ban or a move-back order.

Parental agreements may create rights of custody when they regulate residence or relocation, even if not incorporated into a court order. "Rights of custody" under Articles 3 and 5 are interpreted broadly and may arise not only directly from statutory custody rules but also from binding agreements between parents approved or made in the context of family proceedings. Even if such an agreement is not incorporated into a formal custody order, it can create a custodial right – particularly when it explicitly regulates decisions about the child's residence abroad. If one parent

[78] The issue is discussed, with reference to differing German views, in Austrian Supreme Court, ECLI:AT:OGH0002:2021:E125250. The decision refers to Pape, *Internationale Kindesentführung*, 55 ff, for the view that an expressly allocated right to determine residence may in principle exclude wrongfulness, but not where relocation would so seriously impair the other parent's remaining custody rights that they can no longer be exercised. It also refers to Hausmann, *Internationales und Europäisches Familienrecht*, Art. 3 Hague Convention, §§97–98, for the stricter view that, where the other parent retains joint custody, relocation abroad should generally be treated as wrongful unless expressly authorised, and to Heiderhoff in *Münchener Kommentar zum BGB*, Child Abduction Convention, Art. 3, fn 15, for German case law on relocation by a parent with residence-determination rights where the move makes the other parent's contact practically impossible.

removes the child across borders in breach of that agreement, the removal will be considered *wrongful*.

CASE NOTE 78 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2020:1627
5 August 2020



The parents had agreed during their divorce proceedings that the mother would not remove or permanently relocate the child outside Ghana without the father's prior notice and consent. Although this relocation clause was not formally included in the Ghanaian court's divorce decree, the Dutch Court of Appeal held that the agreement was binding between the parents. Consequently, the mother required the father's consent before moving the child to the Netherlands. Since such consent was not given, the child's retention in the Netherlands was found to be wrongful within the meaning of Article 3 of the 1980 Convention.

Rights of custody may not automatically arise from the marriage of the parents. They could instead depend on other legal mechanisms, such as acknowledgment of the child under the applicable national law. If the marriage is invalid or unregistered, courts must look to alternative legal bases under the law of the child's habitual residence – such as acknowledgement of paternity, registration on a birth certificate, or actual cohabitation rules. What matters is not the marital status itself but whether the parent has acquired legal parental authority under the relevant national law.

CASE NOTE 79 | NL | The Hague Court of Appeal
ECLI:NL:GHSGR:2012:BV7607
22 February 2012



The parents in this case had married in an Islamic ceremony in Italy, but under Italian law, such a marriage only produces legal effects if registered in the civil registry. Since there was no proof of registration, the marriage had no civil effect and could not itself give the father rights of custody. The court, therefore, had to examine whether custody rights arose in another way under Italian law. Italian law provides that parental authority belongs to the parent who acknowledges the child. Where both parents acknowledge the child and live together, they exercise parental authority jointly. In this case, the children's birth certificates listed the father, and the children bore his surname – both clear evidence of acknowledgement. Because both parents had acknowledged the children and lived together as a family, the father acquired joint parental authority, even without a valid civil marriage.

2.5.C. Step 3: classify rights under the autonomous Convention standard

> *46. Perhaps one day, the problem will disappear. All member states will accord equal parental responsibility to all parents, with universal rights of veto, and all will regard these as rights of custody. There is a general trend towards shared parental authority - and even shared parenting - after separation and divorce, but it is not universal […] Particularly when a country first accedes to the Convention, it may be useful in cases of doubt to obtain an authoritative ruling on the content and effect of their law.*

Opinions of the Lords of Appeal for Judgment in the Cause in re D (a child) [79]

After determining the rights the parent held under the applicable domestic law, the court must assess whether those rights qualify as "rights of custody" within the autonomous meaning of the 1980 Convention. This step is governed not by national law, but by the Convention itself, as defined in Article 5(a).

Custody is an autonomous 1980 Convention concept that must not be interpreted by reference to domestic family law categories. The HCCH Special Commission emphasised that the core concepts of the Convention, including "rights of custody", are autonomous Convention concepts and should not be interpreted solely by reference to domestic family law categories. Consequently, domestic labels such as "custody," "parental authority," or "parental responsibility" are not decisive but rather whether those rights, as a matter of their actual content, include the power to decide on the child's place of residence. Their meaning derives from the definitions, structure and objectives of the Convention itself.[80]

CASE NOTE 80 | ES | Malaga Provincial Court | ECLI:ES:APMA:2026:19
28 January 2026

The court noted that the concept of custody under the 1980 Convention and Brussels IIb is broader than the Spanish domestic concept of 'guarda y custodia', which refers only to day-to-day care and is treated as legally separate from the power to decide the child's place of residence. That latter power – the right to determine where the child lives – is in Spanish law an attribute of 'patria potestad', exercised jointly by both parents as a matter of course. The court held that it is precisely this power, the right to decide on the child's place of residence, that the Convention captures under "rights of custody" within the meaning of Article 5, and that Brussels IIb Article 2(2)(9) confirms the same scope.

Access rights do not amount to custody even if relocation affects contact, if they do not include authority over the child's place of residence. The Convention draws a strict line between rights of custody and rights of access, treating custody as an autonomous concept under Article 5(a). While national law determines which rights a parent holds, the question of whether those rights amount to "custody" for Convention purposes is governed by the Convention itself.

The 1980 Convention protects those rights that include authority over the child's place of residence, in particular the power to determine or to participate in decisions concerning relocation. Rights that are limited to contact or access (even if legally enforceable under domestic law) do not amount to rights of custody for the purposes of Article 3. The court must therefore translate the domestic-law rights into the Convention's autonomous categories and determine whether their breach renders the removal or retention wrongful.

[79] Opinions of the Lords of Appeal for Judgment in the Cause in re D (a child) [2006] UKHL 51.
[80] See, for example, *Seventh Meeting of the Special Commission on the Practical Operation of the 1980 Convention and the 1996 Child Protection Convention*, Preliminary Document No. 6 (July 2017), Table of Conclusions and Recommendations of previous Special Commission meetings, referring to the 1993 Special Commission <https://assets.hcch.net/docs/a093695a-5310-42df-92bb-068abfde67c2.pdf> p 3.

CASE NOTE 81 | **AT** | **Supreme Court**
ECLI:AT:OGH0002:2012:0060OB00073.12X.0419.000
19 April 2012

The father applied for the child's return after the mother moved with the child to Tyrol. Under the Portuguese custody order, however, the mother had sole custody, while the father had only visitation rights, which he exercised whenever possible. The Austrian Supreme Court held that the return mechanism was not available. Article 3 requires a breach of rights of custody, including the right to determine the child's place of residence. Since the father did not have custody or a right to determine the child's residence immediately before the removal, the mother's move did not breach his custody rights. The fact that the move interfered with his access rights was not enough to make the removal wrongful under Article 3.

Conversely, a right of veto over the child's removal from the State of habitual residence – a "ne exeat" right – qualifies as a "right of custody" under Articles 3 and 5(a), even where its holder has no day-to-day care of the child and even where domestic law does not label the right as "custody." The power to consent, or to withhold consent, to the child's departure from the country is functionally a right to participate in determining the child's place of residence as between States and therefore falls within the autonomous Convention concept. This is the settled position of the leading appellate courts of the Contracting States and reflects the view consistently endorsed by the HCCH Special Commission. The practical consequence is significant: a parent holding only access rights *plus* a statutory or court-ordered veto over international relocation can invoke the return mechanism, whereas a parent with access rights alone cannot (see Case Note 81 above) – and a parent with joint parental authority that does *not* include such a veto under the applicable law cannot either (see Case Note 86 below).

CASE NOTE 82 | **UK** | **House of Lords** | Re D (A Child) | [2006] UKHL 51
16 November 2006

In return proceedings concerning a child removed from Romania, the House of Lords examined whether the father's rights under Romanian law included a right of veto over the child's removal from the jurisdiction. Baroness Hale held that a right of veto over the child's leaving the country – a *ne exeat* right – does amount to a "right of custody" for Convention purposes, because it gives its holder a say in where the child lives, at least as between one country and another. On the facts, however, an Article 15 determination from the Romanian courts established that the father held no such veto under Romanian law: his rights were limited to access and to being consulted, and the removal was therefore not wrongful. The decision illustrates both halves of the rule – the *ne exeat* right qualifies as custody in principle, but its existence under the law of the habitual residence must be positively established.

CASE NOTE 83 | **US** | **Supreme Court** | Abbott v. Abbott | 560 U.S. 1 (2010)
17 May 2010



A Chilean court had granted the mother daily care of the child and the father visitation rights; by operation of Chilean statute, the father additionally held a *ne exeat* right requiring his consent before the child could leave Chile. The mother removed the child to the United States without that consent. The US Supreme Court held that the father's *ne exeat* right constituted a "right of custody" within the meaning of Articles 3 and 5(a): the power to consent – or to withhold consent – to the child's departure from the country is a right "relating to the care of the person of the child" and, in particular, a right to determine, jointly, the child's place of residence as between States. The removal in breach of that right was therefore wrongful, and the return mechanism was engaged. The Court expressly relied on the international consensus among Contracting States in reaching this interpretation.

Therefore, the breach of access or accommodation rights alone does not constitute wrongful removal or retention. The Perez-Vera Report in §65 explains that the Convention deliberately limits the concept of wrongful removal or retention to breaches of rights of custody, while rights of access are protected through a separate mechanism under Article 21 of the 1980 Convention and do not trigger the return procedure. The CJEU has also clarified that breach of access and accommodation rights does not fall within the concept of wrongful removal or retention.[81] (C-376/14 PPU C v M, §61)[82]

CASE NOTE 84 | **NL** | **The Hague Court of Appeal**
ECLI:NL:GHDHA:2023:2113
11 October 2023



The father argued that his access rights under Turkish law should be interpreted as conferring authority over the children's primary residence. He suggested that, taken together, the Turkish provisions on parental authority and contact rights implied that even a parent without custody must be consulted before a child can be moved abroad. The Court rejected this reasoning. It noted that the legal opinion itself confirmed that, at the relevant moment, the mother held sole parental authority under Turkish law and was entitled to travel abroad with the children. The Court emphasised that parental authority under the 1980 Convention must be interpreted autonomously and in line with its object and purpose. The mere possession of access rights does not amount to a right of custody within the meaning of Article 3, even if the exercise of access is affected by the child's relocation.

Entrusting a child to a relative or third party for substitute or alternative care does not automatically confer rights of custody in the sense of Art. 5(a). Care orders may cover the child's day-to-day welfare and the management of their property, but unless the order expressly includes authority over residence, they do not amount to custody rights in the sense of the Convention.

[81] This interpretation is also reflected in the practice of the Hague Conference, which has recognised that a right of access combined with authority to determine the child's residence may amount to a right of custody within the autonomous meaning of the Convention. See for example HCCH, *Table of Conclusions and Recommendations of previous Special Commission Meetings*, Prel. Doc. No 6 of July 2017, referring to 2011 SC C&R No 45. <https://assets.hcch.net/docs/a093695a-5310-42df-92bb-068abfde67c2.pdf>.
[82] Judgment of 9 October 2014, *C v M*, Case C-376/14 PPU, ECLI:EU:C:2014:2268.

CASE NOTE 85 | NL | Court of Appeal 's-Hertogenbosch
ECLI:NL:GHSHE:2010:BM5997
27 May 2010

A Slovak court entrusted the substitute personal care of a child to his grandmother after the father's detention. The order specified that the grandmother was responsible for the child's personal care and property management. However, as the Dutch court noted: *"Neither the decision on page 1 nor elsewhere in the judgment stipulates that the grandmother has the right to decide on [minor son]'s residence. The aforementioned decision only shows that the grandmother is obligated to provide personal care for [minor son] and to manage his property. Therefore, the judgment does not show that the grandmother has the right to decide on [minor son]'s residence."* This distinction proved decisive. Because the grandmother's rights did not extend to decisions about residence, the mother's removal of the child from Slovakia to the Netherlands did not violate the grandmother's custody rights. Even though the grandmother lost the ability to provide daily care, this did not make the removal "wrongful" under Article 3 of the Convention.

CASE NOTE 86 | NL | The Hague District Court | ECLI:NL:RBDHA:2024:3862
19 March 2024

A child habitually resident in Moldova moved to the Netherlands with the mother. Both parents held joint parental authority. The father argued that the mother's move without his consent was a wrongful removal. The Dutch court examined Moldovan family law, which provides that the parent with whom the child habitually resides may move with the child—within Moldova or abroad—without the other parent's consent, provided that the parent ensures continued contact and information exchange. Under Moldovan law, the mother was therefore authorised to relocate without the father's consent, subject to the applicable obligations concerning contact and information. Although the father held joint parental authority, the relocation did not breach the custody rights he held and was therefore not wrongful under Article 3.

Civil status (e.g., name, registry entries) evidences parentage; but unless the law of the State of habitual residence attaches parental responsibility to those status facts, they do not, alone, establish "rights of custody" under Article 3. A child's civil-status elements – such as carrying a parent's surname, being listed on a birth certificate, or being recognised as a child of that parent – do not in themselves create rights of custody under Article 3 of the 1980 Convention. Custody is determined exclusively by the law of the child's habitual residence and depends on whether the parent has acquired parental responsibility through the procedures prescribed by that law. Even when a child bears the father's family name or is legally acknowledged, this establishes only filiation, not custody. Unless the relevant domestic law provides that legal parentage automatically confers custody, a parent must still demonstrate that they have obtained parental responsibility through the required statutory mechanisms (e.g. registration, affidavit, court order, or parental agreement). Mere civil-status indicators cannot substitute for these legal steps.

CASE NOTE 87 | NL | The Hague District Court | ECLI:NL:RBDHA:2015:11488
6 October 2015

The father argued that because the child carried his surname, this proved that the required registration under Maryland law had taken place and that he therefore held joint custody. The court rejected this argument: Maryland law requires an affidavit of parentage and a subsequent custody application. The father could prove neither, and the surname did not amount to evidence of custody. The court concluded that the mother exercised sole custody, and therefore the father had no relocation-related decision-making rights under Article 3.

When custody is held by more than one person or institution, disagreements may arise about a child's relocation. One holder of custody rights may consent to the move, while another may object. The 1980 Convention resolves this by protecting the rights of all custody holders equally: a removal or retention is considered wrongful if it breaches the rights of even a single holder. The consent or acquiescence of one holder of custody rights cannot override the objection of another. This means that, in shared custody arrangements, a parent cannot rely on the approval of one authority or co-holder while disregarding the rights of another. For practitioners, the decisive point is that the wrongful character of the removal exists as soon as one holder of custody rights 's rights were violated, and that holder of custody rights is entitled to request the child's return under the Convention.

2.5.D. Unmarried fathers and "inchoate" rights of custody

> *"68 .[…] In fact, Mr McB. asks the Court to provide an interpretation to the effect that he can obtain from the ECHR inchoate rights of custody, unknown to the law of the Member State concerned, which can be enforced, ex post, against the mother and which therefore restrict, ex post, her rights of custody, recognised by the law of the State [83]concerned. That is not possible."*
>
> *Advocate General Jääskinen, View in J. McB. v L.E., C-400/10 PPU*

"Inchoate rights of custody" are claimed custody rights that have not been formally granted or expressly recognised under the applicable law. The person asserting them has nevertheless assumed a parental or custodial role and argues that this factual position has sufficient legal content to qualify as custody for the purposes of the 1980 Convention.

The doctrine is not based merely on biological parenthood, cohabitation or occasional participation in the child's care. It has been used mainly where the person holding the formal custody rights has abandoned the child or delegated the child's primary care to another person, who has taken on the responsibilities and decision-making powers of a parent. It remains recognised in some common-law case law, most clearly in the United Kingdom, although it is not accepted uniformly across Contracting States.

In EU child-abduction cases, an unmarried father's biological relationship with the child and factual involvement in the child's care do not, by themselves, create rights of custody. Where the applicable law requires an agreement, registration or court order for an unmarried father to acquire parental responsibility, the mere possibility that he could have obtained such rights before the removal is not sufficient. The autonomous meaning of "rights of custody" determines whether the content of an existing national-law right qualifies as custody for Convention purposes; it cannot create a right that the applicable law did not confer.[84] Therefore, where national law requires an

83 View of Advocate General Jääskinen delivered on 22 September 2010, *J. McB. v L.E.*, Case C-400/10 PPU, ECLI:EU:C:2010:544.
[84] See P. Jiménez Blanco, 'Unmarried Fathers and Child Abduction in European Union Law' (2012) 8 *Journal of Private International Law* 135, p 139–157. The author criticises this approach also adopted in *McB*, arguing that the possibility for an unmarried father to apply for custody before removal does not remove the disadvantage created where the mother acquires custody automatically but the father must take additional

agreement, registration or court order for the father to acquire parental responsibility, that step must have been completed before the relevant removal or retention. A potential or "inchoate" right that could have been obtained before the removal is therefore not sufficient, and a right acquired afterwards cannot retrospectively make the removal wrongful.[85]

The timing of the acquisition of custody rights is therefore decisive. If the father had not acquired those rights before the removal or retention, he cannot claim that the act was wrongful on the basis of rights acquired only afterwards.[86] Where he had neither acquired rights of custody before the removal or retention nor falls within any recognised category of inchoate custody rights, the 1980 Convention return mechanism is unavailable to him on that basis. He may instead need to seek parental responsibility or contact through the court having jurisdiction over those matters.

CASE NOTE 88 | **CJEU** | C-400/10 PPU
5 October 2010

The father and mother had lived together for more than ten years and had three children. The father had participated in the children's upbringing. Under Irish law, however, an unmarried father did not acquire rights of custody automatically. He could acquire such rights by agreement with the mother or by obtaining an order from the competent court, but he had done neither before the mother removed the children from Ireland. The father argued, in substance, that his biological relationship with the children, his long cohabitation with the mother and his active involvement in their upbringing should be treated as giving him inchoate rights of custody, even though Irish law had not formally attributed custody rights to him. The CJEU rejected that argument. It held that, although "rights of custody" is an autonomous EU-law concept, the identity of the person holding those rights depends on the law of the State in which the child was habitually resident immediately before the removal. The autonomous definition determines whether the content of an existing right qualifies as custody, particularly whether it includes the right to determine the child's place of residence. It does not create a custody right in favour of a person to whom the applicable law attributed none.

The absence of rights of custody does not mean that the relationship between an unmarried father and his child falls outside the protection of Article 8 ECHR. Family life and rights of custody are distinct legal concepts. A father may enjoy protected family life with the child while lacking the specific legal authority required to invoke the return mechanism under Article 3 of the 1980 Convention. The protection of family life therefore does not, by itself, transform contact, biological parenthood or factual caregiving into rights of custody for the purposes of the Convention.[87]

legal steps. She further argues that greater weight should be given to the Convention's autonomous and flexible concept of custody, including, in appropriate cases, inchoate rights of custody.

[85] In In the matter of K (A Child) (Northern Ireland) [2014] UKSC 29, §§58–59, the UK Supreme Court confirmed, by majority, that the doctrine of inchoate rights of custody continues to exist in UK Convention case law after *McB*, but only in a strictly limited category of cases. Such rights may arise where a person has assumed the responsibilities and powers of the child's primary carer, does not share those responsibilities with the legal custody-holder, and the legal custody-holder has abandoned the child or delegated primary care to that person. The Court distinguished *McB* because the unmarried father in that case had, at most, shared the children's care with their mother; he had not been delegated primary care and had not acquired a legally recognised custodial position before the removal.

[86] For a more permissive (and potentially problematic) approach to later-established parentage, see Bulgarian Supreme Court of Cassation, Decision No 639 of 30 October 2024, civil case No 2238/2024, Third Civil Division. The Court reopened return proceedings after the applicant was subsequently judicially established as the child's biological father and entered in the birth register. Although it did not itself hold that he possessed rights of custody, it treated the later paternity judgment and his prior care of the child as relevant to a renewed Article 3 assessment. This is compatible with Article 3 only if the later judgment proves that rights of custody had already arisen under the applicable law at the time of removal; it cannot retrospectively create rights acquired only afterwards.

[87] See further P. Jiménez Blanco, 'Unmarried Fathers and Child Abduction in European Union Law' (2012) 8 *Journal of Private International Law* 135, 142–146; *Guichard v France*, App. No. 56838/00, decision of 2 September 2003; *Balbontin v the United Kingdom*, App. No. 39067/97, decision of 14 September 1999. The cases concerned access to the 1980 Convention return mechanism and should not be read as denying that an unmarried father may enjoy family life protected by Article 8 ECHR.

2.6. Actual exercise of rights of custody - Article 3(b)

Article 3

The removal or the retention of a child is to be considered wrongful where –

a) it is in breach of rights of custody [...] and

b) at the time of removal or retention ***those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.***

This second requirement is a practical filter. The 1980 Convention does not protect custody rights that exist only on paper: a return order is justified only where the left-behind parent was, in real life, exercising parental responsibility in relation to the child. This approach reflects the purpose of the Convention. Where custody rights exist only in theory, with little or no real exercise, ordering the child's prompt return does not protect the child's fundamental interests. The Convention is designed to restore a real pre-removal family situation, not to revive dormant or abandoned custody claims.

At the same time, the threshold for showing actual exercise is low. Courts interpret the concept broadly and flexibly. Limited involvement, unequal caregiving or imperfect parenting will not ordinarily establish non-exercise. The decisive question is whether the custody-holder continued to take a genuine and practical interest in the child's life.

"Actual exercise" is not defined in the 1980 Convention. Courts, therefore, look at the facts of family life immediately before the removal. *The key question is: Was the parent genuinely involved in the child's care, upbringing, or welfare at that time?* What matters is whether the parent maintained a real parental role, for example, through care, decision-making, regular contact, or other ordinary acts of parental responsibility, or was prevented from doing so by the removal itself.

In his Opinion in Case C-262/21 PPU (§§46-48), Advocate General Pikamäe addressed the meaning and function of the requirement of "actual exercise of custody rights" in the context of wrongful removal or retention:[88]

- The requirement of actual exercise serves to exclude situations where custody exists only in theory, with little or no real parental involvement.
- The assessment must be carried out case by case, on the basis of the concrete family situation prior to the removal.
- "Actual exercise" must be understood broadly and does not require cohabitation or day-to-day care, provided the parent remains concerned with the child's care.

[88] *Opinion of Advocate General Pikamäe, delivered on 14 July 2021, A v B, Case C-262/21 PPU, ECLI:EU:C:2021:592, paras 46–48.*

— A parent may be regarded as exercising custody even if the child and parent do not live together, where this is explained by valid reasons.

— Referring to the Opinion of Advocate General Saugmandsgaard Øe in UD, a parent who does not in fact look after the child forms part of the child's family environment only insofar as regular contact is maintained.

— The criterion must be applied prudently and rigorously to prevent reliance on purely nominal or abandoned custody rights.

The actual exercise of custody rights is not a purely factual question and should be assessed by reference to the law of the child's State of habitual residence. The requested court should therefore start from the legal position under that law, rather than from its own domestic family-law standards, and then examine whether the applicant was actually exercising the custody rights relied upon at the time of the removal or retention (see also Case Note 95).

CASE NOTE 89 | **HU** | **Supreme Court** | Pfv.II.21.536/2021/5
8 February 2022

The mother removed the child from the State of habitual residence to Hungary without the father's knowledge or consent. In the return proceedings, she argued that the father had not actually exercised custody rights, relying on the limited and indirect nature of his contact with the child. The Court rejected the argument. It held that, under the 1980 Convention, the content of custody rights is determined by the law of the child's State of habitual residence, not by the substantive family law of the requested State. It then stated in §52 that the assessment of actual exercise should start from that legal position. On the facts, the father had recognised parental responsibility, court-regulated contact, pending proceedings concerning parental responsibility, and had not consented to the removal.

The issue of the exercise of custody rights appears again in Article 13, but in a different procedural role. While Article 3(b) requires the applicant to establish, as a condition of wrongfulness, that custody rights were actually being exercised at the time of removal, Article 13(1)(a) allows the respondent to resist return by proving the contrary – that those rights were not in fact exercised. The burden of proof is therefore reversed at this stage. As explained in the Perez-Vera Report (§73), the Convention is based on the presumption that the person who has care of the child normally exercises custody; consequently, if the abducting parent wishes to rely on non-exercise, it is for them to rebut that presumption. In practice, this defence succeeds only where the applicant had abandoned the exercise of custody rights before the removal. The detailed discussion on this dual function and the different procedural roles of the requirement of "exercise of custody rights" under Articles 3 and 13 can be found in Chapter 2.6.B.

2.6.A. Presumption of actual exercise

The 1980 Convention presumes that the parent is exercising custody. The left-behind parent only needs to provide preliminary evidence of actual exercise; the burden then shifts to the taking parent, who must prove that custody was not exercised if they want to resist return. As the Pérez-Vera Report (§73) explains: *"Thus, we may conclude that the Convention, taken as a whole, is built upon the tacit*

presumption that the person who has care of the child actually exercises custody over it."[89] The standard is flexible but requires concrete evidence of engagement; custody cannot remain a purely nominal right. For details on burden of proof, see Chapter 5.4.B.

The *reasons behind a lack of exercise* (such as illness, detention, or family arrangements) are not decisive. The 1980 Convention asks whether custody rights were being effectively exercised at the time of removal, not why they were not; they may nevertheless be relevant in determining whether apparently limited involvement amounted to continued exercise of custody.

Living in the same house with the children presumes effective exercise. For Article 3(b) of the 1980 Convention, when parents and child live together in the same household, this normally *presumes* that custody rights are being actually exercised. In such a situation, the parent does not need to prove daily caregiving tasks to establish exercise of authority. Cohabitation itself indicates that the custody-holder is participating in the child's life and is in a position to represent the child's interests in accordance with the content of the custody right.

CASE NOTE 90 | NL | The Hague District Court | ECLI:NL:RBDHA:2016:4758
2 May 2016

The mother argued that the father had not actually exercised custody because she performed nearly all daily care. The court rejected this argument, noting that the family had been living together with the children until the removal. Cohabitation was sufficient to establish actual exercise: the father's physical presence in the shared household meant he was participating in family life and jointly exercising parental authority. The mother's claim that she handled most caregiving duties did not displace this presumption.

2.6.B. What actual exercise requires?

> *"'In my view, art. 3(b) must be construed widely as meaning that the custodial parent must be maintaining the stance and attitude of such a parent, rather than narrowly as meaning that he or she must be continuing to exercise day-to-day care and control. If the narrow meaning was adopted, it could be said that a custodial parent was not actually exercising his or her custodial rights during a period of lawful staying access with the non-custodial parent. That, as it seems to me, cannot be right."*
>
> *Lord Brandon in Re H ; Re S (Minors) (Abduction: Custody Rights) [1991] 2 AC 476*[90]

Actual exercise requires real engagement with the child, not mere formal custody. Under Article 3(b), a parent formally holding custody must also actually exercise that custody at the moment of removal. This does not require day-to-day care or co-residence, but it *does* require that the parent shows, through concrete behaviour, that they remain involved in the child's life, take an interest in the child's welfare, and act consistently with the responsibilities inherent in custody. A parent who, over a prolonged period, fails to maintain contact, declines involvement in key aspects of the child's life, does not respond to invitations or important events, refuses cooperation on basic parental matters

[89] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction*.
[90] UK House of Lords, *Re H.; Re S. (Abduction: Custody Rights)* [1991] 2 AC 476, [1991] 3 All ER 230, [1991] 2 FLR 262, [1991] Fam Law 427.

(e.g., passports, school contact), and takes no meaningful steps to repair the relationship, may be found not to be "actually exercising" custody, even if they technically still hold parental authority under domestic law.

CASE NOTE 91 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2023:1566
4 August 2023

Both parents formally held parental authority under Spanish law. However, the father had not meaningfully participated in the child's life for several years. After moving 400 km away, he made no practical effort to continue the shared care arrangement, rarely responded to the child's or mother's invitations, declined to attend key school events, maintained only sporadic and poorly handled email contact, refused permission for the child's passport (causing litigation), and informed the child very late about significant family events such as the birth of a sibling and his own surgery. The court found that these patterns showed the father had long ceased to exercise custody in any real sense. Because he had not shown active involvement in the child's life or acted in a manner consistent with parental responsibility, he was not "actually exercising" custody at the time of the mother's move. As a result, the removal was not wrongful under Article 3(b).

For the purposes of Article 3(b) of the 1980 Convention, custody is "actually exercised" when the parent engages in any normal, day-to-day acts of parental involvement. The threshold is low: the parent need not prove perfect parenting, extensive contact, or optimal involvement. Allegations of inadequate parenting, limited cooperation, or imperfect communication are insufficient to show that custody was not being exercised. What matters is whether the parent continued to perform ordinary parental responsibilities, or attempted to do so, at the time of removal.

CASE NOTE 92 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2024:1981
23 September 2024

The father claimed that the mother was not exercising her custody rights because she allegedly showed little interest in the children's wellbeing. He pointed to a hospital visit after a suspected seizure and argued that her absence showed she was not acting as a custodial parent. The mother countered with concrete evidence: she had taken the child to a neurologist shortly after the incident and had maintained regular contact and involvement. The court accepted her explanation and held that these ordinary parental actions were enough to demonstrate actual exercise. The father had not shown that she had abandoned or failed to perform basic parental responsibilities, so Article 3(b) was satisfied.

Custody rights may still be considered actually exercised even if the other parent performs most of the child's daily caregiving because the parent works outside the home. The fact that one parent assumes the primary day-to-day care does not mean that the other parent has ceased exercising custody rights, provided that the latter remains part of the child's life and continues to assume parental responsibility.

CASE NOTE 93 | **NL** | **The Hague Court of Appeal** | ECLI:NL:GHDHA:2024:103
25 January 2024

The mother argued that the father had not actually exercised custody rights because she had carried out almost all day-to-day care for the children. She claimed that the father was rarely at home due to work and was not actively involved in their upbringing. The court rejected this argument. It found that the father lived in the same household as the children in France and remained part of their daily life. Although he spent much of his time working, he was the family's main breadwinner and provided financially for the children's care and upbringing. The court held that this was sufficient to show that he had not abandoned his parental responsibility and had therefore actually exercised his custody rights. The mother's reliance on Article 13(1)(a) was therefore rejected.

The assessment of whether rights of custody were "actually exercised" does not involve any comparison between the parents. Under Article 3, the court is not required (and is not permitted) to evaluate which parent was the primary caregiver, whose care was more intensive, or whether one parent's involvement was of higher quality than the other's – these are related to the parental capacities of the parents and fall within the custody issues. The concept of "exercise" refers to the factual exercise of custody rights, even at a minimal level. Arguments based on comparative caregiving roles or alleged deficiencies in the other parent's care are not relevant at this stage and should not affect the assessment of wrongfulness.

CASE NOTE 94 | **CZ** | **Constitutional Court** | II. ÚS 3345/20
8 April 2021

The children are retained in the Czech Republic from Italy. The mother argued that she had been the children's primary caregiver and that the father had played only a limited role in their day-to-day upbringing. She relied on this to contest the finding that the father had been exercising custody rights. The court rejected this line of reasoning as the purpose of the "exercise of custody rights" requirement is not to compare parental roles or to determine which parent provided more care, but simply to establish whether custody rights existed and were being exercised in fact. Since the father held rights of custody under the law of the State of habitual residence and had been involved in the children's lives, this threshold was met. The court therefore did not engage in any assessment of the relative quality or extent of each parent's care.

Custody rights may be actually exercised despite imprisonment. The actual exercise of custody rights within the meaning of Article 3 of the 1980 Convention does not require the parent's physical presence or day-to-day care of the child. A parent who is in pre-trial detention or serving a prison sentence may still be regarded as exercising custody rights if they remain involved in the child's life in a manner consistent with their legal authority – for example, by maintaining contact, giving instructions, or expressing consent or opposition to decisions concerning the child's residence or upbringing. Detention affects the parent's ability to care for the child personally but does not, in itself, interrupt the exercise of custody, provided that the parent continues to act, within the limits of detention, in a way that reflects ongoing responsibility and interest in the child's welfare. In such cases, contact with the child occurs indirectly, for example, through relatives who maintain communication with the parent.

CASE NOTE 95 | **DE** | **Munich Local Court** | 567 F 7440/21
23 September 2021



The father had been detained since 2017 and was serving a sentence of nine years and six months when the children were removed from Ukraine in 2020. The court held that imprisonment did not, in itself, prevent the exercise of custody rights and noted that, despite his detention, the father had continued to exercise custody before the removal. The children maintained contact with their paternal grandparents, who in turn maintained contact with the father by telephone. The court further emphasised that the concrete manner in which custody could be exercised while the father was imprisoned was a matter for the domestic law of the State of habitual residence.

Voluntarily leaving the child in the other parent's care may amount to non-exercise where the circumstances show a genuine relinquishment of the custodial role. Article 3(b) requires that the right of custody be actually exercised at the moment immediately preceding the alleged removal or retention, or that it would have been exercised but for those events. Where the applicant parent has placed the child in the care of the other parent, not as a result of obstruction, coercion, or the other parent's conduct, but through own voluntary act, this applicant may no longer satisfy the actual exercise requirement. The return mechanism is then not available to remedy the consequences of the applicant's own decision to relinquish actual care of the child.

CASE NOTE 96 | **PT** | **Supreme Court** | 5403/20.1T8LSB-A.L1.S1
8 April 2021



A mother holding sole legal custody of twin daughters under German law agreed with the father to relocate the family from Germany to Portugal in December 2019 to establish definitive residence. Following disagreements with the paternal family, the mother moved to a separate household and, in February 2020, left the children with the father and returned to Germany without notifying him. She subsequently filed a return application alleging wrongful retention in Portugal. The Supreme Court confirmed the refusal of return. It held that the initial relocation was consensual and therefore lawful. As to the alleged retention, the Court held that the mother had voluntarily surrendered actual exercise of custody by leaving the children in the father's care and returning to Germany. When she departed, she no longer had effective guard of the children – not because it had been taken from her, but because she had left them with the father herself. The Article 3(b) requirement that custody be actually exercised at the moment immediately preceding the retention was therefore not satisfied, and the return mechanism could not be invoked to remedy the consequences of her own decision to relinquish actual care.

A parent whose exercise of custody is limited by the other parent's obstruction is not, on that ground, deemed to have ceased exercising custody. Article 3(b) of the 1980 Convention protects both actual exercise and rights that "would have been so exercised but for the removal or retention". A parent who attempts to exercise custody but is obstructed – for example, by denial of contact, concealment of the child's location, non-cooperation on schooling or travel, or active interference with the parental relationship – continues to satisfy the requirement of actual exercise. The burden of establishing non-exercise lies on the respondent, and the respondent cannot rely on obstruction that they themselves have caused. A rule to the contrary would reward a parent for obstructing the other parent's exercise and then invoking that obstruction as evidence of non-exercise. Courts interpret actual exercise consistently with the purpose of the Convention: a parent has not failed to

exercise custody where the limitation is attributable to the conduct of the other parent rather than to the applicant's own disengagement.[91]

CASE NOTE 97 | **US** | **Sixth Circuit Court of Appeals** | Friedrich v. Friedrich
78 F.3d 1060
13 March 1996

A German father sought the return of his child to Germany after the mother had removed the child to the United States. Both parents held de jure joint custody under German law. The mother argued that the father had not actually been exercising custody rights because his contact with the child had been limited. The court rejected this argument. It held that a parent with de jure custody rights who attempts to maintain a regular relationship with the child exercises custody within the meaning of Article 3(b), and that the threshold for establishing non-exercise is high: nothing short of clear and unequivocal abandonment will defeat the requirement. Where a parent's contact has been limited by circumstances outside their control – including conduct of the other parent – the parent cannot be said to have ceased exercising custody. The court also observed that, once a court finds exercise, it should stop there: the Convention does not permit inquiry into whether custody was exercised well or poorly, as this would involve the court in merits issues reserved to the court of habitual residence.

A parent may be found not to be actually exercising custody rights where their role in the child's life is limited to occasional visitation, and they do not assume or intend to assume responsibility for the child's upbringing. Where the evidence shows that the parent neither participated in decisions concerning the child's care, residence, or development nor took practical steps to exercise parental authority, the custody right may be considered purely formal. In such circumstances, the return mechanism under Article 3 cannot be invoked, because the Convention protects the exercise of custody rights and not the mere possibility of visitation.

CASE NOTE 98 | **NL** | **The Hague Court of Appeal**
ECLI:NL:GHSGR:2010:BM5037
27 May 2010

A father requested the return of his child to Poland after the child remained in the Netherlands beyond the agreed period of stay. Although he formally held parental authority under Polish law, the court found that he had played no meaningful role in the child's upbringing. He had not participated in decisions concerning the child's residence or welfare, had not exercised the visitation arrangements that had been established, and could not explain how he would assume responsibility for the child's care if the child returned to Poland. The court concluded that the father was effectively seeking to maintain visitation contact rather than to exercise custody. Because the Convention's return mechanism does not serve to enforce access rights, the court held that the requirement of actual exercise of custody rights was not satisfied.

[91] On the interpretation of Article 3(b) and the actual exercise of custody rights, including the interaction with the "would have been so exercised but for" clause, see also N Swinkels, *A Consistent Interpretation and Application of Articles 3 and 13 of the Hague Child Abduction Convention in the United States and the Netherlands: A Matter of Vigilance* (Doctoral Thesis, Tilburg University 2022), available at <https://research.tilburguniversity.edu/files/60462019/Bibliotheek_Nathalie_Swinkels_14_January_2022.pdf>.

CASE NOTE 99 | AT | Supreme Court
ECLI:AT:OGH0002:2024:0060OB00060.24B.0515.000
15 May 2024



The father had joint custody under Turkish law, but he had expelled the mother and their 13-month-old child from the family home and sent them to relatives 400 km away. For the next five months, he made no meaningful effort to maintain contact with the child or participate in the child's life. Even after an earthquake emergency, he did not offer accommodation or take concrete steps for the child's safety. The Court held that the father had not actually exercised custody. At the same time, it clarified that actual exercise is not denied merely because the child lives with the other parent after separation; the decisive question is whether the applicant parent showed practical interest in participating in the child's life before removal.

Payment of a share of the child's expenses may not, in itself, satisfy the requirement of actual exercise of custody rights. Financial contribution alone may be insufficient to establish actual exercise where it is not accompanied by meaningful parental involvement. The adequacy of such a contribution must be assessed in context, taking into account the general cost of living in the State of habitual residence and the proportion of the child's actual needs that the contribution covers.

CASE NOTE 100 | BG | Sofia Court of Appeal | 20251000501831
9 October 2025



The father argued that he was actually exercising custody rights because he contributed one third of the costs of the child's nursery in the United Kingdom and maintained online contact with the child at weekends. The court rejected this argument. It held that payment of a share of childcare expenses did not, in itself, satisfy the requirement of effective exercise of parental rights, particularly given the high cost of living in the United Kingdom. Nor did the father's sporadic and short online contacts on Saturdays and Sundays amount to effective exercise. The court concluded that the father had not been actually exercising custody rights at the relevant time within the meaning of Article 3(b) of the 1980 Convention.

2.6.C. What actual exercise does not require?

The Convention does not require a parent to be living continuously with the child or to be the primary caregiver in order to be deemed as "exercising" custody rights. Even periods of absence from the marital home, such as during marital conflict, do not automatically negate actual exercise. What matters is whether there is evidence that the parent continued to hold and act upon custody rights in practice. Courts will look at the parent's overall involvement and recognition by the other parent at the time of removal, not at later strategic claims.

CASE NOTE 101 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2016:1714
15 June 2016



The mother argued that the father had not exercised custody rights because he no longer lived in the marital home and allegedly never played a role in the children's upbringing. The court rejected this, noting that temporary absence due to marital difficulties was insufficient to conclude non-exercise.

Actual exercise does not require performing daily care tasks. The Convention does not require hands-on, equal, or shared daily care. It is sufficient that the parent lives with the child, participates in family life, and fulfils parental responsibilities appropriate to the family's division of roles – including being the primary breadwinner. Actual exercise is negated only where the parent has abandoned the child or ceased all meaningful involvement.

CASE NOTE 102 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2021:2413
29 November 2021

The child was living with both parents in Sweden. The mother argued that the father was not "actually exercising" custody because he worked full-time, spent little time on daily care, and left almost all routines to her. The court rejected this argument. It held that the family had lived together as a unit from the child's birth until the removal, and the father, as the primary breadwinner, was fully involved in the child's life in a manner consistent with the family's internal division of roles. Daily hands-on care was not required. His custody rights were therefore being exercised at the time of removal.

When custody rights within the meaning of Article 3(b) of the 1980 Convention are exercised by an institution, actual exercise does not require that the institution provide the child's daily care or upbringing itself. It is sufficient that the institution demonstrates active responsibility for the child's welfare in accordance with the content of the custody rights entrusted to it. This may include organising the child's care, making arrangements concerning upbringing and contact, or supervising the implementation of those arrangements by others. Custody may therefore be exercised indirectly where the institution entrusts the child's daily care to parents or other caregivers while retaining decision-making authority and oversight.

CASE NOTE 103 | NL | Supreme Court | ECLI:NL:HR:2006:AY7937
20 October 2006

After the parents' divorce, a German court withdrew parental custody from both parents and appointed the German youth welfare authority (Kreisjugendamt) as guardian of the children. The children continued to live with their mother, who later took them to the Netherlands. The mother argued that the authority had not actually exercised custody because it did not provide the children's daily care. The court rejected this argument. It found that the authority had prepared a care plan, held meetings with the parents concerning the children's upbringing, and sought to facilitate contact between the father and the children. These actions demonstrated that the authority remained actively responsible for the children's welfare and therefore exercised its custody rights within the meaning of Article 3 of the 1980 Convention.

2.7. The wrongfulness test and mechanisms for its determination - Article 3, 14 and 15

> ***Article 3***
>
> *The removal or the retention of a child* ***is to be considered wrongful where -***
>
> *a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and*
> *b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.*
>
> *[…]*

Article 3 is the legal gateway to the 1980 Convention. The Convention's return mechanism applies only if a child's removal or retention is wrongful as defined in this provision. If that threshold is not met, the return obligation under Article 12 is never triggered.

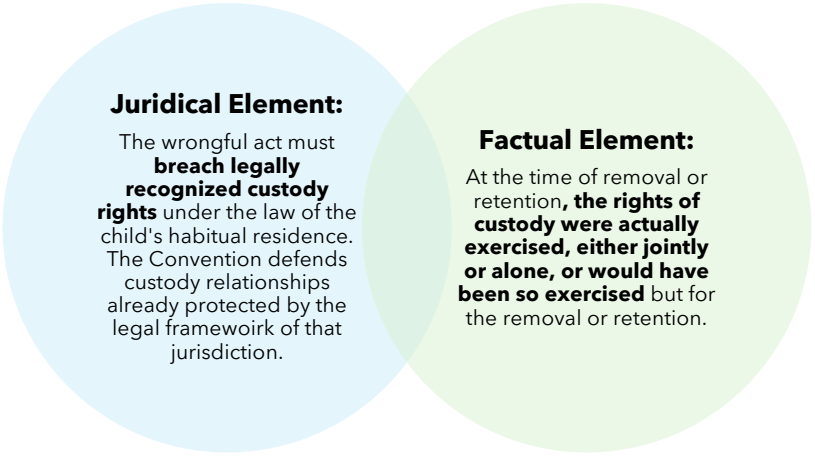
As the Pérez-Vera Report explains (§64), Article 3 identifies the core relationships the Convention seeks to protect: custody rights conferred under the law of the child's habitual residence, and the actual exercise of those rights at the time of removal or retention. These two elements—one legal, one factual—form the basis of the wrongfulness test.

A removal or retention is wrongful only if:

(1) it breaches custody rights recognized under the law of the child's habitual residence (juridical element), and

(2) those rights were actually being exercised at the time of removal or would have been but for the removal or retention (factual element).

Figure 4: Cumulative conditions for wrongful removal or retention under Article 3 of the 1980 Convention



Wrongfulness thus exists as a legal condition once the juridical and factual elements are met; it is not created by filing a return application. A removal or retention is wrongful where it breaches custody rights existing under the law of the child's State of habitual residence immediately before the removal or retention and those rights were actually exercised, or would have been but for the removal or retention. The fact that the left-behind parent has not initiated return proceedings under the 1980 Convention does not, by itself, mean that the removal or retention was not wrongful.

CASE NOTE 104 | **CJEU** | C-35/23
20 June 2024

The Court clarified that, for the purposes of Article 10 Brussels IIa, the wrongful character of a removal or retention is determined by reference to the infringement of rights of custody under the law of the child's former habitual residence, together with the requirement that those rights were actually exercised or would have been exercised but for the removal or retention. Wrongfulness does not depend on whether the holder of rights of custody has subsequently initiated return proceedings under the 1980 Convention. The Court rejected an interpretation making the use of the Convention return procedure a precondition for wrongfulness, stating that the definition "merely refers to an infringement of the rights of custody" and "does not therefore depend on the holder of rights of custody initiating proceedings."

To determine whether these elements are met, courts may use the mechanisms provided by the 1980 Convention. Article 8 requires the application itself to contain information about the grounds on which the return claim is based (on the requirements for filing an application, see Chapter 3.3.D). This provides the first evidentiary mechanism, before Articles 14 and 15 even engage. Further, article 14 allows for judicial notice of foreign law; Article 15 permits formal declarations from authorities in the State of habitual residence; and expert opinions may assist in clarifying custody rules under foreign law.[92]

These tools are integral to applying Article 3 in practice. However, they have limited function: to assist the requested authority in establishing the legal and factual basis of the case. None replaces the authority's task of resolving disputed facts, applying the Convention's autonomous concepts and deciding whether the removal or retention was wrongful.

The 2023 HCCH document on direct judicial communications explains that judges handling 1980 Convention cases may contact a foreign judge directly to clarify the content or interpretation of foreign law, particularly when it concerns custody rights relevant to the wrongful removal test under Article 3.[93] This informal communication can help ensure the requested court understands how custody is structured in the child's habitual residence, without needing to rely solely on expert opinions or formal declarations.

While Articles 14 and 15 of the 1980 Convention are independent mechanisms for determining whether a removal or retention was wrongful under Article 3, courts often engage them in a practical sequence. In most cases, Article 14 is applied first, allowing the court to take judicial notice of the law of the child's habitual residence. If the materials submitted under Article 14 (such as statutes, court orders, or official documents) are sufficient to establish the existence and exercise of custody rights, courts typically make their determination at that stage. This

[92] See HCCH, Tools available to ascertain whether a removal or retention is wrongful under the 1980 Convention (Arts 8, 14 and 15), Prel. Doc. No 14 of August 2023, <https://assets.hcch.net/docs/766ddbde-113a-46a7-b487-bd4e3201286a.pdf>, which outlines good practices such as using model forms, early Central Authority coordination, and attaching legal certificates under Article 8(2)(f).
[93] HCCH, *Document to inform lawyers and judges about direct judicial communications, in specific cases, within the context of the International Hague Network of Judges* (2023).

way, an Article 15 determination is unnecessary where the requested court considers itself sufficiently informed about the law of the child's habitual residence from the materials already before it. Only when Article 14 does not provide a clear answer (for example, if the foreign legal framework is ambiguous, disputed, or inaccessible), do courts turn to Article 15, which permits the requested court to seek a formal declaration from the authorities in the child's habitual residence confirming whether the removal or retention was wrongful.

CASE NOTE 105 | NL | The Hague District Court | ECLI:NL:RBDHA:2016:4931
9 May 2016

In a return case concerning a child habitually resident in Austria, the Dutch court was asked to determine whether the child's removal violated the father's custody rights. The applicant submitted Austrian legal provisions and a prior judgment showing that both parents had joint custody and that relocation required mutual consent. The court relied directly on the relevant Austrian legal provisions and decisions and determined that the removal was wrongful. Because the legal framework and custody status were clear, the court declared itself sufficiently informed and declined to request a formal declaration under Article 15.

Where national procedures under Articles 14 and 15 do not suffice to clarify the applicable custody law, courts may also rely on international assistance mechanisms. Notably, the European Convention on Information on Foreign Law (1968) obliges Contracting States to provide information about their own civil and family law upon request from a judicial authority of another Contracting Party.[94] Although not specific to the 1980 Convention, it can be a valuable procedural resource for judges seeking authoritative guidance on custody rights under foreign law—particularly in the absence of a formal Article 15 declaration or where expert opinions are difficult to obtain. The 1968 Convention ensures that such information, including statutory texts and relevant case law, can be shared efficiently and free of charge, without the need for recognition or formal mutual legal assistance processes.

Failure to identify and apply the correct law may result in a breach of Article 8 of the ECHR. Under Article 3, the wrongfulness of a child's removal or retention must be assessed exclusively by reference to the law of the State where the child was habitually resident immediately before the removal. Domestic courts may not substitute their own national law for the applicable foreign custody rules. This is not a technicality – it is a foundational requirement of the 1980 Convention's operation. As confirmed by the ECtHR, failure to apply the correct law may violate the procedural and substantive rights of the left-behind parent. When a court disregards the custody rights granted under the law of the habitual residence, it undermines the 1980 Convention's protective function and fails to respect the right to family life.

CASE NOTE 106 | ECtHR | R.S. v. Poland | App. No 63777/09
21 July 2015

The Polish courts refused the father's return request because, under Polish law, the mother could keep the children in Poland, and an interim Polish order granted her temporary custody. In doing so, they failed to apply Swiss law, which governed custody rights at the time of removal and required the father's consent for permanent relocation. The ECtHR held that ignoring the relevant foreign law rendered the father's lack of consent meaningless and resulted in an inadequate and unfair decision-making process, amounting to a violation of Article 8 ECHR.

[94] Council of Europe, *European Convention on Information on Foreign Law* (1968).

A refusal to consent to the child's move, even where it prevents the child from leaving the country under national law, does not in itself amount to "wrongful" conduct within the meaning of the 1980 Convention. The absence of consent may restrict the child's ability to travel, but it does not constitute an act of "keeping" the child. A mere disagreement between parents concerning the child's place of residence or cross-border movement, therefore, falls outside Article 3. The application of Article 3 presupposes the existence of a removal or retention attributable to the respondent. Where no such act exists, the wrongfulness test does not arise.

CASE NOTE 107 | **BG** | **Sofia City Court** | 20211100106344
22 May 2021

A mother travelled with her child to Bulgaria and later sought return to Switzerland, arguing that the father's refusal to consent to the child's departure amounted to wrongful retention. Under Bulgarian law, the father's consent was required for the child to leave the country, and in its absence, the child could not cross the border. The court nevertheless dismissed the application as inadmissible, holding that the situation did not fall within Article 3. The child was not being held by the father but was living with the maternal grandmother, following the mother's own actions. The father's refusal to provide consent, even though legally required for the child's departure, did not constitute an act of retention. The dispute concerned parental disagreement over travel and had to be addressed through domestic proceedings, not through the 1980 Convention.

Wrongful retention under Article 3 does not require proof that the retaining parent intended to retain the child unlawfully. Where the non-return breaches custody rights under the law of the child's habitual residence and those rights were actually exercised, the requirements of Article 3 are satisfied without separate proof of an intention to retain.

CASE NOTE 108 | **CY** | **Second Instance Family Court** | Appeal No. 22/2008
30 December 2008

The father argued that the mother had to prove not only breach of custody rights, but also his intention to abduct or unlawfully retain the child. The court rejected that argument. It held that Article 3 required proof that the child's removal or retention breached custody rights under the law of the child's habitual residence, and that those rights were being exercised or would have been exercised but for the removal or retention. On the facts, the mother had custody rights and parental responsibility under English law, and the child's residence had been fixed by the English court at the mother's address in England. When the father failed to return the child after the expiry of contact, that non-return breached the mother's custody rights and amounted to wrongful retention. No separate proof of an intention to abduct was required.

2.7.A. Judicial notice of foreign law and foreign decisions - Article 14

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take ***notice directly of the law of, and of judicial or administrative***

> ***decisions**, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.*

The 1980 Convention defines wrongfulness by reference to custody rights existing under the law of the child's habitual residence and to their actual exercise. This means that the court deciding the return application cannot determine wrongfulness by looking at its own domestic law. It must look outward and understand what the foreign law – the law of the habitual residence – says about who held custody rights, how those rights arise, and what they comprised. The entire assessment depends on that foreign legal framework. [95]

Without knowing what custody rights existed under that law, it is impossible to determine whether those rights were breached. Likewise, foreign decisions or administrative records may be directly relevant, because they may show how custody arose or was exercised.

Because of this structure, the judge in the requested State always needs to consider foreign law, and Article 14 is the first and most obvious choice. It is titled in the Perez Vera report as "Relaxation of the requirements of proof of foreign law" (see §119) because ordinarily, a court considering foreign law or foreign decisions would have to follow lengthy procedures: authenticating documents, obtaining expert opinions, or recognising foreign judgments.[96] These procedures are slow and, in return cases, delay undermines the Convention's effectiveness.

When a party challenges the admissibility of foreign documents on formal grounds – legalisation, authentication, or recognition, Articles 14 and 23 provide the direct answer: the court may rely on those materials without any such formalities, for the limited purpose of establishing custody rights under Article 3. Article 23 separately provides that no legalisation or similar formality may be required. Party who acknowledges the authenticity of a document but contests only its formal status cannot use that objection to block the return application. In this sense, Article 14 does two things depending on the procedural context: when no one contests the foreign materials, it operates silently as a background facilitation rule; when a formal challenge is raised, it surfaces as an express procedural shield against delay tactics.

CASE NOTE 109 | ES | Madrid Provincial Court | ECLI:ES:APM:2026:2057
20 February 2026

The taking mother challenged the admissibility of the documents supporting the return request (including a notarial custody agreement) on the ground that they had not been legalised for use in Spain. The court invoked Article 14 expressly to dismiss this objection, holding that the 1980 Convention permits direct reliance on foreign law and foreign official documents without formal authentication or recognition procedures. The mother's own concession that the documents were authentic, while contesting only their formal status, made the objection particularly weak: the court used those materials to establish that the father held custody by parental agreement and had authorised the child's travel to Spain for ten days only, rendering the subsequent retention wrongful.

[95] Practical guidance on ascertaining foreign law—particularly through expert opinions—can be found in comparative models such as the Hamburg Guidelines for Ascertaining and Applying Foreign Law in German Litigation (Max Planck Institute, 2025). While non-binding and specific to German civil procedure, the Guidelines reflect broader procedural principles relevant to Hague return proceedings. These include the court's responsibility to determine the content of foreign custody law, the supporting (but not determinative) role of experts, and the importance of minimizing delay and cost in cross-border litigation. As such, they may serve as a helpful reference point for judges, lawyers, and Central Authorities working with the Convention's evidentiary tools. <https://www.mpipriv.de/1997489/20251118-hamburger-leitlinien-auf-englisch-verfuegbar>.

[96] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction*.

Article 14 does not turn the foreign decision into a recognised judgment, nor does it require the court to apply foreign law as governing law of the return proceedings. The court uses these materials as evidence of the content of custody rights in the habitual residence. This "relaxation of proof" is essential to allow a rapid decision on wrongfulness, which is one of the central aims of the Convention.

Courts ordinarily apply Article 14 of the 1980 Convention implicitly, even when they do not cite it expressly.[97] It allows the judge to take direct notice of the foreign law and of foreign judicial or administrative decisions, whether or not formally recognised in that foreign State, without following any special procedures for proving foreign law or recognising foreign decisions. In other words, the judge may simply read the law or the decision and rely on it for the limited purpose of determining whether the removal breached custody rights under Article 3. Article 14 is a functional norm: it enables courts to "take notice" of foreign law and foreign decisions without formal proof. Because this operates as a *background procedural rule*, courts often rely on it automatically when determining custody rights, habitual residence factors, or the content of foreign parental responsibility laws.

CASE NOTE 110 | NL | The Hague District Court | ECLI:NL:RBDHA:2024:3224
7 March 2024

In a return application concerning two children habitually resident in Denmark, the mother disputed the father's claim that they shared custody, arguing that the digital "care and responsibility declarations" he submitted were insufficient proof. The court nevertheless relied on the relevant provisions of Danish law, which establish joint custody automatically upon such a declaration, and accepted the digitally signed declarations despite the absence of a physically signed and stamped copy. (Although the court did not expressly refer to Article 14, it effectively applied it by taking judicial notice of the foreign law and the foreign official documents, using them to determine that joint custody existed ex lege and that the retention was therefore wrongful.)

In return proceedings, the court deciding the return request does not need to determine whether a foreign custody decision satisfies the conditions for recognition or enforcement in the requested State. The return procedure is not an exequatur procedure. A foreign decision may simply be taken into account as evidence that rights of custody existed under the law of the child's habitual residence. The court's task under Article 3 is limited to determining whether custody rights existed and exercised, and whether those rights were breached by the removal or retention. For the limited purpose of Article 14, the return court may assess the relevance and evidentiary weight of the foreign decision but may not review its merits. Where a decision from another Member State is invoked for its legal effects, recognition is governed by Brussels IIb and may be determined incidentally under Article 30(5).

CASE NOTE 111 | NL | The Hague Court of Appeal
ECLI:NL:GHSGR:2009:BI3011
6 May 2009

A Portuguese court approved an agreement between the parents granting the father sole parental authority over the child. When the mother later took the child to the Netherlands, she argued that the agreement was invalid because the father had allegedly forged her signature. The Dutch court refused to investigate this allegation. It held that, for the purposes of Article 3 of the 1980 Convention, the Portuguese decision establishing the father's custody rights had to be respected. The court therefore relied on that decision as evidence that the father held rights of custody and concluded that the child's removal to the Netherlands had breached those rights.

[97] See here an example of explicit reference to art 14: Decision on case No. 16227/2018 of Sofia City Court.

Article 14 allows the return court to take a foreign custody decision into account without requiring a separate recognition procedure. This procedural facilitation does not, however, displace applicable rules governing whether that decision may be recognised or given effect. Where the decision falls within the EU recognition regime, the return court may therefore have to consider incidentally whether a ground for non-recognition exists.

CASE NOTE 112 | BG | Sofia Court of Appeal | 20201000502773
1 December 2020

The applicant relied on a decision of an Austrian court granting the mother sole parental responsibility. The Bulgarian court examined the circumstances in which that decision had been issued and found that the father had not been properly served and had no opportunity to participate in the proceedings. Relying on the standards reflected in Article 23 of the Brussels IIa Regulation, the court concluded that the decision could not be relied upon in the return proceedings. It therefore disregarded this decision when assessing whether rights of custody existed and instead applied the law of the child's habitual residence directly, concluding that both parents held custody rights and that no wrongful removal had occurred.

2.7.B. Determination of wrongfulness from the state of habitual residence - Article 15

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child ***a decision or other determination that the removal or retention was wrongful within the meaning of Article 3*** *of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.*

As explained in the HCCH "Tools available to ascertain whether a removal or retention is wrongful under the 1980 Convention (Arts 8, 14 and 15)", §§19–29, Article 15 was created to help the requested court determine whether a removal or retention was wrongful under Article 3 of the 1980 Convention, especially when foreign custody law is unclear.[98] Requests under Article 15 are entirely discretionary because the procedure may cause delay, it should be used exceptionally, where the available information is insufficient and there is a "real doubt" concerning the relevant foreign law.[99]

An Article 15 determination is *not a prerequisite to return*. If it is unavailable, cannot be obtained, or would cause delay incompatible with the requirement of expedition, the requested authority should determine wrongfulness from the other material available to it.

[98] HCCH, *Tools available to ascertain whether a removal or retention is wrongful under the 1980 Convention (Arts 8, 14 and 15)* (2023).
[99] See similarly Rhona Schuz, who observes that recourse to Article 15 may itself cause delay where the authorities of the State of habitual residence do not deal with such requests expeditiously: Rhona Schuz, 'Disparity and the Quest for Uniformity in Implementing the Hague Abduction Convention' (2014) 9(1) *Journal of Comparative Law* 3, p 24 <https://www.academia.edu/9926575/Disparity_and_the_Quest_for_Uniformity_in_Implementing_the_Hague_Abduction_Convention>.

An Article 15 determination may be obtained at the request of a party or a Central Authority, and it may be obtained before return proceedings have commenced. Although the wording of Article 15 refers to the requested judicial or administrative authority asking the applicant to obtain the determination, the character of a document as an Article 15 determination does not depend on who initiated the request or on return proceedings already being pending.

CASE NOTE 113 | **NL** | **Supreme Court** | ECLI:NL:HR:2008:BC8942
25 April 2008

The Dutch Supreme Court held that, for the purposes of Article 15, it is irrelevant whether the determination was requested by the court dealing with the return application, by one of the parties, or by one of the Central Authorities. Nor does Article 15 prevent such a determination from being obtained before return proceedings have commenced. The decisive question is whether the document constitutes a decision or other determination concerning wrongfulness within the meaning of Article 3.

Scope

The earlier 2017 HCCH Discussion paper on the operation of Article 15 of the 1980 Child Abduction Convention identifies the main question concerning the content of the determination.[100] Some authorities consider that an Article 15 determination should primarily explain the content and effect of the domestic custody law, leaving the requested court to apply the Convention's autonomous concepts. Other authorities accept that the issuing court may also analyse how its domestic law operates in Convention terms, since it is particularly well placed to explain the true meaning and effect of its own law.

HCCH makes clear in "Tools available to ascertain whether a removal or retention is wrongful under the 1980 Convention (Arts 8, 14 and 15)" (2023) that an Article 15 determination should do more than merely describe the applicable law or factual background. Paragraph 25 states that the competent authority should issue a *conclusive decision or determination* bearing on whether the removal or retention was wrongful in the Convention sense, and that the determination should decide the relevant legal and factual elements under Article 3, including the existence and breach of rights of custody and their actual exercise. In other words, what is required is a determination of wrongfulness, not simply an explanatory statement of the law.

The issuing authority should therefore ensure that it clarifies the central elements relevant to wrongfulness under the 1980 Convention, in particular:

1. Whether the applicant held rights of custody under the law of the State of habitual residence, and whether those rights were actually exercised at the time of removal or retention, or would have been so exercised but for the removal or retention.

2. Whether those rights included the right to determine the child's place of residence.

3. Whether the removal or retention breached those custody rights.

[100] HCCH, Discussion paper on the operation of Article 15 of the 1980 Child Abduction Convention (2017), available at <https://assets.hcch.net/docs/8d8fe552-1dbb-43ec-99e1-cb82de674ab1.pdf>.

4. Where the child's habitual residence is disputed, the authority issuing the Article 15 determination may make a provisional finding or proceed on an expressly stated assumption concerning habitual residence.

An Article 15 determination answers only whether the removal or retention was wrongful; it does not decide whether the child should be returned. The determination is obtained separately from the authorities of the child's habitual-residence State and may assist the court that later decides the return application. In intra-EU cases, the applicable EU rules may still be relevant when deciding whether the removal was wrongful. This distinction continues under Brussels IIb: the special EU return rules apply to the return proceedings themselves, while an Article 15 determination remains a separate preliminary step.

CASE NOTE 114 | CJEU | C-400/10 PPU
5 October 2010

The English court had requested the father, under Article 15 of the 1980 Convention, to obtain from the Irish courts a determination that the children's removal from Ireland was wrongful (§20). The CJEU distinguished that Article 15 procedure from the subsequent return proceedings, observing that Article 11 Brussels IIa concerns the procedure for return rather than the Article 15 determination itself (§31). Nevertheless, it held the preliminary reference admissible because Irish legislation required the Irish court, when making an Article 15 determination concerning removal to another Member State, to determine wrongfulness by reference to Brussels IIa (§35). The Court further emphasised that, in relations between Member States, the 1980 Convention and Brussels IIa formed a combined body of rules, with the Regulation taking precedence in matters within its scope (§36). The interpretation of Brussels IIa was therefore relevant to the Article 15 proceedings (§§35–38).

An Article 15 decision may also declare that the removal was *not* wrongful. The text of Article 15 mentions only such declarations *of wrongfulness*, but in practice, an Article 15 ruling can also take the opposite form: the foreign court may declare that the removal or retention was *not* wrongful. Even though the Convention's wording does not explicitly mention this possibility, the logic of Article 15 requires it.

CASE NOTE 115 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2023:1566
4 August 2023

A Spanish court issued a decision under Article 15 of the 1980 Convention stating that the child's move to the Netherlands was not a wrongful removal. When the Dutch court later heard the return application, it held that–although Article 15 refers only to declarations of *wrongfulness*–the Spanish ruling still qualified as an Article 15 decision. The Dutch Court of Appeal, therefore, treated it as relevant evidence when assessing Article 3. The fact that the Spanish court found *no* wrongful removal did not prevent the Dutch court from relying on it as an Article 15 tool.

An Article 15 determination should clearly identify the custody rights relied upon and indicate whether those rights include the power to determine the child's place of residence. A mere statement that the removal or retention was "unlawful" may be insufficient. If the determination does not explain the existence and scope of the relevant custody rights under the law of the State of habitual residence, the requested court is not bound by that conclusion and must determine independently whether the requirements of Article 3 are satisfied.

CASE NOTE 116 | NL | The 's-Hertogenbosch Court of Appeal
ECLI:NL:GHSHE:2010:BM5997
27 May 2010



The District Court of Nové Zámky issued an Article 15 declaration stating that the transfer of the child to the Netherlands was unlawful. Yet this declaration did not explain whether the grandmother's substitute personal care included the right to decide on residence, or only day-to-day care. The Dutch court held that the declaration's conclusion was insufficient: a mere statement that the transfer was unlawful could not replace an analysis of which custody rights were conferred. The requested court therefore rejected the Central Authority's reliance on the declaration and found that the grandmother did not have custody rights under Article 3.

Evidentiary weight

HCCH Permanent Bureau has noted that determinations issued by non-judicial authorities are generally regarded as advisory, while there is less consensus concerning those issued by judicial authorities. It has suggested, as a matter of good practice, that the requested authority should take notice of the determination and give it due weight *without being bound by it.*[101]

This approach reflects the structure of the Convention: the final decision on wrongfulness and return remains with the competent judicial or administrative authority in the requested State. A determination issued in the State of habitual residence may be highly authoritative on questions of its own domestic law and may also address the elements of Article 3, but it does not in itself determine the outcome of the return proceedings in the requested State. Treating it as automatically binding would sit uneasily with the requested authority's responsibility to assess the facts and apply the Convention. This is particularly important where the determination addresses not only the content of domestic custody law but also the classification of the rights under the Convention's autonomous concepts, which must be interpreted consistently across Contracting States.[102]

The evidential weight of an Article 15 declaration depends on its content and the authority issuing it**.**

— Declarations explaining the *law of the State of the child's habitual residence* generally carry significant, often decisive, weight, since the courts of that State are best placed to interpret their own legal system.

— By contrast, declarations assessing *factual circumstances*, such as whether custody rights were actually exercised, may have more limited evidential value, as the requested court must assess the facts itself.

— The authority issuing the declaration is also relevant. A determination made by a judicial authority may carry greater weight than one issued by a non-judicial body, although neither is automatically binding on the requested court.

[101] See HCCH Permanent Bureau, Tools Available to Ascertain Whether a Removal or Retention Is Wrongful under the 1980 Child Abduction Convention (Arts 8, 14 and 15), Prel. Doc. No 14 of August 2023, §§26–27.
[102] On the binding nature of Article 15 declarations, Schuz argues that the better view is that such a declaration should be treated as binding unless it is clearly out of line with the international understanding of the Convention's terms: Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing, 2013) p 156. The case law of EU courts has not followed this approach, treating Article 15 declarations consistently as carrying significant evidentiary weight without being binding on the requested court, which retains full responsibility for the return decision.

— The evidential value may depend on whether the declaration was issued *after hearing both parties*; where the abducting parent was not involved in the procedure leading to the declaration, this may reduce the weight attributed to it. [103]

The fact that the determination is not formally binding does not mean that its conclusions may simply be relitigated without justification. The 2017 HCCH Discussion Paper refers to authority requiring "considerable weight" to be attached to an authoritative judicial determination from the requesting State, both as to the content of its law and the interaction of that law with the Convention. In particular, a party should not ordinarily be permitted to undermine such a determination merely by commissioning fresh expert evidence on the same foreign-law question.[104]

A declaration issued by the court of the child's habitual residence under Article 15 of the 1980 Convention does not become a decision on parental responsibility merely because that court also has jurisdiction over custody matters under Brussels IIb. The character of the decision is determined by its legal basis and purpose – not by the identity of the court that issued it. Where the issuing court expressly acts under Article 15, the decision is a procedural auxiliary to the return proceedings and does not engage the recognition rules of Brussels IIb.

CASE NOTE 117 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2023:1566
4 August 2023

The district court mistakenly treated a Spanish order as a binding custody judgment. On appeal, it was clarified that the Spanish court had issued its decision under Article 15, explicitly addressing only whether the child's transfer to the Netherlands was wrongful. The Court of Appeal held that this is not a parental-responsibility ruling but an Article 15 declaration, therefore it would consider it as persuasive evidence when assessing wrongfulness under Article 3, without being bound by it.

While not formally binding, such declarations carry significant evidentiary weight. This is especially true when issued by judicial or official authorities and when limited to interpreting foreign custody law.

CASE NOTE 118 | NL | Supreme Court | ECLI:NL:HR:2008:BC8942
25 April 2008

In proceedings before the Dutch courts concerning a child removed from Australia, the Dutch Central Authority submitted an Article 15 declaration from the Australian Central Authority. It stated that the removal breached the custody rights of both the father and the Australian court. Although the Court of Appeal questioned the declaration's interpretation of Australian law, the Supreme Court held that where the Article 15 declaration concerns the applicable foreign law, it must generally be afforded considerable–often decisive–weight.

[103] For a similar analysis and examples from Dutch case law, see also G. Ruitenberg, *De toepassing van het Haags Kinderontvoeringsverdrag in Nederland en het belang van het kind* (Den Haag: Boom Juridische uitgevers 2015) 306.
[104] HCCH, Discussion paper on the operation of Article 15 of the 1980 Child Abduction Convention (2017), available at <https://assets.hcch.net/docs/8d8fe552-1dbb-43ec-99e1-cb82de674ab1.pdf>, §§68–70, referring particularly to *Re D (A Child) (Abduction: Rights of Custody)* [2006] UKHL 51, §41 and §45. Although the requested court retains the final decision, the House of Lords held that considerable weight must be attached to an authoritative judicial determination from the requesting State and rejected an attempt to challenge it through newly commissioned expert evidence.

2.7.C. Expert opinions on foreign law

In some cases, the mechanisms provided by Articles 8, 14 and 15 may not yield sufficient or timely information on the foreign law - for example, where the information under Article 8 is incomplete, contact with an IHNJ (International Hague Network of Judges) judge cannot be established, or the Article 14 route proves insufficient. In such situations, the HCCH guidance Tools to ascertain whether a removal or retention is wrongful, §30 notes that the competent authority of the requested State may exceptionally appoint an independent expert on the foreign law as an alternative means of ascertaining wrongfulness.[105] However, the same document cautions that resorting to independent experts may be costly and may risk prolonging what must remain expedited proceedings.

Where the content of foreign custody law requires specialist knowledge, the requested court may commission an expert opinion to establish the applicable legal position. This ensures that findings on wrongful removal rest on a correct understanding of the legal system of the child's habitual residence, and not on domestic assumptions about custody. Expert opinion however is meant to establish whether custody rights existed and what they included - whether those rights were actually exercised is a factual question for the court.

CASE NOTE 119 | DE | Higher Regional Court of Nuremberg | 7 UF 829/21
25 October 2021

A child was removed from the United States (Kentucky) to Germany by her mother. The German court had to determine whether, under Kentucky law, the unmarried father possessed joint custody at the time of removal. To clarify the foreign legal position, the *Oberlandesgericht Nürnberg* commissioned an expert opinion from the Max Planck Institute for Comparative and International Private Law. The expert confirmed that, under Kentucky Revised Statutes §213.046 and §405.020, both unmarried parents share joint custody once paternity is acknowledged by notarised declaration, without requiring a further judicial act.

Courts must assess expert opinions on foreign law critically and independently - they are tools for clarification, not conclusions to adopt. Even when a qualified foreign law expert is instructed or relied upon, the requested court must read, test, and critically assess the opinion against the 1980 Convention's autonomous concepts, the relevant timeframe, and the applicable foreign legal sources. The court remains responsible for determining whether custody rights existed and were breached within the meaning of Article 3 of the 1980 Convention.

CASE NOTE 120 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2023:2113
11 October 2023

The father relied on a legal opinion by a Turkish law professor to argue that his access rights under Turkish law amounted to custody and required his consent for the children's relocation. The Dutch Court of Appeal examined the opinion in detail and rejected its central conclusion. While the expert correctly acknowledged that the mother had sole custody at the time of removal, the court found that the opinion relied on a custody order issued *after* the removal and conflated access rights with custody. The court reaffirmed that custody is an autonomous Convention concept and that access rights, even if affected by relocation, do not confer the right to determine the child's residence under Article 3. The expert's interpretation was therefore not followed.

[105] HCCH, *Tools available to ascertain whether a removal or retention is wrongful under the 1980 Convention (Arts 8, 14 and 15)* (2023).

2.8. When the removal or retention does not fall within the 1980 Convention

Not every cross-border movement of a child falls within the scope of the 1980 Convention. The concept of "abduction" presupposes both a breach of custody rights and the exercise of those rights at the moment of removal or retention. Where these elements are missing – for example, because no custody right was breached, or the relevant custody rights were not being exercised, the situation does not amount to a "wrongful removal" under Article 3. In such cases, the return mechanism is inapplicable, and any remaining dispute must be resolved by the courts competent for parental responsibility rather than through return proceedings.

In these cases, the left-behind parent is not without remedies. Several alternative legal avenues may still be available depending on the circumstances of the case.

Table 10: Practical Options Available When a Cross-Border Move Does Not Qualify as a Wrongful Removal under Article 3

Step / Option	Practical Aim or Priority	Description / How It Helps	When to Use
1. File Domestic Custody or Access Case	Re-establish parental role or ensure continued relationship with the child	Initiating custody or access proceedings before the court having jurisdiction may help reassert parental responsibility or request structured contact arrangements.	Appropriate when the 1980 Convention does not apply, but a parent seeks to safeguard or regain their role in the child's life.
2. Seek application of the Brussels IIb Regulation (EU)	Ensure recognition or enforcement of parental responsibility decisions that already grant custody or access	Where a custody or access order was issued in another EU Member State (except Denmark), Brussels IIb allows for its recognition and enforcement, thus securing cross-border legal protection.	Useful when an enforceable order exists in one EU country, and the child is now located in another Member State.
3. Request Mediation or Family Counselling	Promote voluntary return, access, or future cooperation	Mediation or family-focused services (e.g. MiKK, ISS, national child welfare agencies) can facilitate agreed solutions such as return, visitation, or regular contact, while also reducing emotional strain.	Especially relevant when formal legal proceedings may be premature or counterproductive, or when preserving cooperation between parents is a key priority.
4. Seek assistance concerning access under Article 21 of the 1980 Convention (see more on Art. 21 in Chapter 3.1.D.)	Secure cross-border contact with the child	Even where return is not sought or not possible, the Convention allows assistance in organising or securing contact arrangements. An application may be made to the Central Authorities to organise or secure the effective exercise of rights of access.	Useful when the child remains abroad, and the primary goal is maintaining a relationship rather than return.

Unit 3: Applicants' Litigation Track

This unit examines the procedural pathway available to the applicant *seeking the return of an abducted child*. While the 1980 Convention provides a structured return mechanism, successful litigation requires careful strategic choices at each stage of the proceedings. Applicants must decide not only whether to initiate return proceedings, but also how to structure the case, gather evidence, and respond to procedural obstacles. The sections that follow outline the key strategic considerations that arise before and during the litigation process.

For convenience, 'left-behind parent' is used to refer to the person seeking return, although custody rights under the Convention may also be held by an institution or other body.

3.1. Strategic considerations for the left-behind parent

Before initiating proceedings, the left-behind parent must assess several strategic questions, including the legal basis for action, the available procedural routes, and the practical prospects of success. Early decisions may significantly affect the speed, efficiency, and outcome of the proceedings.

3.1.A. Trends influencing the left-behind parent's strategic choice

Empirical studies on the operation of the 1980 Convention provide valuable insight into how return proceedings function in practice. These statistical trends do not determine the outcome of individual cases, but they can help the left-behind parent and their legal advisers realistically assess the likely trajectory of proceedings. Several recurring patterns emerge from global statistical studies and academic research.[106]

As each case turns on its own facts, these trends cannot predict the outcome of a particular case but may assist the left-behind parent and their legal advisers in assessing the strategic implications of initiating return proceedings.

Primary carers are the predominant taking parents

Statistical studies consistently show that the majority of international child abduction cases involve the relocation of the child by the parent who had been the child's primary carer. In the 2021 global study, 75% of taking persons were mothers, while 23% were fathers and the remaining 2% consisted of other relatives or institutions.[107] Where information was available, 88% of taking persons were identified as the primary carer or joint primary carer of the child. This proportion was even higher

106 The 2021 figures should nevertheless be read with some caution, as the study year was affected by the COVID-19 pandemic.
[107] Nigel Lowe and Victoria Stephens, *Global Report – Statistical Study of Applications Made in 2021 under the 1980 Child Abduction Convention*, HCCH Preliminary Document No. 19A (September 2023) §14 <https://assets.hcch.net/docs/bf685eaa-91f2-412a-bb19-e39f80df262a.pdf>.

when the taking parent was the mother (94%), while it was lower when the father was the taking parent (71%).[108]

For the left-behind parent, this structural feature of abduction cases has important strategic implications. When the taking parent is the primary carer, courts may be confronted with the practical question of whether the child can realistically return without that parent. Such situations often generate arguments concerning the feasibility of return, the child's welfare, and the availability of protective arrangements in the State of habitual residence.

Return is a frequent outcome, but it is far from guaranteed

Although the 1980 Convention is designed to secure the prompt return of abducted children, and this should be the default outcome, the 2021 global study recorded an overall return rate of 39%, consisting of 16% voluntary returns and 23% judicial return orders.[109] This represents a decline compared with previous studies. When cases reached the courts, 59% of judicial decisions resulted in a return order, while the remaining cases ended in refusal or other outcomes. [8]

For the left-behind parent, these figures illustrate an important strategic reality. While the 1980 Convention establishes a strong presumption in favour of return, the empirical evidence demonstrates that success is not automatic. The decision to initiate proceedings should therefore be based on a realistic evaluation of the facts, the available evidence, and the potential defences.

Article 13(1)(b) remains the most frequently invoked ground for refusal

Among all applications, 13% of all return applications ended in a judicial refusal. When examining the grounds relied upon for refusal, the statistical study found that Article 13(1)(b) (grave risk of harm) was the most frequently invoked defence, appearing in 46% of refused applications.[110] Although comprehensive global statistics are not available, several empirical studies indicate that domestic violence may be present in a significant proportion of parental child abduction cases, with some research suggesting that such allegations may be present in up to 70% of cases.[111]

This trend is particularly significant for the strategic assessment of the left-behind parent. Because the grave risk defence is raised so frequently, the applicant must carefully consider whether the factual circumstances of the case may give rise to such allegations and whether adequate protective measures could address them.

Proceedings may take longer than the 1980 Convention anticipates

The Convention emphasises the importance of prompt proceedings, yet statistical data indicate that cases often take several months to resolve. In the 2021 study, the average time required to reach a final outcome was approximately 207 days, measured from the receipt of the application by the Central Authority.[11]

[108] ibid, §15.
[109] Ibid, §17.
[110] Ibid, §19.
[111] Katarina Trimmings and Onyója Momoh, 'Intersection between Domestic Violence and International Parental Child Abduction: Protection of Abducting Mothers in Return Proceedings' (2021) *International Journal of Law, Policy and the Family*, fn 2 (citing empirical research suggesting that domestic violence may be present in a significant proportion of parental child abduction cases) <https://academic.oup.com/lawfam/article/35/1/ebab001/6247324>.

For the left-behind parent, the expected duration of proceedings may influence the strategic choice. If the child has already spent a substantial period in the State of refuge, further delay may contribute to the child's integration there and may strengthen arguments against return.

3.1.B. Choosing between a return application and alternative remedies

When a child has been wrongfully removed or retained, the left-behind parent faces an early and often difficult strategic choice: whether to initiate a return application under the 1980 Convention, whether to pursue other ways to return the child, or whether to accept that the child is now living in a new State and shift the focus toward other legal avenues.

This decision is rarely straightforward. It requires not only an assessment of the legal strength of a potential return claim, but also a realistic appraisal of the child's current situation, the prospects of litigation, and the long-term dynamics between the parents.

A return application is usually most compelling when the circumstances clearly support the child's habitual residence in the State of origin, when custody rights were unquestionably breached, and when the left-behind parent can demonstrate actual exercise of those rights. Acting promptly maintains the procedural advantages offered by the Convention: it prevents the abducting parent from establishing that the child is settled in the new environment, and precludes custody decisions from being made in the State of refuge.

In the early phase of a case (before a year has passed and before the child forms stable new connections), the Convention's return mechanism is at its strongest. If there is a risk of the child being moved onward to another country, if the abducting parent is already avoiding cooperation, or if protective measures and police cooperation are urgently needed, a return application remains the most effective procedural tool available.

In intra-EU cases, prompt action is also relevant to jurisdiction: under Article 9 Brussels IIb, the courts of the child's former habitual residence retain jurisdiction following a wrongful removal or retention, while failure to seek return within the prescribed period may contribute to the conditions under which jurisdiction eventually shifts to the new Member State.

Once chosen, the return must be actively invoked by the left-behind parent. The mechanism does not operate unless the parent files a formal return application. The Convention does not require the authorities to initiate return proceedings on behalf of a parent who does not pursue that remedy. Even when a court identifies that the circumstances amount to an unlawful removal under Article 3 of the 1980 Convention, its role is normally limited to informing the parent of the correct remedy and emphasising the need to act promptly. Where the parent remains passive despite clear information, reminders, and assistance from the Central Authority, that inaction may be treated as a waiver of the Convention remedy. Such inaction may also weigh heavily in the subsequent assessment of an Article 8 ECHR complaint concerning the consequences of the removal, because the State cannot be faulted for failing to secure a return that the parent themselves failed to seek through the available international mechanism.

CASE NOTE 121 | **ECtHR** | **P.N. v. Czech Republic** | App. No 44684/14
8 June 2023

The first-instance court expressly characterised the mother's move as an unlawful removal and directed the father to the return procedure, even reminding him of the Article 12 one-year period. The Central Authority translated documents, scheduled meetings, and repeatedly encouraged him to submit the return application, yet he never completed it. The ECtHR held that, in these circumstances, the father had effectively *waived* his right to rely on the 1980 Convention mechanism. As a result, the Czech courts were entitled to proceed with the mother's applications (study stay, then change of residence) solely as matters of domestic family law and to decide on the children's best interests. The Court accepted this approach, confirming that domestic courts are not required to correct or compensate for the applicant's failure to trigger the Convention's mechanism.

In other situations, however, pursuing a return application may be neither realistic nor desirable. A parent may recognise that the child has already integrated into the new environment to such an extent that a return is unlikely to be ordered. Even a timely application may face significant obstacles if the child's schooling, social integration, linguistic environment, or daily routines have already consolidated abroad. There are also cases in which the parent, upon reflection, concludes that relocation may genuinely benefit the child, or that a contested procedure would escalate conflict to the detriment of everyone involved. The 1980 Convention litigation is adversarial, intense, and swift, often triggering parallel criminal, civil, or protective proceedings. Some parents prefer to avoid the stress of urgent cross-border litigation, particularly when they wish to preserve cooperation with the other parent or when they foresee that a hostile court battle would make future co-parenting more difficult.

Choosing not to pursue return proceedings does not leave the left-behind parent without meaningful remedies. Once the child's residence in the new State is accepted, the parent may seek to establish or strengthen contact arrangements, obtain recognition and enforcement of existing decisions, or initiate parental responsibility proceedings before the court having jurisdiction. In many cases, focusing on stable and workable contact arrangements proves more constructive than prolonged litigation over return. Mediation and facilitated negotiation often play an important role in this process. Cross-border mediation services, including those supported by Central Authorities and specialised international networks, can assist parents in developing practical parenting arrangements that may later be formalised before the competent court in the child's new habitual residence.

Accepting the new residence in turn *does not retroactively render the removal lawful*. What it does, however, is reshape the dynamics. Once the left-behind parent either expressly accepts the move or refrains from seeking return within a reasonable time, the child's life gradually consolidates in the new State. Habitual residence shifts in a factual, child-centred manner, and with it jurisdiction over parental responsibility issues may also shift (subject to the rule of Article 9 Brussels IIb for intra-Eu cases). The law then adjusts to this new situation: further litigation concerning custody, access, information rights, or decision-making responsibilities must take place before the courts of the State where the child is now integrated. The parent thus transitions from contesting the child's presence abroad to safeguarding and structuring their parental role within the framework of the new habitual residence.

A clear assessment of these pathways allows parents to choose the course most consistent with the child's welfare and their long-term parenting goals.

Table 11: Early strategic assessment for the left-behind parent: factors influencing the choice between return proceedings and alternative approaches

Key Question in the Early Assessment	Implications Pointing Toward a Return Application	Implications Pointing Toward Acceptance of the New Residence / Alternative Remedies
1. What outcome is the parent seeking? (Return, continuity of contact, stability, jurisdiction, de-escalation)	A clear wish for the child to live again in State A supports initiating return proceedings to restore the previous situation.	If the priority is stable contact, cooperation, or avoiding escalation, arrangements in State B may be more effective.
2. How established is the child in State B? (length of stay, school, community, language)	A short stay with limited integration strengthens the rationale for prompt return proceedings.	Significant integration, school attendance, and routine formation may shift the focus toward stability in State B.
3. Is there a risk of further movement or concealment?	A return application allows the court to adopt measures that stabilise the situation and prevent onward relocation.	If the child is safe and not at risk of further movement, local measures in State B may be sufficient.
4. What evidence exists regarding custody rights and non-consent?	Clear documentation of custody rights and objection to the move strengthens the legal basis for return.	Unclear, contradictory, or missing evidence may reduce the prospects of return and favour building a case in State B.
5. What is the level of communication between the parents?	When communication has broken down or access is being obstructed, formal legal action may be necessary to restore the child's position.	If communication is functioning, mediated or negotiated solutions in State B may be more sustainable.
6. Are there any criminal, immigration, or safety implications linked to the removal?	Return litigation may interact with criminal or protective proceedings and change the strategic landscape.	Acceptance may avoid escalation, preserve cooperation, and concentrate on future arrangements rather than past conduct.
7. In which State should future decisions on parental responsibility be made?	A return application seeks to restore the child to State A, where courts of habitual residence would normally address parental responsibility.	Acceptance leads to future decisions being made in State B, where the child is now living.
8. How does the parent weigh speed versus broader substance?	Return proceedings are fast, focused, and limited to narrow issues, aiming to restore the pre-removal situation.	Proceedings in State B may allow a more comprehensive examination of welfare and longer-term parenting arrangements.
9. Considering all circumstances, what outcome is realistically achievable?	If the factual matrix strongly supports wrongful removal and there is limited integration, return remains a realistic pathway.	If a return order is unlikely or would destabilise the child, focusing on arrangements in State B may offer more predictable results.

3.1.C. Considering mediation before filing the return application

Before initiating return proceedings, the left-behind parent may consider whether mediation offers a realistic alternative to a return application. In some cases, particularly where communication between the parents remains possible, mediation may lead to voluntary return, agreement on relocation, or structured cross-border contact without litigation. Because parental child abduction disputes are often highly escalated and emotionally charged, mediation may help de-escalate the conflict and refocus the discussion on the needs of the child.

From the perspective of the left-behind parent, mediation may provide several practical advantages. First, it may create an opportunity for *direct communication* with the taking parent in a structured environment, which can be particularly valuable in highly escalated disputes. Second, mediation may help secure *interim contact arrangements* between the left-behind parent and the child while the dispute is ongoing, thereby reducing the risk of parental alienation. Third, mediation may address practical issues surrounding the child's return, including travel arrangements, safety guarantees, and transitional arrangements following return.[112]

The *legal framework* of international child abduction cases also encourages the use of mediation. The 1980 Convention itself emphasises the importance of securing the voluntary return of the child or an amicable resolution of the dispute, and Central Authorities are tasked with facilitating such outcomes. EU law reinforces this approach. Under the Brussels IIb Regulation, courts are encouraged, as early as possible and at any stage of the proceedings, to invite the parties to consider mediation or other forms of alternative dispute resolution where appropriate.

In terms of outcome, where mediation succeeds, it may allow parents to *reach broader agreements* than those available in return proceedings alone. While the court hearing the return proceedings can decide only the question of return, mediation can address a wider range of issues, including the child's residence, contact arrangements, schooling, cultural upbringing, and financial matters. Such "package agreements" may provide more sustainable solutions for the family and reduce the risk of renewed conflict or repeated abduction.

Specialised cross-border mediation services have developed to support such processes. For example, the international mediation organisation MiKK (International Mediation Centre for Family Conflict and Child Abduction) provides information and assistance to parents and practitioners and helps organise international co-mediation with specially trained mediators. According to data published by MiKK, agreements or partial agreements were reached in approximately 77% of the child abduction mediations conducted through its services over recent years.[113]

Mediation is, however, not suitable in every international child abduction case. Before initiating a mediation process, practitioners should assess whether the circumstances allow for a fair and meaningful dialogue between the parents. HCCH emphasises that mediation may be inappropriate where the situation involves serious safety concerns, significant power imbalances between the parties, or a lack of genuine willingness to negotiate. In such cases, the mediation process may not provide a safe environment for constructive discussion and may risk reinforcing unequal bargaining

[112] For detailed discussion see Hague Conference on Private International Law (HCCH), *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Mediation* (HCCH 2012) §31.
[113] MiKK – *International Mediation Centre for Family Conflict and Child Abduction*, information on mediation in international parental child abduction cases, available at: <https://mikk-ev.org/why-mediation/> (accessed 27 March 2026).

positions.[114] Recital 43 of the Brussels IIb Regulation also makes clear that mediation must not undermine the effectiveness of the return mechanism: attempts to reach an amicable solution should not unduly prolong return proceedings, and mediation may be inappropriate in certain circumstances, particularly where domestic violence is involved**.** Where parents reach an agreement during the return proceedings (whether on the child's return or on broader issues of parental responsibility), the Regulation allows the court seised with the return proceedings, in certain circumstances, to give binding legal effect to that agreement.

Mediation can be a valuable tool in international child abduction disputes, but the left-behind parent should be aware of several potential risks before engaging in the process. Mediation may take time and can delay the initiation or progress of return proceedings, can generate additional costs, or participation in mediation may sometimes be invoked by the abducting parent as evidence that the left-behind parent acquiesced in the child's relocation or accepted the situation, especially if the parent does not clearly maintain their request for the child's return.[115]

In addition, mediation often involves open discussion of family circumstances, which may lead to the disclosure of sensitive information that could later be used strategically in subsequent litigation. Mediation ordinarily operates subject to confidentiality safeguards, but their scope and exceptions depend on the applicable legal framework. For these reasons, the left-behind parent should approach mediation carefully and ensure that participation does not undermine the prompt pursuit of legal remedies.

3.1.D. Alternative routes

Sometimes the left-behind parent decides not to pursue a return application under the 1980 Convention. The reasons may vary: the child has already settled in the new environment, or the parent is convinced that relocation is in the child's best interests and/or recognises that such an application would be unlikely to succeed.

Accepting the relocation of the child

A return proceeding can be stressful, confrontational, and uncertain, particularly where the child has already begun to adjust to the new environment or where the left-behind parent recognises that relocation may, in fact, serve the child's interests. In such situations, a parent may choose to accept the relocation and refrain from initiating return proceedings under the Convention. This may be a plausible option for parents who wish to avoid complex international procedures, lengthy delays, and the emotional burden associated with contested litigation.

Accepting relocation may offer several *practical advantages*. It allows the parent to preserve a cooperative relationship with the other parent rather than escalating conflict through litigation. It

[114] Hague Conference on Private International Law (HCCH), *Practitioners' Tool: Cross-Border Recognition and Enforcement of Agreements Reached in the Course of Family Matters Involving Children* (HCCH 2022), also see HCCH, Guide to Good Practice, Part V – Mediation (2012).
[115] See, as a good example of safeguards designed to mitigate such risks, the President of the Family Division's Practice Guidance on Case Management and Mediation of International Child Abduction Proceedings (England and Wales), Annex 1, §4(a)-(f), which provides that mediation runs in parallel with court proceedings and is conducted without prejudice to the applicant's right to pursue the child's return or the respondent's right to defend the proceedings. Similar safeguards may also be incorporated into the mediation agreement. <https://www.judiciary.uk/wp-content/uploads/2023/03/Presidents-Practice-Guidance-on-Case-Management-and-Mediation-of-International-Child-Abduction-Proceedings.pdf>.

may also spare the child the disruption associated with return proceedings and the uncertainty that often accompanies them. From a strategic perspective, accepting the relocation allows the left-behind parent to focus resources on establishing stable and sustainable arrangements for contact rather than investing time and energy in litigation that may ultimately fail.

From a legal perspective, however, *the removal or retention may still remain wrongful* within the meaning of Article 3 of the 1980 Convention. If no return application is pursued, the child's life may gradually consolidate in the new State. As habitual residence is a factual concept reflecting the child's integration in a social and family environment, increasing integration in the new environment may eventually lead to the courts of that State becoming competent to decide matters of parental responsibility. Within the EU, this development is reflected in the jurisdictional framework of the Brussels IIb Regulation. Article 7 establishes the general rule that jurisdiction follows the child's habitual residence. At the same time, Article 12 of the 1980 Convention reinforces this dynamic: where more than one year has elapsed since the wrongful removal or retention and the child is now settled in the new environment, the requested court may refuse to order the child's return.

It is important to *distinguish acceptance of relocation from acquiescence* under Article 13(1)(a) of the 1980 Convention (see Chapter 4.5.E). Acquiescence refers to a situation in which the left-behind parent, through words or conduct, accepts the removal or retention of the child, thereby giving the court discretion to refuse the child's return under the Convention. It concerns only the availability of the return remedy and does not determine the child's long-term residence or resolve questions of parental responsibility. Accepting relocation, by contrast, represents a substantive decision that the child may remain permanently in the new State. Practitioners must therefore carefully distinguish between these two situations: one concerns a defence to a return application, while the other relates to the long-term arrangements governing the child's life.

Once relocation is accepted, the parents' strategy naturally shifts from contesting the child's residence to safeguarding parental rights within the new legal framework. Although the return remedy is no longer pursued, **the left-behind parent still retains several legal and practical avenues** through which the relationship with the child may be protected and maintained.

— First, the parent may seek to establish or strengthen contact arrangements. Where no access regime exists, proceedings may be initiated before the courts of the State where the child now resides in order to obtain a judicial determination regulating contact, communication, and travel arrangements. If an access decision already exists, the parent may instead seek recognition and enforcement of that decision.

— Second, the parent may initiate *parental responsibility proceedings* in the competent court to clarify issues such as custody, residence, or decision-making authority. Depending on the circumstances and the applicable jurisdictional framework, such proceedings may address the broader long-term arrangements concerning the child's upbringing and welfare.

— Third, where a decision concerning parental responsibility or contact has already been issued, the parent may pursue *recognition and enforcement of that decision*. Within the EU, this may take place under Articles 30–39 of the Brussels IIb Regulation, which govern the recognition and enforcement of parental responsibility decisions. Outside the EU, recognition and enforcement may rely on the 1996 Convention, where applicable.

— Fourth, the parent may seek *assistance from Central Authorities*. Even where no return application is filed, Central Authorities may assist with locating the child, facilitating communication between authorities, providing information about legal procedures, and encouraging amicable solutions between the parents. Where the parent seeks to organise or secure contact rights, an application may also be submitted through the Central Authority under Article 21 of the 1980 Convention.

— Finally, parents may turn to *mediation* or other forms of alternative dispute resolution to negotiate voluntary arrangements. Mediation may allow parents to address a wider range of issues than those typically decided within return proceedings, including residence arrangements, contact schedules, schooling, and financial matters (for agreements and mediation, see Chapter 5.10).

In practice, these avenues enable the parent to move away from contesting the relocation itself and instead concentrate on building a stable and workable framework for the future exercise of parental rights.

Alternative route to return: custody proceedings in the state of habitual residence

The 1980 Convention is not designed as the only legal route for return of the child available to parents. Article 29 makes clear that a parent does not have to use the Convention at all but may instead go directly to court and rely on other legal bases, such as national custody law. Article 34 confirms this approach from another perspective: while the Convention takes priority when it is applied within its scope, it does not exclude the use of other international instruments or domestic rules that may also be used to seek the return of a child or to organise access. Taken together, these provisions show that the 1980 Convention offers a specialised and fast mechanism for return, but it does not displace the wider legal framework. In practice, this means that a parent must make a choice at the outset: to use the Convention and pursue a prompt return, or to proceed outside it and risk entering broader proceedings.

The most often met alternative route for the left-behind parent is to initiate custody or parental responsibility proceedings before the courts of the child's habitual residence and request that the court order the child's return within those proceedings.

This possibility arises because courts dealing with parental responsibility generally have the authority to adopt measures necessary to ensure the effective exercise of custody rights. In certain legal systems, this includes the power to order that the child be returned to the jurisdiction as part of a custody determination. As explained in the View of Advocate General Sharpston in *Rinau*, (paras 52–53), general jurisdiction over parental responsibility necessarily includes the power to order the return of an abducted child.[116] Since rights of custody include the right to determine the child's place of residence, a court having jurisdiction over custody must also be able to secure the child's actual presence with the person to whom custody has been granted. However, the availability of this route depends on several factors, including whether the courts of the child's habitual residence still have jurisdiction over parental responsibility, and whether national procedural law allows the court to order the child's return within custody proceedings (see Case Note 126).

116 View of Advocate General Sharpston in Case C-195/08 PPU, *Rinau*, ECLI:EU:C:2008:377, 1 July 2008, paras 52–53.

Proceedings of this type *differ fundamentally from the return mechanism* established by the 1980 Convention. The Convention proceedings are designed to operate as a summary and time-sensitive procedure focused on determining whether the child was wrongfully removed or retained and whether one of the limited exceptions to return applies. Custody proceedings, by contrast, require a full examination of the merits, including the allocation of parental responsibility and the assessment of the child's welfare.

For that reason, the two routes cannot be treated as interchangeable. Custody proceedings may ultimately lead to the same practical outcome- an order requiring the child's return, but they involve a broader evidentiary inquiry and typically take longer to conclude.

1980 Convention proceedings are designed to operate quickly. Once the applicant demonstrates that the removal or retention was wrongful within the meaning of Article 3, return is presumed. The burden then shifts to the respondent to establish one of the limited exceptions to return. The procedure is intentionally summary and does not determine custody on the merits.

Custody proceedings before the courts of the habitual residence may ultimately produce the same practical outcome - an order requiring the child's return, but they operate under very different procedural conditions. These proceedings are typically slower and require the applicant to litigate the entire custody dispute. The advantage is that the court may resolve both return and custody comprehensively, but the evidentiary burden and risk of delay are significantly higher.

The left-behind parent should *anticipate the higher evidentiary burden* – they must construct the entire case for return within the framework of a custody dispute. This may require not only demonstrating the wrongful nature of the removal or retention but also litigating custody on the merits. The applicant must present full evidence regarding the exercise of custody rights, the disruption caused by the relocation, and the child's welfare, integration, and best interests.

Unlike 1980 Convention proceedings, there is no presumption of return and no shift of the burden to the abducting parent. The court examines the dispute in substance as part of an ordinary custody case, and the applicant bears the full evidentiary burden throughout.

Special rules for intra-EU abduction cases

For intra-EU abductions, this alternative route operates within the framework of the Brussels IIb Regulation, which governs jurisdiction and the recognition and enforcement of parental responsibility decisions. As explained in Handbook part 1, Chapter 6.2.A. "Jurisdiction in International Child Abduction Cases: Return vs. Parental Responsibility", the two proceedings are brought in different fora: the return application is decided in the State where the child is located, while jurisdiction over parental responsibility normally remains with the courts of the Member State of the child's habitual residence immediately before the wrongful removal or retention.

Return under the 1980 Convention is not the only procedural avenue for securing the child's return within the EU. Where the court of the child's habitual residence has jurisdiction under the Brussels IIb Regulation and issues a decision on parental responsibility ordering the child's return, that decision may be recognised and enforced directly in another Member State under the Regulation's recognition and enforcement rules. The applicant is not required to first seek the child's return through proceedings under the 1980 Convention. At the same time, return proceedings and custody proceedings remain distinct procedural mechanisms: return proceedings are designed as

urgent procedures aimed solely at securing the child's prompt return, while custody proceedings involve a full examination of parental responsibility on the merits.

CASE NOTE 122 | **CJEU** | Joined Cases C-325/18 PPU and C-375/18 PPU
19 September 2018

The Brussels IIa Regulation complements, but does not require prior use of, the 1980 Convention return procedure. A holder of parental responsibility may therefore seek recognition and enforcement under the Regulation of a decision ordering the child's return that has been issued by the court with jurisdiction over parental responsibility in the child's habitual residence. Such enforcement may be pursued even where no return application has been made under the 1980 Convention.

CASE NOTE 123 | **CJEU** | C-35/23
20 June 2024

The CJEU confirmed that request for the child's return and a custody application are not interchangeable. A return procedure is designed as an expedited mechanism aimed solely at restoring the child's prior situation by securing prompt return. Custody proceedings, by contrast, require a full examination of parental responsibility on the merits. A decision ordering or refusing return therefore does not determine custody rights, and the parent may still pursue custody before the court with jurisdiction under the Regulation.

CASE NOTE 124 | **NL** | **The Hague Court of Appeal**
ECLI:NL:GHDHA:2021:641
16 February 2021

The mother argued that, instead of initiating these summary proceedings, the father should have sought the child's return through proceedings under the 1980 Convention before the competent courts in Poland. The Court of Appeal rejected that argument. It noted that, although the father could have requested the return of the child under the 1980 Convention, he had chosen not to pursue that route. According to the court, this choice could not be held against him. The court emphasised that it is for the parent to decide whether to initiate return proceedings under the 1980 Convention or instead request a decision on parental responsibility – in this case concerning the child's principal residence – in order to secure the child's return to the familiar environment. In reaching that conclusion, the court relied on the CJEU judgment in *Hampshire County Council v C.E. and N.E.*, which confirms that applicants are not required to first pursue return proceedings under the 1980 Convention before seeking relief within the Brussels II framework.

However, **pursuing return through custody proceedings in the State of habitual residence is possible under two cumulative conditions:**

1. The court still *retains jurisdiction over parental responsibility*. If jurisdiction has already shifted to the State where the child is now living, the courts of the former habitual residence can no longer determine custody or order the child's return. Under Article 9 Brussels IIb, the courts of the child's habitual residence at the time of the wrongful removal or retention normally retain jurisdiction over parental responsibility matters until the conditions set out in the Regulation for a shift of jurisdiction are met. As long as jurisdiction remains with the court of habitual residence, that court may conduct custody proceedings and may order the child's return as part of its determination of parental

responsibility. For Jurisdiction under Article 9 Brussels II b, following a Child's Wrongful Removal or Retention – see Handbook part 1, chapter 6.2.A. [117]

2. Such return is *provided for by the national law*. While Brussels IIb ensure that the courts of the child's habitual residence retain jurisdiction in cases of wrongful removal or retention, they do not harmonise the remedies available. Whether a court may order the return of the child within parental responsibility proceedings depends on national procedural law and the interpretation of custody powers. As a result, some Member States accept such orders, while others may require the use of the 1980 Convention return mechanism.

CASE NOTE 125 | SI | Supreme Court | ECLI:SI:VSRS:2021:II.IPS.25.2021
21 April 2021

After the mother removed the child from Slovenia to Croatia without the father's consent, the father's return proceedings in Croatia were refused under the 1980 Convention. Custody proceedings were meanwhile pending in Slovenia as the State of habitual residence. The lower courts assumed that Croatia's refusal prevented the Slovenian courts from acting, and that return could in any event only be ordered together with an award of custody to the father. The Supreme Court rejected both assumptions. It confirmed that the Slovenian court had no jurisdiction to make a *return order under the Convention* – under the Convention only the court of the State to which the child was removed decides that – but retained jurisdiction under the Regulation over the merits of parental responsibility, including the power to order the child's return as an interim/protective measure within the parental-responsibility proceedings. Relying on the Court of Justice in *Povse* (C-211/10 PPU), it held that the court of origin need not settle final custody before ordering return: as the court with the final word on custody, it must be able to fix the child's residence and order return on an interim basis. The refusal of return in Croatia therefore did not bar the Slovenian court from exercising jurisdiction and, if appropriate, ordering the child's return within the custody proceedings.

CASE NOTE 126 | NL | Arnhem-Leeuwarden Court of Appeal
ECLI:NL:GHARL:2019:4188
14 May 2019

After the mother failed to return the child from Bulgaria, the father sought an order before the Dutch courts requiring return to the Netherlands, relying on his custody rights rather than the 1980 Convention. The mother argued that only the courts of the State where the child was located had jurisdiction. The court accepted this for proceedings under the 1980 Convention, however emphasised that the claim was not based on the Convention, but on parental responsibility. Applying the Brussels IIbis Regulation, the court held that it retained jurisdiction under Articles 8(1) and 10 and that this jurisdiction extended to ordering the child's return as a custody measure, noting also the Regulation's precedence over the Convention between Member States.

Where the court of habitual residence issues a parental responsibility decision requiring the child's return, that decision may circulate across Member States under the *recognition and enforcement* framework of Brussels IIb (see Handbook part 1, Chapter 5.4). The abolition of exequatur means that

[117] See also European Commission, Practice Guide for the Application of Regulation (EU) 2019/1111 (Brussels IIb), section 3.2.5 ("Jurisdiction issues as regards child abduction cases – Article 9 and Recital 22" <https://op.europa.eu/en/publication-detail/-/publication/ff34bda5-ea90-11ed-a05c-01aa75ed71a1>.

such a decision may be recognised and enforced directly in the Member State where the child is located, subject to the safeguards contained in the Regulation.

Ultimately, whether the court of habitual residence may order the child's return within custody proceedings depends on national procedural law. Some legal systems allow such measures within parental-responsibility proceedings, while others require the use of the return mechanism provided by the 1980 Convention.

CASE NOTE 127 | **BG** | **Lovech Regional Court** | 20204300500137
10 March 2020

The father argued that the mother had taken the child to the Netherlands without his consent and sought changes to parental responsibility together with the child's return to Bulgaria. Because the issue of wrongful removal was raised within custody proceedings, the father had to establish the circumstances of the removal as part of the broader parental responsibility claim. In addressing the issue of jurisdiction, the Regional Court examined whether the removal could be considered wrongful within the meaning of Article 10 of Brussels IIa Regulation (currently Article 9 of the Brussels IIb Regulation). The court considered the father's custody rights, the absence of his consent, and the effect of the removal on the existing parenting arrangements. On that basis, it held that Bulgarian courts retained jurisdiction and allowed the custody proceedings to continue.

Enforcing access rights - Article 21

Article 21

An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

Where the left-behind parent does not seek the child's return, or where return is not available, the parent may instead focus on preserving the relationship with the child by requesting assistance in securing contact. Article 21 of the 1980 Convention provides a procedural mechanism for this purpose: it enables Central Authorities to assist in organising or securing the effective exercise of rights of access across borders, but it does not itself create such rights.[118]

[118] Where the 1996 Hague Convention also applies, its mechanisms should be considered alongside Article 21, particularly recognition and enforcement of measures, advance recognition under Article 24, and cooperation concerning access under Articles 31(b) and 35. See Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) pp 430–431.

Article 21 of the 1980 Convention is *not limited to the enforcement of already existing access orders*. The provision allows a parent to request assistance from the Central Authorities of Contracting States in order to organise or secure the effective exercise of rights of access. Importantly, the use of Article 21 does not depend on the existence of a prior judicial decision regulating contact. An application may also be made where no access order has yet been issued, where access rights arise directly by operation of law under the applicable domestic legal system, or where the parent simply has standing to seek contact with the child. In such situations, Article 21 enables the requesting parent to obtain assistance in initiating proceedings or establishing practical arrangements for contact. The provision therefore serves not only as a mechanism for the implementation of existing access rights, but also as a tool for facilitating the establishment of contact arrangements across borders.[119]

Under Article 5(b) of the Convention, rights of access include the right to take a child for a limited period of time to a place other than the child's habitual residence. In practice, this refers to maintaining direct personal contact with the child through visits, stays or other forms of communication (for details on access rights see Handbook part 1, Chapter 5.1.E).

Article 21 operates independently of the return mechanism.[120] While return proceedings under Articles 8–19 aim to restore the child to the State of habitual residence, Article 21 focuses on ensuring that contact between the child and the non-resident parent can be maintained in practice. Article 21 therefore provides an alternative or complementary route where return is not pursued or cannot be obtained. It may also be used while a return remedy is being pursued, without prejudice to the request for return. Critically, Article 21 also operates independently of the Convention's temporal scope for return: Article 35's limit applies only to the return provisions, and the access cooperation framework may be invoked where the obstruction of contact occurs or continues after the Convention has entered into force between the two States, even if the original abduction predates entry into force. In such cases, the applicant may request Central Authority cooperation to organise, secure, or restore contact, even if a return application is not legally available.

CASE NOTE 128 | BE | Supreme Court
ECLI:BE:CASS:2019:ARR.20190523.16
23 May 2019

A Belgian father's child was abducted to Russia in October 2007 by the child's mother. At the time of the abduction, the 1980 Convention was not in force between Belgium and Russia; it became effective between the two States only on 3 March 2016. The father subsequently sought an order requiring the Belgian State to open negotiations with the Russian authorities concerning his access rights under the 1980 Convention. The Liège Court of Appeal rejected the claim on the ground that the Convention did not apply because the abduction predated its entry into force. The Court of Cassation reversed. Relying on the Pérez-Vera Report, the Court held that Article 35's temporal limit confines only the return provisions of the Convention. The access provisions — Article 21 combined with the Central Authority cooperation framework of Article 7 — operate independently and can be invoked for refusals of access that occur or continue after the Convention enters into force, even where the original abduction occurred before entry into force.

[119] This interpretation is confirmed in the HCCH Guide to Good Practice on Transfrontier Contact Concerning Children, which notes that applications under Article 21 may be used even where no prior decision on access exists (p. 72). See also Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) 424–426, discussing the divergent approaches to Article 21, including jurisdictions in which it provides a basis for an access order and others in which the Central Authority assists the applicant in pursuing such an order under domestic law.

[120] Where access is sought while a return remedy is still being pursued, the request is without prejudice to the return application. See Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) pp 428–429, discussing the practical concern that a left-behind parent seeking access in the requested State may fear that such conduct could subsequently be relied upon as evidence of acquiescence to the child's remaining there.

Applications under Article 21 are also *not limited to situations involving international child abduction*. An application to organise or secure the effective exercise of rights of access or contact may be submitted to Central Authorities even when no wrongful removal or retention has occurred.[121]

Article 21 of the 1980 Convention should not be confused with *Article 27(2) of the Brussels IIb Regulation*. Article 21 concerns independent applications seeking assistance from Central Authorities to organise or secure the exercise of rights of access across borders. By contrast, Article 27(2) applies only within pending return proceedings and allows the court seised of the return application to examine whether contact between the child and the person seeking return should be ensured during those proceedings. The provision therefore serves a procedural function aimed at preserving the relationship between the child and the left-behind parent while the return case is being decided, rather than establishing or facilitating access rights through the Central Authority mechanism (for details on Article 27(2), see Chapter 3.5).[122]

Article 21 allows *Central Authorities to assist in organising or securing* the effective exercise of access rights across borders. Unlike return proceedings under Articles 8–19, the purpose of Article 21 is not to restore the status quo but to ensure that contact between the child and the non-resident parent can be maintained in practice. The HCCH Central Authority Practice Guide describes the procedural role of the requesting Central Authority when preparing an access application.[123] Before transmitting the request, the requesting Central Authority should first obtain information about the procedures applicable in the requested State in order to ensure that the application complies with the legal and administrative requirements of that country. It must verify that the application is complete and contains all essential supporting documents, including any required legal aid forms, and provide translations where necessary. The application should then be transmitted to the correct Central Authority in the requested State.

The Practice Guide also notes that *access applications are generally considered less urgent than return applications*, since the immediate restoration of the status quo is not at stake. Nevertheless, they remain important within the 1980 Convention system because maintaining contact between the child and the non-resident parent can serve a preventive function, reducing the risk of future abductions. In certain situations, however, access applications may require urgent treatment, for example, where a scheduled visit is about to be frustrated, where the access parent has travelled to see the child, but access is denied, or where the child has been located after a long period of separation and contact must be re-established promptly.

In 2023, the HCCH identified several practical issues affecting the operation of Article 21 of the 1980 Convention in relation to cross-border contact and access rights. In particular, the following challenges were reported in practice:[124]

[121] See, for example, HCCH, *Access / contact under the 1980 Convention and 1996 Child Protection Convention*, Prel. Doc. No 15 (Aug 2023), prepared for the Eighth Meeting of the Special Commission on the Practical Operation of the 1980 and 1996 Hague Conventions, §20(a) <https://assets.hcch.net/docs/017fcfbc-fd2c-4c05-a9bc-92326b3eeb9b.pdf>. See also R Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) p 425, noting that wrongful removal or retention is generally not required for an Article 21 application, while the threshold requirements derived from Article 4, including the habitual-residence requirement, have not been interpreted entirely uniformly.
[122] See Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) pp 428, 433, observing that the 1980 Convention does not itself clearly confer jurisdiction on the requested court to make an access order pending return proceedings and that, under the Convention alone, the existence of such jurisdiction depends on another jurisdictional basis.
[123] HCCH, *Central Authority Practice Guide*, Part I, p. 63
[124] Hague Conference on Private International Law (HCCH), *Access / contact under the 1980 Convention and 1996 Child Protection Convention*, Prel. Doc. No 15 of August 2023, prepared for the Eighth Meeting of the Special Commission on the Practical Operation of the 1980 and 1996 Hague Conventions, §11.

— *Lack of uniform interpretation of Article 21 obligations.* States differ considerably in how they understand the role of Central Authorities in organising or securing contact between the child and the left-behind parent.

— *Limited involvement of Central Authorities in some jurisdictions.* In certain States, applicants may be required to apply directly to a competent court or authority to organise or enforce contact abroad, without relying on the assistance of a Central Authority.

— *Refusal to process access applications in the absence of abduction.* Some States have reported that their authorities do not process Article 21 requests where there has been no wrongful removal or retention, even though the Convention allows access applications independently of return proceedings.

— *Operational difficulties in securing contact arrangements.* Challenges in organising or securing the effective exercise of access rights have been reported both in cases connected with international child abduction and in stand-alone cross-border contact cases.

Whether a person may invoke Article 21 depends on whether that person has, or may claim, rights of access under the applicable law. The 1980 Convention does not itself determine who is entitled to such rights.

CASE NOTE 129 | UK | High Court of England and Wales
[2018] EWHC 2048 (Fam)
30 July 2018

The maternal grandmother and the child's aunt sought contact with the child after the child's mother had died and the father had taken the child to England. Both relatives had previously played a role in the child's life, although the grandmother had been the primary caregiver. The aunt had no parental responsibility and no court order granting access rights. The case raised the question whether a non-parent without formally recognised access rights could rely on Article 21 of the 1980 Convention. The court examined whether such an application was permissible, noting that the Convention does not expressly limit who may invoke Article 21 but expressing concern that an overly broad interpretation could allow a wide range of persons to bring access applications.

Article 21, however, may not allow alterations or changes to existing access rights, as it does not itself provide a uniform jurisdictional basis for modifying existing access arrangements. It is primarily a facilitative and cooperative mechanism, not a jurisdictional rule for altering parental responsibility arrangements. If a parent wants to modify the schedule or conditions of contact, proceedings must be brought before a court having jurisdiction under the applicable jurisdictional rules.[125]

[125] See further Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) 424–425, discussing the divergent national approaches as to whether Article 21 itself provides a jurisdictional basis or merely enables Central Authorities to facilitate proceedings under domestic law.

CASE NOTE 130 | BG | Supreme Court of Cassation | Case No 292/2011
4 November 2011



A father residing in the United States asked the Bulgarian Ministry of Justice, acting as Central Authority, to intervene under Article 21 of the 1980 Convention so that he could see his child living in Bulgaria. A Bulgarian divorce judgment had already established a regime of personal contact between the father and the child, which had also been recognised in the United States. The father's request, however, effectively sought the establishment of a different contact arrangement. The Supreme Court held that Article 21 cannot be used to determine or modify the regime of personal relations fixed by a final judicial decision. The 1980 Convention mechanism is limited to assisting in the organisation and effective exercise of existing access rights, not to creating or altering them.

Table 12: Practical operation of Article 21 applications depending on whether access rights are already established

Situation	How Article 21 Applies	What the Applicant Must Do	Role of the Central Authority
Access rights already exist (court order, agreement, or rights arising by law)	Article 21 helps organise and secure the effective exercise of those rights across borders. It cannot modify the underlying rights.	Submit an Article 21 application with the relevant decision or evidence of access rights. If modification is sought, apply separately to the competent court.[126]	Receive and transmit the application, promote voluntary arrangements or mediation, assist the applicant in accessing recognition or enforcement proceedings where required, and facilitate practical contact arrangements.
No access rights have yet been established	Article 21 does not create access rights, but it may be used to seek assistance in establishing contact arrangements.	Submit an Article 21 application explaining the relationship with the child and the contact sought. Proceedings may need to be initiated in the relevant State to obtain an access order.	Provide information on procedures, assist the applicant in accessing the competent court or legal assistance, encourage mediation, and support efforts to establish contact.

Preparing an Article 21 access application

An Article 21 request does not always require the use of a standard form, although many States provide one to make processing easier. The HCCH and several Central Authorities have developed model forms, and using them is strongly recommended because they ensure that all necessary information is provided (e.g. the German form).[127]

When preparing the application and filling out the HCCH form, several practical points should be kept in mind:[128]

— **Choice of Central Authority (Form: introductory section / requesting authority).** The application may be submitted either to the Central Authority of the applicant's State of

[126] See also Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) p 426, noting the practical problem that a contact order made while both parents lived in the same State may become unsuitable after the relationship becomes international—for example, weekly contact may need to be replaced by longer periods during school holidays.
[127] HCCH, *Request for arrangements for organising or securing the effective exercise of rights of access* <https://www.bundesjustizamt.de/SharedDocs/Downloads/EN/HKUE/form_hkue_umg_en.pdf?__blob=publicationFile&v=1>.
[128] HCCH, Revised Request for Return Recommend Model Form and new Request for Access Recommended Model Form under the HCCH 1980 Convention & Explanatory Note (2023).

residence or directly to the Central Authority of the State where the child is located. In practice, applications are often transmitted through the applicant's domestic Central Authority, which may assist with completing the form and gathering documents.

— **Identification of the child (Form: section "Child").** Accurate identification of the child is essential. The form requests details such as name, date of birth, nationality and current location. If the child's exact address is unknown, as much information as possible should be provided to assist the authorities in locating the child.

— **Identification of the respondent (Form: section "Person alleged to have the child").** The form requires the name and contact details of the person with whom the child lives. Providing complete information facilitates communication and may allow the Central Authorities to explore voluntary arrangements before court proceedings become necessary.

— **Relationship with the child (Form: section "Applicant").** The applicant should clearly describe their relationship with the child. Where the applicant is not a parent, it is helpful to briefly explain the role previously played in the child's life.

— **Legal basis of access rights (Form: section "Basis of the application").** The form requires the applicant to indicate whether access rights arise from a court decision, an agreement, or operation of law. Supporting documents should be attached where available. If no access order exists, the application should clarify that assistance is sought in establishing contact arrangements.

— **Description of the access sought (Form: section "Arrangements sought").** The application should describe the type of contact requested, for example, visits, holiday stays, or remote communication. Vague requests for "contact" are less helpful than specific proposals.

— **Supporting documentation (Form: section "Documents attached").** Relevant documents such as court orders, agreements or birth certificates should be attached. Providing only the necessary documents facilitates the review of the application.

— **Information about related proceedings (Form: section "Other proceedings").** The form requests information about ongoing or past proceedings relating to custody, parental responsibility or access. Disclosure of such proceedings helps authorities coordinate the handling of the case.

— **Possibility of mediation (Form: section referring to settlement or mediation).** The form asks whether the applicant is willing to consider mediation or voluntary arrangements. Indicating openness to mediation may assist the authorities in exploring practical solutions.

— **Urgency (Form: section "Urgency").** Where relevant, the applicant should explain the reasons why the case requires urgent attention, for example, where a planned visit may be prevented, or contact has been interrupted for a long period.

— **Translations (Form: section relating to language).** Some States require translations of the application and supporting documents. Ensuring that translation requirements are met helps avoid delays in processing the request.

3.2. Procedural framework for return applications

Preparing a return application under the 1980 Convention involves not only compiling the necessary documents and evidence but also determining the procedural route through which the application will reach the competent authorities. Two issues must be considered at this stage: which court has jurisdiction to decide the return request, and through which channel the application should be transmitted to that court.

3.2.A. Competent court in return proceedings

> ***Article 12***
>
> *Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the* ***judicial or administrative authority of the Contracting State where the child is****, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.*

Under the 1980 Convention, jurisdiction to decide a return application lies exclusively with the courts of the State where the child is physically present at the moment the proceedings are initiated (see Case Note 133). This rule follows from Article 12, which imposes the duty to order the return of the child on the authorities of the State where the child is located. As explained in the Pérez-Vera Report in §106, the obligation to return the child presupposes a decision taken by the competent authorities of the requested State. Only those authorities can therefore determine whether the conditions for return are satisfied and order the child's return. Jurisdiction in return proceedings cannot be created or altered by parental choice.

The rationale is simple: the courts of the Contracting State where the child is physically present at the time of the return application are better placed than the courts of the State of habitual residence to decide the return proceeding. The Convention's design reflects this reality - the courts of the State of refuge can assess first-hand the factual circumstances of the child's presence, the conditions of any alleged wrongfulness, and the child's situation, and can order and execute return directly and without delay. [129]

The jurisdictional rule governing return proceedings under the 1980 Convention must be *distinguished from the jurisdictional rule established in Article 9 of the Brussels IIb Regulation*. Article 9 Brussels IIb does not regulate jurisdiction for the return procedure itself**.** Instead, it governs jurisdiction over parental responsibility following a wrongful removal or retention within the EU (for details see Handbook part 1, Chapter 6.2.A.).

This rule should as well not be confused with the situation of *outgoing abductions to non-Contracting states*, where courts in the State of the child's habitual residence may intervene. In such cases, the

[129] For such justification, see §II(2) of Portuguese Supreme Court of Justice (Supremo Tribunal de Justiça), First Section, 13 September 2022, Process 20/22.4T8VVC-A.E1.S1, Rapporteur Manuel Aguiar Pereira, available at <https://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/4f8650181db797ed802588bc00508a6f?OpenDocument>.

1980 Convention return mechanism cannot operate in the State of refuge, and the courts act under domestic jurisdictional rules, sometimes applying the Convention's principles by analogy.

As between Contracting States under the 1980 Convention, only the courts of the State where the child is physically present at the time of the application have jurisdiction to decide on Convention-based return. The courts of the child's former habitual residence may retain jurisdiction over parental responsibility and, where national law permits, may order the child's return within those proceedings. They cannot, however, decide the Convention return application itself, and no such jurisdiction arises under Brussels IIb or the 1996 Convention. Accordingly, even where the courts of the habitual-residence State consider themselves better placed, or where the effectiveness of the requested State's Central Authority is questioned, the return application must be brought before the courts of the State in which the child is present. (see also Chapter 1.3.C.)

CASE NOTE 131 | NL | The Hague District Court
ECLI:NL:RBSGR:2011:BU9097
14 December 2011

A mother in the Netherlands sought the return of her children, who had been taken to Morocco by the father. She initiated summary proceedings in the Netherlands, arguing that the children's habitual residence was the Netherlands and that Dutch courts therefore had jurisdiction. She also claimed that Morocco did not effectively process return requests, so Dutch intervention was necessary. The court rejected this argument. Because the children were physically in Morocco, only the Moroccan courts had jurisdiction to hear a return request under the 1980 Convention. The mother was required to proceed either through the Moroccan Central Authority or to file the return application directly before the Moroccan courts. The Dutch court therefore declared itself not competent to hear the claim.

CASE NOTE 132 | SI | Ljubljana Higher Court
ECLI:SI:VSLJ:2018:IV.CP.1764.2018
19 September 2018

Within Slovenian custody proceedings, a father sought interim orders requiring the return of his daughter from Croatia under the 1980 Convention, after the Croatian court had refused return. He argued that Article 8 of the Convention permits filing with the Central Authority of either the State of origin or the State of refuge, so the Slovenian court also had jurisdiction to decide. The Higher Court rejected this. Article 8 governs only where the application may be filed with a Central Authority; it does not give the applicant a choice of which court decides. Jurisdiction to decide on return under the 1980 Convention lies exclusively with the courts of the State where the child is physically located. The Slovenian court, as court of the former habitual residence, had no jurisdiction to decide the return question under the Convention.

3.2.B. Selecting the procedural track

Once the competent court has been identified and the timing of the application assessed, the next question is how the return request will reach that court. The 1980 Convention provides several procedural routes through which an application may be transmitted to the authorities of the State where the child is located.

Most commonly, applications are transmitted through the Central Authority of the child's habitual residence, which forwards the request to the Central Authority of the requested State. However, the 1980 Convention also allows applicants to send the request directly to the Central Authority of the

State where the child is located, to transmit it through the Central Authority of another Contracting State, or in many jurisdictions to apply directly to the competent court.

Each of these routes has different practical implications in terms of speed, administrative support, costs, and procedural control. Understanding the advantages and limitations of each option is therefore important when preparing the return application.

Submitting to the central authority of the child's habitual residence

> ***Article 8***
>
> *Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply* ***either to the Central Authority of the child's habitual residence*** *or to the Central Authority of any other Contracting State for assistance in securing the return of the child.*

This is the most common route. The habitual residence Central Authority is often in the best position to assist the applicant in compiling a complete and compliant application, as required by Article 8(2) of the Convention. It can provide guidance on the necessary documents, assist with translations, and ensure the file is in an appropriate format before forwarding it to the receiving Central Authority in the destination State under Article 9.

Communication is generally in the applicant's language, and the authority may also help in locating legal representation abroad. This route is particularly advantageous when the applicant is unfamiliar with foreign legal systems, does not speak the language of the destination State, or needs official institutional support.

The HCCH Special Commission has emphasised that Central Authorities play an important facilitating role in preparing and transmitting return applications.[130] In particular, the requesting Central Authority should ensure that the application is complete and, in addition to the essential supporting documents required under Article 8, may include any complementary information that could assist the receiving authority or the court in assessing and resolving the case.

The Special Commission has also stressed that the power of a requested Central Authority to refuse to process an application under Article 27 should be exercised with extreme caution. Applications should not be rejected merely because additional documents or information are required. Instead, Central Authorities are encouraged to cooperate and request the missing material so that the application can proceed without unnecessary delay.

The main drawback is the potential for delay caused by the two-step transmission process: the application must first be processed domestically before being sent abroad. Even though the 1980 Convention in Article 9 requires prompt transmission and cooperation, in practice, additional document requests, translation issues, or administrative backlogs may slow progress.

[130] HCCH, *Table of Conclusions and Recommendations of previous Special Commission Meetings (1989–2012)*, Prel. Doc. No 6 of July 2017, referring to 2006 SC C&R Nos 1.1.2–1.1.3 and 2011 SC C&R Nos 12–13.

The HCCH Special Commission has also emphasised that, when transmitting or receiving return applications, Central Authorities should not attempt to determine substantive issues such as the child's habitual residence or the existence of rights of custody. The evaluation of these factual and legal matters belongs to the court or other authority deciding the return application.[131]

Submitting directly to the central authority of the destination state

Article 8 of the 1980 Convention does not exclude an applicant to file the application directly to the Central Authority of the *State where the child is located*. This can save valuable time in urgent cases, such as when there is a risk of the child being moved to another jurisdiction or when immediate protective measures are needed. The advantage is the elimination of the intermediary stage: the destination Central Authority can begin processing and initiating return proceedings without waiting for the habitual residence authority's involvement.

This route works best when the applicant has already obtained translations into the official language of the destination State and understands the documentation and procedural requirements. The disadvantage is that the applicant may lose access to institutional support from their own Central Authority, which might otherwise act as a liaison, help resolve procedural obstacles, and monitor the case. Without this support, communication barriers and unfamiliarity with the destination State's legal culture may make the process more difficult.

Submitting to the central authority of any other contracting state

> ***Article 8***
>
> *Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence* ***or to the Central Authority of any other Contracting State*** *for assistance in securing the return of the child.*

The Convention also permits applications to be lodged with the Central Authority of any other Contracting State, which will then forward them to the appropriate destination authority. In the EU context – where all Member States are Contracting Parties – this could mean involving a third State's Central Authority for strategic or practical reasons: for example, if the applicant is temporarily residing there, has legal representation there, or if that authority has a reputation for efficient handling. However, this route is rarely used, as it adds an extra administrative step and may be slower than either of the first two options. It may be useful in exceptional situations, such as when the habitual residence authority is unable or unwilling to act, or where the applicant has safety concerns that make initial contact with their own State's authorities undesirable.

Submitting directly to the court where the child is present – Article 29

> ***Article 29***

[131] ibid, No 1.1.2; HCCH, *Seventh Meeting of the Special Commission on the practical operation of the 1980 Convention and of the 1996 Convention – October 2017* <https://assets.hcch.net/docs/a093695a-5310-42df-92bb-068abfde67c2.pdf>.

> *This Convention shall not preclude any person, institution or body that claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying* ***directly to the judicial or administrative authorities of a Contracting State****, whether or not under the provisions of this Convention.*

In addition to the options under Article 8, the applicant may submit the return application directly to the competent courts in "Contracting State". Article 29 means, in practice, that an applicant is not obliged to use the Central Authority mechanism in order to act. Instead, the applicant may refer directly to the court. This can be the fastest route, avoiding administrative transmission stages entirely, and may be particularly effective when the applicant already has legal representation in the destination State and when immediate judicial intervention is necessary.

When proceeding directly before the court under Article 29, the standard application form is normally not used as such; instead, the same substantive information must be presented *in the procedural format required by the national court seized*. This means that the application must be in the language of the state and comply with domestic rules on pleadings, including structure, evidentiary attachments, and, where applicable, representation by counsel. In practice, the form may still serve as a drafting template, but it must be translated and adapted into a legally valid submission under national procedural law, ensuring that all elements relevant under Articles 3 and 12 are clearly pleaded and supported in accordance with the court's formal requirements. Therefore, this route requires familiarity with local court procedures, potential advance payment of legal fees, and ensuring all documentary and translation requirements are met from the outset. Also, without Central Authority involvement, there is no institutional body to coordinate cross-border cooperation or assist with enforcement after the return order is issued.

Article 29 route is, however, limited to the *mode of access*, not to jurisdiction. The applicant cannot choose any court at will: the application must still ultimately be brought before a court that is competent under the applicable rules. In return cases, this will be the courts of the State where the child is present, since only those courts are in a position to order a return under the Convention.

CASE NOTE 133 | **NL** | **Supreme Court** | ECLI:NL:HR:2011:BU2834
9 December 2011



A child habitually resident in the Netherlands was wrongfully retained in Belgium. The left-behind parent, seeking to act quickly, bypassed the Central Authority and brought a return application directly before a Dutch court, relying on Article 29 of the 1980 Convention. The argument is that Article 29 permits direct access to the courts and therefore allows the application to be filed in the Netherlands. The Supreme Court rejected this reasoning and clarified the precise function of Article 29: the provision allows applicants to address the courts directly, but it does not determine which court is competent. It cannot be used to justify the jurisdiction of a court that would not otherwise be competent under the Convention. Jurisdiction must instead be derived from the Convention's structure, which directs return proceedings to the authorities of the State where the child is physically present. Accordingly, even in a direct application under Article 29, the return request could only be brought before the Belgian courts. The Dutch court lacked jurisdiction, notwithstanding the reliance on Article 29 and the child's habitual residence in the Netherlands.

When filing directly with the court under Article 29, the applicant should state clearly whether return is sought under the 1980 Convention. If so, the application should expressly invoke the Convention and plead the elements required for return. If the applicant instead relies on another legal basis, the case will proceed under the relevant national, EU or 1996 Convention rules, including the applicable rules on jurisdiction. The practical point is simple: direct access to the court does not determine the legal basis of the claim; the applicant must identify the route relied upon from the outset.

Strategic considerations

Selecting the channel through which an application is submitted requires careful assessment of the practical circumstances of the case. The choice should take into account the urgency of the situation, the applicant's access to legal assistance, language considerations, and the administrative practices of the States involved.

Where time pressure is moderate, and the applicant would benefit from guidance and institutional support, submitting the application through the Central Authority of the child's habitual residence is often the safest option. That authority can assist in preparing the file, ensure that the documentation complies with the requirements of the receiving State, and coordinate communication with the authorities abroad.

Where speed is critical (for example, when there is a real risk that the child may be moved again), direct submission to the Central Authority or to the court in the State where the child is located may be more effective. Eliminating intermediary transmission can save valuable time, particularly when the applicant already has legal representation in that State and the necessary documents have been translated in advance.

Submitting the application through the Central Authority of another Contracting State is possible but should normally be reserved for exceptional circumstances, such as when the Central Authority of the habitual residence is unable to act, where safety concerns make direct contact with that authority inappropriate, or when the applicant is physically located in another State and can access assistance there more easily.

In practice, the most important considerations are the *speed with which proceedings can be initiated, the completeness of the documentation, the availability of legal representation in the State where the child is located, and the level of institutional support required by the applicant*.

Table 13: Strategic objectives and the procedural routes available for submitting an application under the 1980 Convention

Strategic objective	Recommended approach	Benefits	Legal basis
Maximum speed in starting proceedings	Apply directly to the competent court in the State where the child is located	This avoids administrative transmission and allows the court to begin the procedure immediately.	Art. 29
Rapid initiation where legal representation is not yet secured	Submit the application directly to the Central Authority of the State where the child is located	The receiving authority can assist in initiating the procedure and help identify legal representation while the case proceeds.	Arts. 8, 9

Minimising costs	Submit through the Central Authority of the child's habitual residence	The authority may assist with translations, transmission of documents, and applications for legal aid.	Arts. 8, 9
Need for procedural guidance	Submit through the Central Authority of the child's habitual residence	The authority can verify that the application is complete and meets the requirements of the receiving State.	Arts. 8, 9
Maintaining direct control over litigation strategy	Apply directly to the court through local counsel	Legal representatives can manage the evidence, arguments, and timing of the proceedings without relying on administrative transmission.	Arts. 8, 29
Need for institutional support during the case	Submit through the Central Authority of the child's habitual residence	The authority can monitor the case, coordinate with foreign authorities, and assist with enforcement if necessary.	Arts. 7, 8, 9
Habitual-residence authority unable or unwilling to act	Submit through the Central Authority of another Contracting State	Provides an alternative channel where the usual route cannot be used.	Art. 8
Risk that the child may be moved again	Apply directly to the court or Central Authority in the State where the child is located	Allows rapid judicial or administrative intervention to secure the child's location.	Arts. 7, 8, 29
Reducing the risk of procedural errors	Submit through the Central Authority of the child's habitual residence	The authority reviews the application and supporting documents before transmitting them.	Arts. 8, 9

3.3. Preparing the return application

The preparation of a return application under the 1980 Convention is both a legal and a practical exercise. The Convention does not impose strict formal requirements, but Article 8 sets out the minimum information that must be provided to enable the Central Authority and, ultimately, the court to understand the claim and act without delay. In essence, the application must clearly identify the parties, explain why the removal or retention is considered wrongful, and provide sufficient information to locate the child.

At the same time, the Convention deliberately avoids requiring full evidentiary substantiation at the initial stage. Supporting documents may accompany the application, but their absence does not prevent submission. This reflects the priority given to speed and the prompt location of the child, with the possibility to supplement the file at a later stage.

The content of the application also serves an *initial screening function*. Under Article 27, Central Authorities are not required to process applications that fall outside the scope of the Convention or are manifestly unfounded but must promptly inform the applicant of the reasons for any refusal (see Pérez-Vera Report, §137).

3.3.A. Language of the application and accompanying documents

> ***Article 24***
>
> *Any application, communication or other document sent to the Central Authority of the requested State* ***shall be in the original language****, and shall be* ***accompanied by a translation into the official language or one of the official languages of the requested State*** *or, where that is not feasible, a translation into French or English.*
>
> *However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.*

In practice, Article 24 means that the authorities in the requested State must be able to read and process the documents submitted with the application. Applicants should therefore ensure that the application form and all essential supporting documents (such as court decisions, custody orders, or written agreements) are translated into a language accepted by that State. Failure to comply with the applicable language requirements may delay the transmission of the application or the initiation of proceedings.

While the 1980 Convention allows translations into English or French when translation into the official language of the requested State is not feasible, this possibility is limited by reservations made under Article 42. Some Contracting States have objected to the use of one of these languages and will only

accept the other or require translations into their official language. [132] Applicants should therefore verify the linguistic requirements and any reservations made by the requested State in advance, as published in the HCCH Status Table for the 1980 Hague Convention, where reservations and declarations are listed in the "RES/D/N/DC" column.[133]

While it is recommended that return applications under the 1980 Convention be typed and clearly legible, *a handwritten application may still be accepted in practice*. According to the HCCH Guide (Part I – Central Authority Practice, §3.2), some Central Authorities retype handwritten submissions to ensure legibility and compliance with the procedural requirements of the requested country.[134] The retyped version may be returned to the applicant for signature or may include the original handwritten version as an attachment. However, applicants should be aware that certain countries may not accept handwritten applications; in such cases, these jurisdictions are expected to provide notice of this requirement in their procedural information.

3.3.B. Content of the application (Article 8 a-d)

> ***Article 8***
>
> The application shall contain -
>
> *a)* information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
> *b)* where available, the date of birth of the child;
> *c)* the grounds on which the applicant's claim for return of the child is based;
> *d)* all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

Article 8 sets out the minimum information required for a return application under the 1980 Convention. Its purpose is not to impose formalism, but to ensure that the Central Authority and the court receive sufficient information to identify the case, assess its legal basis, and act without delay.

Purely formal objections to supporting documents cannot, by themselves, defeat a return application under the 1980 Convention. Article 8 provides that supporting documents may accompany or supplement the application, but this is permissive rather than mandatory. Article 23 excludes any requirement of legalisation or similar formality. Article 14 expressly authorises the requested-State authorities to take into account directly the legislation and judicial or administrative decisions of the State of habitual residence, whether or not formally recognised, without recourse to specific procedures for proving foreign law or recognising foreign decisions. Where the respondent challenges such material solely because it lacks an apostille or legalisation, but does not contest its authenticity or the accuracy of the translation, the court must assess its content rather than disregard

[132] Applicants should be aware that some States impose particularly strict translation requirements. Brazil, for example, requires documents to be translated into Portuguese by a sworn translator. See HCCH, *Status Table – 1980 Convention*, reservation of Brazil and Finland's objection. <https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=606&disp=resdn>. Further, if an application is submitted to the Central Authority in Germany, the documents may be provided in German, French or English. However, Germany indicates that applications should normally be accompanied by a German translation, even though it has not formally objected under Article 24.
[133] HCCH, *Status Table: Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* <https://www.hcch.net/en/instruments/conventions/status-table/?cid=24> .
[134] HCCH, *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction - Part I - Central Authority Practice* (2003) <https://assets.hcch.net/docs/31fd0553-b7f2-4f34-92ba-f819f3649aff.pdf>.

it on those formal grounds. Such objections cannot displace the Convention's prompt-return mechanism.

CASE NOTE 134 | ES | Madrid Provincial Court | ECLI:ES:APM:2026:2057
20 February 2026

A Peruvian mother retained the parties' son in Spain after a 10-day authorised visit, in breach of the father's custody under a Peruvian conciliation agreement. Defending against return, the mother argued that the conciliation agreement and other Peruvian documents lacked an apostille and could not be relied upon in Spain. The Madrid Court of Appeal rejected this. Article 8 of the 1980 Convention provides that supporting documents may accompany the application, but do not require any particular formal status. Article 14 expressly authorises the requested State authorities to take into account directly the legislation and judicial or administrative decisions of the State of habitual residence, whether or not officially recognised, without recourse to specific procedures for proving foreign law. The mother had conceded the authenticity of the documents and challenged only their formal status. Formalistic objections of this kind cannot displace the Convention's prompt-return mechanism, and the Court ordered return.

Identity of the applicant, the child, and the alleged taking person

This requirement ensures that all key persons involved in the case are clearly identified. It enables the Central Authority to verify the applicant's standing, to identify the child, and to locate or contact the person alleged to have removed or retained the child.

In practice, this includes full names, possible aliases, and, where available, identifying details such as dates of birth, nationality, and identity documents. Consistency across documents is important, as discrepancies in names or spelling may delay identification or create uncertainty. Even partial information may be useful, particularly in relation to the respondent.

Date of birth of the child (where available)

The date of birth is relevant primarily to confirm that the child falls within the *scope of the Convention (under 16 years of age)*. It also assists in identifying the child and distinguishing between siblings or persons with similar names.

If the exact date is not known, approximate information may still be provided, but official proof (such as a birth certificate) will normally be required at a later stage. This element is usually straightforward but should not be omitted where available.

Grounds on which the claim for return is based

This is the core legal component of the application. The applicant must set out why the removal or retention is considered wrongful within the meaning of the Convention. In practice, this requires identifying:

— where the child was habitually resident immediately before the removal or retention;

— what rights of custody existed at that time;

— whether those rights were actually exercised, or would have been exercised but for the removal or retention; and

— how those rights were breached.

The requirement under Article 8(c) to indicate the grounds on which the claim for return is based serves a practical filtering function. It enables the Central Authority to assess, at an early stage, whether the application is sufficiently substantiated and to rely, where appropriate, on its power under *Article 27 to refuse to process applications* that are clearly not well-founded. These grounds should, in principle, address both the factual and legal elements of wrongful removal or retention within the meaning of Article 3, namely the child's habitual residence and the existence and breach of rights of custody. However, the Convention deliberately does not require full documentary proof at this stage. As explained in the Pérez-Vera Report §100, supporting evidence (particularly on foreign law or custody rights) may be difficult to obtain quickly and should not delay the prompt transmission of the application.[135] The priority at this stage is speed and the effective location of the child; detailed evidentiary support may be provided later, and in cases of voluntary return or amicable resolution, it may not be necessary at all.

The explanation does not need to be elaborate or formally argued, but it must be sufficiently clear and structured to allow the requested authority to understand the legal basis of the claim. Supporting documents (such as custody decisions or evidence of habitual residence) should be referenced or attached.

Information on the whereabouts of the child and the person with whom the child is presumed to be

This requirement serves a purely practical function: it enables the authorities to locate the child and take effective action. The applicant should provide all available information, including addresses, contact details, names of relatives or other persons involved, and any indications of the child's current situation (such as school attendance or recent travel). The information does not need to be certain; even partial or indirect leads may be useful.

Where the child's exact location is unknown, it is important to include any information that may assist in tracing the child, rather than leaving the section blank.

3.3.C. Collecting supporting documents (Article 8 e-g)

Article 8

The application may be accompanied or supplemented by -

e) an authenticated copy of any relevant decision or agreement;
f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
g) any other relevant document.

[135] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction*.

The second part of Article 8 specifies the types of documents that may accompany or supplement the application. Unlike the first part of the provision, these elements are not mandatory, but they play a crucial role in supporting the claim and facilitating a faster and more effective handling of the case.

As underlined in the Pérez-Vera Report in §101, the Convention *deliberately separates the submission of the application from the full evidentiary assessment*.[136] While supporting documents are important, their absence at the initial stage does not prevent the application, and evidence may be supplemented later as the case progresses.

The HCCH model form on page 12 offers a checklist of documents that may be attached to support the request.[137] Not all documents are required in every case, but the application must contain enough information to explain the basis of the claim under Article 3, in particular the child's habitual residence, the existence of custody rights, and their exercise.

The checklist is structured by category (child, applicant, parents, respondent, other) and serves a practical purpose: it helps Central Authorities and courts quickly verify identity, locate the child, and assess the legal basis of the request. Applicants should therefore attach all relevant documents available at the time of filing. Missing documents do not prevent submission but may delay the procedure. Documents should be submitted in chronological order with a table of annexes, so that the court can easily follow the applicant's case.

Table 14: Key requirements under the 1980 Convention and typical supporting documents

Requirement	Purpose, examples, and practical guidance
The child is under 16 (Article 4 1980 Convention)	Confirms that the Convention applies. Established through official documents showing the date of birth, typically a birth certificate. A certified copy is usually sufficient; translation may be required.
Identity of the child	Allows authorities to identify and locate the child. Includes passports, ID cards, residence permits, and recent photographs. Even expired documents can be useful, especially for tracing travel or identity.
Identity and standing of the applicant	Confirms who is making the request and allows authorities to communicate with them. This is usually straightforward (passport or ID), but should match the details in the application. The applicant's relationship to the child must also be clear from accompanying documents.
Identity of the respondent (if available)	Helps identify and locate the alleged taking parent. Any available information is useful, including partial data, copies of documents, or photographs.
Habitual residence of the child immediately before removal/retention	Establishes the legal framework and the starting point of the Convention analysis. This should be supported by a combination of evidence (e.g. school, daycare, medical records, registration, housing). A single document is rarely sufficient; the aim is to show the child's real centre of life.
Existence of rights of custody (Article 3 1980 Convention)	Core requirement. It must be clear that the applicant had rights of custody under the law of the habitual residence. These may arise by law, court

[136] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction*.
[137] HCCH, *Revised Request for Return Recommend Model Form and new Request for Access Recommended Model Form under the HCCH 1980 Convention* (2023) <https://assets.hcch.net/docs/62326ee1-7133-42b9-b349-6b17c3754a8d.pdf>.

	decision, or agreement. Where custody arises automatically, it is helpful to indicate the relevant legal rule or provide a short explanation.
Content of custody rights (right to determine residence)	It must be clear that the rights include deciding where the child lives. This is often implicit in custody, but should be supported where necessary by decisions, agreements, or legal provisions clarifying parental responsibility.
Actual exercise of custody rights (Article 3 1980 Convention)	Shows that the applicant was actively exercising custody (or would have done so). Evidence typically reflects daily life: involvement in schooling, medical care, financial support, or regular contact. Formal proof is not required; practical involvement is sufficient.
Wrongful removal or retention (breach of custody rights)	Demonstrates that the child was taken or kept in breach of custody rights. This usually follows from the factual timeline: travel details, lack of return, and absence of required consent. Clear chronology is important.
Absence of consent or acquiescence (Article 13(1)(a) 1980 Convention – anticipatory)	Helps pre-empt common defences. It is useful to show that the applicant did not agree to the relocation or continued stay. Written objections, messages, or prior legal steps can be included where available.
Initial consent and its limits (if relevant)	Where travel was initially agreed, it is important to show its scope (e.g. duration, purpose). This helps identify when retention became wrongful. Travel consents, tickets, or correspondence may be relevant.
Withdrawal of consent/moment retention became wrongful	Clarifies when a lawful stay becomes unlawful. This can be shown through communications requesting return or objecting to continued stay. The timing is important for Article 12.
Parental relationship and its legal effects	Provides context for custody rights under applicable law. Marriage, partnership, or divorce may determine how parental responsibility arises or is exercised. Supporting documents should reflect the legal situation at the relevant time.
Ongoing proceedings concerning the child	Alerts authorities to parallel proceedings that may affect the case. Include basic details (court, case number, type of proceedings). Even incomplete information is better than none.
Ability to locate the child	Essential for the effectiveness of the procedure. Any information that may help locate the child should be included: addresses, contact details, relatives, workplaces, or online presence. Indirect leads are often useful.
Practical feasibility of return (optional)	Helps authorities understand how return could be organised in practice. This may include travel arrangements or accommodation, but is not legally required and does not affect the assessment of the case.
Risk factors and possible need for safeguards (if relevant)	Alerts authorities to issues that may arise upon return. This may include safety concerns, prior incidents, or vulnerabilities. The information does not need to be framed as a legal argument but should be concrete and fact-based.
Applicable law of the habitual residence (if unclear)	May be useful where custody rights are not obvious. A short explanation, legal extract, or opinion can assist the requested authority in understanding foreign law.
Admissibility and usability of documents	Ensures that documents can be used in the requested State. Translations are often required; authentication or certification of copies may be necessary depending on the country. Checking the relevant Country Profile avoids delays.

3.3.D. Completing the HCCH model application form

HCCH has developed a Recommended Model Form for Return Applications under the 1980 Convention.[138]

The HCCH form has been substantially revised in recent years. Earlier versions relied largely on open-text descriptions, whereas the newer model introduces a more structured format with tick-boxes and guided sections reflecting the legal requirements of the Convention.[139] Applicants should ensure they are using the most recent version of the form, as it is designed to facilitate cross-border cooperation and more efficient handling of applications by Central Authorities.

The form is not mandatory but strongly encouraged. Its use is intended to standardise applications across jurisdictions, reduce delays, and ensure that courts and Central Authorities receive the essential information in a clear and structured way. The form is widely used, but applicants should verify whether the requested State accepts it or requires its own national form.[140]

Although the HCCH model form is designed to be user-friendly, an application may be delayed if it is filled in incorrectly or incompletely. Drop-down menus (e.g. selecting "Mother" or "Father") are straightforward, but free-text fields (such as those on habitual residence, circumstances of removal, or exercise of custody) require careful drafting. Each answer should be concise, factual, and supported by documents, and the form should tell a *clear and well-documented story of a wrongful removal or retention under Article 3* of the Convention. This section, therefore, offers step-by-step instructions on completing some of the key fields, illustrated with examples, references to supporting documents, and notes on common pitfalls to avoid. [141]

Siblings

Concerning the following child(ren):	
1. Name of child No 1: Click or tap here to enter text.	1. **Who will attain the age of 16 on (dd/mm/yyyy):** Click or tap here to enter text.
2. Name of child No 2: Click or tap here to enter text.	2. **Who will attain the age of 16 on (dd/mm/yyyy):** Click or tap here to enter text.
3. Name of child No 3 Click or tap here to enter text.	3. **Who will attain the age of 16 on (dd/mm/yyyy):** Click or tap here to enter text.
4. Name of child No 4: Click or tap here to enter text.	4. **Who will attain the age of 16 on *(dd/mm/yyyy)*:** Click or tap here to enter text.
Does this child / do these children have siblings subject of a distinct return application?	☐ **Yes (please provide the date of application and the name of the sibling(s)):** Click or tap here to enter text. ☐ **No**
Does this child / do these children have siblings who are not the subject of a return application?	☐ **Yes** ☐ **No**

[138] The most recent and final version was adopted in June 2024 following extensive consultations with States and practitioners. The revisions reflect practical experience gathered from Contracting States, including the need for electronic completion, clearer terminology, and improved fields for describing custody rights and voluntary return attempts. See HCCH, *Explanatory Note on the Revised Model Form for Applications under the 1980 Child Abduction Convention*, prepared for the Eighth Meeting of the Special Commission (2023), <https://assets.hcch.net/docs/5178320a-7d48-4ea7-850a-9d5dd3d7e075.pdf>.

[139] HCCH, *Seventh Meeting of the Special Commission on the practical operation of the 1980 Convention and of the 1996 Convention – October 2017* <https://assets.hcch.net/docs/45e73114-2225-4d1f-b4ca-04b1218b002c.pdf>.

[140] Germany, for example, provides its own *Request for Return* form through the Federal Office of Justice (Bundesamt für Justiz), which broadly follows the structure of the HCCH model form but is shorter and more standardised. Poland as well offers forms available in two formats: interactive and traditional <https://www.gov.pl/web/stopchildabductions/-information-on-the-preparation-of-applications-under-the-hague-convention-on-the-civil-aspects-of-international-child-abduction-drawn-up-at-the-hague-on-25-october-1980>; Finland: <https://www.suomi.fi/services/application-for-the-return-of-a-child-in-a-child-abduction-case-the-ministry-of-justice/307fdc32-7009-40bc-9e68-71356e2abf6e>.

[141] Detailed instructions on completing Hague Convention applications are available from a number of national Central Authorities (e.g. the U.S. Office of Children's Issues available here: <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/abductions/guidance-hague-application.html>). These materials may include step-by-step guidance, examples, and country-specific requirements, but they do not replace the need to assess each case in light of the applicable legal framework and the HCCH Model Application Form.

"Does this child / do these children have siblings subject of a distinct return application?"

This question asks whether there are brothers or sisters for whom a separate return application has already been filed under the Convention. If the answer is yes, the applicant must indicate the name of the sibling and the date of the other application, allowing Central Authorities to identify and link related proceedings. (*Example:* A father files a return application for his son and a separate application for his daughter, for instance, because the children were abducted at different times or because they have different legal parents and therefore separate custody arrangements. In such a case, the application concerning the son should indicate that the daughter is the subject of a separate return request.)

"Does this child / do these children have siblings who are not the subject of a return application?"

This question asks whether the child has siblings who exist but are not included in any return application. This may occur, for example, where a younger sibling remained in the State of habitual residence with the applicant parent, or where an older sibling has already reached the age of 16 and therefore falls outside the scope of the Convention. Indicating this information helps authorities understand the family structure while clarifying that no return request is sought for those children.

Requesting state / requested state

REQUESTING STATE	Click or tap here to enter text.
REQUESTED STATE	Click or tap here to enter text.

Requesting State is the country from which the application for return or access originates. It is usually the State where the child was habitually resident immediately before the wrongful removal or retention, and/or where the left-behind parent submits the application to the Central Authority.

Requested State is the country to which the child was taken or in which the child is being wrongfully retained, and where the return is sought.

Child

When completing the section on the child, ensure that all identifying information is provided accurately and consistently across documents.

SECTION I – CHILD (1) SUBJECT OF THE RETURN APPLICATION	
	IDENTITY OF THE CHILD
Family name(s)	Click or tap here to enter text.
Given name(s)	Click or tap here to enter text.
Alias *(if applicable)*	Click or tap here to enter text.
Place and date of birth *(dd/mm/yyyy)*	Click or tap here to enter text.
Nationality(ies)	Click or tap here to enter text.
Gender	Click or tap here to enter text.
Identity document(s), number(s) and validity dates thereof *(if known)*	Click or tap here to enter text.
Travel document(s), number(s) and validity dates thereof *(if known)*	Click or tap here to enter text.
Place of habitual residence immediately before removal or retention	Click or tap here to enter text.
Language(s)	Click or tap here to enter text.

Any *aliases* should include all variations of the child's name (such as different spellings, second surnames, or names used in another country), as discrepancies between documents can create confusion or delay identification.

Details of *identity and travel documents* should be included where known, indicating document numbers and validity; leaving this information blank or assuming it is irrelevant may hinder tracing the child or assessing the possibility of cross-border movement.

Child's *habitual residence immediately before the removal or retention* must be a precise, full address reflecting the situation at the relevant moment, not a general reference to a country or the child's current residence. Vague or incorrect answers at this stage are a frequent source of difficulty, as habitual residence is central to establishing wrongfulness under Article 3. Where possible, this information should be supported by documents such as school records or registration certificates.

The *languages* spoken or understood by the child should be listed comprehensively, including the context in which they are used (for example, at home or at school). Limiting this to one language may create practical difficulties in hearings or interviews.

Any additional identifying characteristics should be mentioned only where they genuinely assist identification, such as distinctive marks or the use of glasses or medical aids.

Applicant

SECTION II – APPLICANT, *I.E.*, PERSON REQUESTING RETURN OF THE CHILD IDENTITY AND CONTACT DETAILS OF APPLICANT	
Family name(s)	Click or tap here to enter text.
Given name(s)	Click or tap here to enter text.
Alias *(if applicable)*	Click or tap here to enter text.
Place and date of birth *(dd/mm/yyyy)*	Click or tap here to enter text.
Relationship to the child	☐ Mother ☐ Father ☐ Legal or customary guardian ☐ Other. Please specify: Click or tap here to enter text.

This section establishes who is invoking the Convention and in what legal capacity (see more in Chapter 1.4.A.).

Relationship to the Child field identifies the applicant's legal connection to the child. It is critical because only persons, institutions, or bodies with "rights of custody" under the law of the child's habitual residence may request return. The court will assess not only biological ties but also whether the applicant had a legally recognised right to determine the child's place of residence.

"Other (please specify)" needs to be marked if the applicant is not the child's mother, father, or formally appointed guardian, but still claims to hold rights of custody. Clearly state who the applicant is (e.g. grandparent, child protection authority, municipality, foster carer, institution) and on what legal basis they have custody rights under the law of the child's habitual residence.

Respondent

SECTION III – RESPONDENT, *I.E.*, PERSON ALLEGED TO HAVE WRONGFULLY REMOVED or RETAINED THE CHILD	
Family name(s)	Click or tap here to enter text.
Given name(s)	Click or tap here to enter text.
Alias *(if applicable)*	Click or tap here to enter text.
Place and date of birth *(dd/mm/yyyy)*	Click or tap here to enter text.
Relationship to the child	☐ Mother ☐ Father ☐ Legal or customary guardian ☐ Other. Please specify: Click or tap here to enter text.

This field identifies *who is alleged to have removed or retained the child* (see more in Chapter 1.4.A. – Respondent).

The relationship between the child and the respondent must be clearly stated, as it helps define the factual and legal framework of the case. If the respondent is a parent (mother or father), indicate this and ensure consistency with the information provided elsewhere in the application. No detailed legal explanation is needed here, but the relationship must match the custody analysis under Article 3.

If the respondent is a *legal or customary guardian*, this should be specified, especially where custody rights are shared or transferred. Supporting documents may be relevant later in the proceedings.

If the respondent falls under *"Other (please specify)"*, clearly explain who this person or entity is (e.g. grandparent, relative, foster carer, institution) and how they came to have physical control of the child.

Whereabouts of the child

Please provide any other relevant information on the present status and whereabouts of the child and the person(s) thought to be with the child.	Click or tap here to enter text.

This field is intended to provide *all available information* on where the child currently is, who they are with, and what their living circumstances might be. Even partial or uncertain information can be useful for Central Authorities to locate the child.

Indicate the *last known address* and identify the *person(s) the child is believed to be with* (e.g. respondent, relatives, friends). Include any available *contact details*, such as phone numbers, email addresses, or addresses.

If known, briefly mention *relevant indications of the child's situation*, such as school attendance, medical care, or recent travel.

If the exact location is unknown, provide any *useful leads* (family members, contacts, or places where the child may be found).

Third parties who could help locate the child

Please provide information on any other person(s) who might be able to provide additional information concerning the present status and whereabouts of the child. *(If applicable)*

This field is often overlooked, but it can be very important for Central Authorities. List any individuals who may know where the child is, or who may have useful information about the respondent's or child's circumstances. This allows the Central Authority to contact them directly if the respondent and child cannot be found.

List any persons who are likely to have *direct or indirect knowledge* of the child's whereabouts or who are in contact with the respondent. This enables Central Authorities to follow up and obtain information quickly. Include, where possible, names and contact details (address, phone, email), and indicate why the person is relevant (e.g. "in regular contact with the respondent").

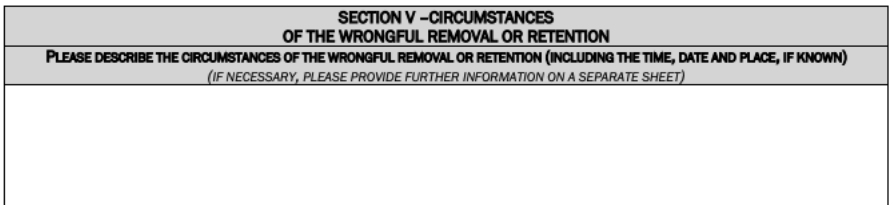
Relationship between the parents

SECTION IV – RELATIONSHIP STATUS OF THE PARENTS	
Relationship	☐ Married ☐ Other form of union (e.g., registered partnership) ☐ Unmarried cohabitation ☐ Divorced ☐ Separated ☐ Other: Click or tap here to enter text.
Date and place of marriage / union	Click or tap here to enter text.
Date and place of divorce / dissolution of the union *(if applicable)*	Click or tap here to enter text.
Are there ongoing divorce / legal proceedings or ongoing alternative dispute resolution procedures (e.g., mediation) that may affect the custody rights concerning the child covered by this Request?	☐ Yes. Please specify: Click or tap here to enter text. ☐ No

This section provides basic information on the *legal or factual relationship* between the parents at the relevant time. It helps the Central Authority and the court understand the family context and may be relevant for identifying how parental responsibility and custody rights arise under the applicable law.

The legal status of the parents, and in particular whether they are married, separated, or divorced, may affect how parental responsibility is structured under the applicable law. In many legal systems, married parents exercise parental responsibility jointly by operation of law. However, divorce or separation often triggers a legal reorganisation of those rights. A court or other competent authority may allocate parental responsibility to one parent, maintain joint responsibility with specific limitations, or regulate key aspects such as the child's residence and decision-making powers. As a result, the existence and scope of custody rights at the time of the removal or retention cannot be assumed from the parental relationship alone but must be assessed in light of any divorce or separation arrangements.

Circumstances of the wrongful removal or retention



SECTION V –CIRCUMSTANCES OF THE WRONGFUL REMOVAL OR RETENTION

PLEASE DESCRIBE THE CIRCUMSTANCES OF THE WRONGFUL REMOVAL OR RETENTION (INCLUDING THE TIME, DATE AND PLACE, IF KNOWN)

(IF NECESSARY, PLEASE PROVIDE FURTHER INFORMATION ON A SEPARATE SHEET)

This section contains the core *factual narrative* of the case. The applicant should describe clearly and chronologically the events leading to the removal or retention, including dates, places, and any relevant agreements or understandings between the parties. It is important to identify the exact moment at which the situation became wrongful (e.g. expiry of agreed contact, breach of consent). The description should remain factual and *avoid legal argumentation*.

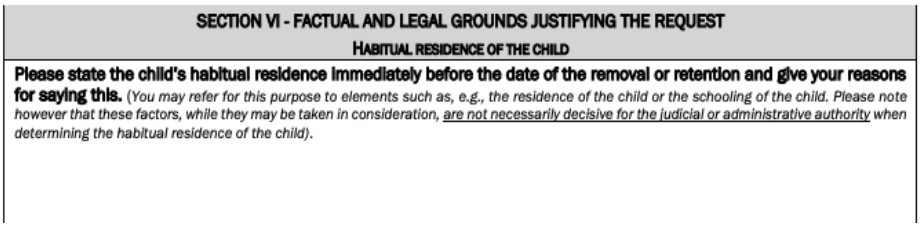
Factual and legal grounds - habitual residence & custody rights

This section contains two mandatory subsections:

1. *Habitual residence of the child* - why the child was habitually resident in the requesting State immediately before removal/retention (see more on habitual residence in Chapter 2.4.). The form instructs to give reasons (residence, school, integration, etc.).

2. *Rights of custody* - who had rights of custody at the relevant date, how those rights arose (operation of law, agreement, court order), and attach supporting documentation.

This is the *only section* where the Model Form asks for a legal justification establishing wrongful removal/retention under Articles 3 and 5 of the 1980 Convention. According to the HCCH recommendations in HCCH Preliminary Document No. 14 (August 2023) – Tools available to ascertain whether a removal or retention is wrongful under the 1980 Convention (Articles 8, 14 and 15), this section should set out clearly and concisely the facts and legal elements that allow the requested authority to determine whether the removal or retention was wrongful.[142]



SECTION VI - FACTUAL AND LEGAL GROUNDS JUSTIFYING THE REQUEST

HABITUAL RESIDENCE OF THE CHILD

Please state the child's habitual residence immediately before the date of the removal or retention and give your reasons for saying this. *(You may refer for this purpose to elements such as, e.g., the residence of the child or the schooling of the child. Please note however that these factors, while they may be taken in consideration, are not necessarily decisive for the judicial or administrative authority when determining the habitual residence of the child).*

The applicant is expected to explain where the child was *habitually resident* immediately before the alleged removal or retention and to support this with concrete factual indicators. This typically includes information showing the child's integration in that State, such as school or daycare attendance, medical registration, local registration, social or family environment, and any other facts that demonstrate that the stay there was stable and not temporary. Relevant documents, for example, school certificates or medical records, should be attached and referenced.

[142] HCCH, *Tools available to ascertain whether a removal or retention is wrongful under the 1980 Convention (Arts 8, 14 and 15)* (2023).

RIGHTS OF CUSTODY

Who had rights of custody in respect of the child at the time of the alleged removal or retention? Rights of custody, in accordance with the Convention, *"shall include rights relating to the care of the person of the child, and in particular, the right to determine the child's place of habitual residence".*

☐ Applicant (joint, sole or other):
☐ Respondent (joint, sole or other) ☐ An institution or other body (e.g., a court)
☐ Other (please specify): Click or tap here to enter text.

Please indicate how these rights of custody arose: Click or tap here to enter text.

☐ By virtue of a **decision by a judicial or administrative authority**

☐ By **operation of law** *(i.e., where there is no decision by a judicial or administrative authority or an enforceable agreement)*

☐ By virtue of a **legally binding agreement** between the parties *(i.e., an agreement reached by the parties regarding rights of custody and having legal effect under the law applicable in the State of the child's habitual residence)*

☐ **Other** (please specify): Click or tap here to enter text.

*Please **attach any documentation** (copy of a decision by a judicial or administrative authority, legal agreement, affidavit, relevant legal provisions...) **that support the existence of such rights of custody** at the time of the alleged removal or retention.*

This section is one of the most important in the entire form because it goes directly to the core requirement of the Convention: whether the applicant had *rights of custody at the time of the alleged removal or retention*. Without establishing this, the Convention simply does not apply. The purpose of this part is not just to state that the applicant is a parent or guardian, but to explain what concrete legal rights existed and where they come from. The applicant must identify both the holder of the rights and the legal source of those rights.

First, the applicant must indicate *who held rights of custody*. This can be the applicant alone, both parents jointly, or another person or institution (for example, a guardian or a child protection authority). This is not about who actually cared for the child in practice, but who had the legal authority to determine the child's place of residence. That is the key element of "rights of custody" under the Convention (see Chapter 2.5. and Handbook part 1, Chapter 5.1.D for the concept "rights of custody").

Second, the applicant must explain how those rights arise. The form gives three main possibilities, and it is important to choose carefully:

— If the rights arise *by operation of law*, this means they exist automatically under the law of the child's habitual residence, without any court decision. This is very common, for example, where married parents automatically have joint parental responsibility. In such cases, the applicant should still explain briefly what the law provides (e.g. "under Dutch law, both parents have joint parental authority by default").

— If the rights arise from a *judicial or administrative decision*, the applicant must refer to the specific decision (for example, a custody order or divorce decision). The exact decision should be identified and attached. It is important to make clear whether the custody rights include the right to determine the child's residence.

— If the rights arise from an *agreement*, this refers to a legally binding agreement between the parties (for example, a parenting agreement approved by a court or notary under national law). The applicant must show that the agreement has legal effect under the relevant law.

Often, custody arises by operation of law (for example, because the parents are married and therefore have joint parental responsibility). A later court decision, such as in divorce proceedings,

does not create new rights as they are already established, but may confirm or regulate how those existing rights are exercised. In such situations, it is helpful to refer to all relevant sources, not because the rights arise more than once, but to show clearly what the custody situation was at the time of the removal or retention and how it is supported.

Ongoing proceedings

SECTION VII – ONGOING PROCEDURES CONCERNING THE CHILD AND THEIR FAMILY *(IF KNOWN OR APPLICABLE)*		
ONGOING LEGAL PROCEEDINGS		
Ongoing civil proceedings in the requesting State	Name of court / authority	Click or tap here to enter text.
	Date of hearing	Click or tap here to enter text.
	Case No	Click or tap here to enter text.
	Please provide details: Click or tap here to enter text.	
Ongoing civil proceedings in the requested State	Name of court / authority	Click or tap here to enter text.
	Date of hearing	Click or tap here to enter text.
	Case No	Click or tap here to enter text.
	Please provide details: Click or tap here to enter text.	
Ongoing civil proceedings in a third State	Name of court / authority	Click or tap here to enter text.
	Date of hearing	Click or tap here to enter text.
	Case No	Click or tap here to enter text.
	Please provide details: Click or tap here to enter text.	

This section requires information about any *ongoing proceedings* concerning the child or the parents, whether in the requesting State, the requested State, or another country. The applicant should include court proceedings (e.g. custody, divorce, protective measures), as well as mediation or other dispute-resolution processes if relevant. It is important to provide concrete details where possible, such as the name of the court, case number, and current stage of the proceedings. Even if the proceedings are not directly about return under the Convention, they may affect the handling of the case and should therefore be disclosed.

Voluntary return

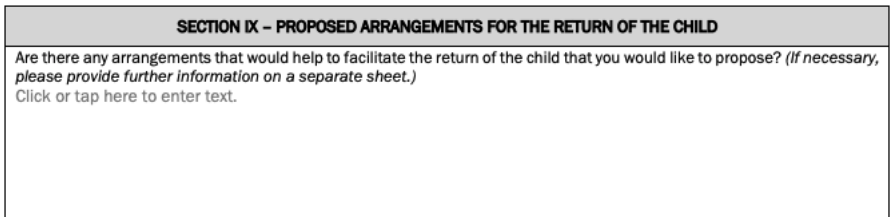
SECTION VIII – VOLUNTARY RETURN / AMICABLE RESOLUTION OF THE DISPUTE
Would you agree to the Central Authority contacting the respondent to this application for the purpose of requesting a voluntary return? ☐ Yes ☐ No (please explain): Click or tap here to enter text. Would you consider the possibility of an amicable resolution of the dispute (*e.g.*, by means of mediation)? ☐ Yes ☐ No (please explain): Click or tap here to enter text.

This section is practical and does not affect the legal assessment of the case. Indicating that the applicant is open to voluntary return or mediation does not weaken the application, delay proceedings, or suggest acceptance of the removal or retention. It simply allows the Central Authority to explore faster, less confrontational solutions alongside the formal procedure.

Answering "yes" means that the Central Authority may contact the respondent to see whether the child can be returned voluntarily or whether an agreement can be reached. This can sometimes lead to quicker outcomes without the need for a full court process.

Answering "no" signals that such contact is unlikely to be useful or appropriate. A short explanation may be helpful to briefly indicate practical reasons, such as a lack of communication, previous failed attempts to reach an agreement, or concerns about safety or pressure.

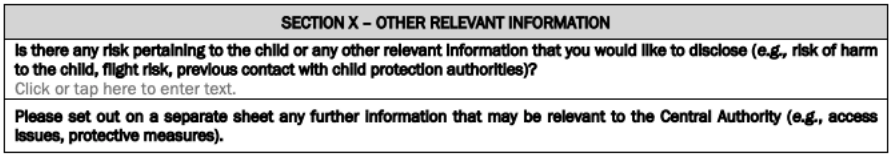
Proposed arrangements



SECTION IX – PROPOSED ARRANGEMENTS FOR THE RETURN OF THE CHILD
Are there any arrangements that would help to facilitate the return of the child that you would like to propose? *(If necessary, please provide further information on a separate sheet.)* Click or tap here to enter text.

This section is intended for *practical arrangements to facilitate the return of the* child (see Chapter 6.1.D), and the applicant may provide these in more detail, including on a separate page. While the focus is on logistics (such as travel, accommodation, or who will accompany the child), the applicant may also indicate practical assurances that make the return workable in reality. This can include, for example, arrangements for housing, financial support, or coordination upon arrival. However, this section is not the place to develop legal arguments or to address protective measures in the formal sense (such as those linked to Article 13(1)(b)). The purpose is to show how the return can be carried out in practice, not to argue whether it should be ordered.

Additional information



SECTION X – OTHER RELEVANT INFORMATION
Is there any risk pertaining to the child or any other relevant information that you would like to disclose (e.g., risk of harm to the child, flight risk, previous contact with child protection authorities)? Click or tap here to enter text.
Please set out on a separate sheet any further information that may be relevant to the Central Authority (e.g., access issues, protective measures).

This section is intended for any additional information that may be relevant to the handling of the case, including risks concerning the child and possible protective measures. The applicant should indicate whether there are concerns such as risk of harm, domestic violence, flight risk, or prior involvement of child protection authorities. This is also the appropriate place to mention protective measures or safeguards that may be needed or that already exist.

Unlike Section IX, which focuses on practical arrangements for carrying out the return, this section allows the applicant to highlight *risk-related issues and how they may be addressed*. Where relevant, the applicant may briefly describe what kind of measures could reduce or manage the risk (for example, supervision of contact, housing arrangements, or coordination with authorities). If more detail is needed, this can be provided on a separate page.

The information does not need to be presented as a legal argument, but it should be clear enough to alert the Central Authority and the court to any concerns that may affect the return and require safeguards.

3.4. Locating the child and the role of the central authority

Once a request for the return of a child has been made under the 1980 Convention, the authorities of the requested State must take active steps to locate the child. The obligation to secure the prompt return of abducted children includes a duty to identify the child's whereabouts and to coordinate the actions of the competent authorities responsible for locating the child.

Article 7(a) of the 1980 Convention requires Central Authorities to take appropriate measures to discover the whereabouts of a child who has been wrongfully removed or retained. The HCCH Special Commission has repeatedly emphasised the crucial role of Central Authorities in locating children who have been wrongfully removed or retained. [143] Once a return application is submitted, the requested Central Authority may use a range of administrative and institutional channels to determine the child's whereabouts. These may include cooperation with other governmental bodies such as police authorities, migration services, or population registries.

If the requested Central Authority has reason to believe that the child is in another Contracting State, Article 9 requires it to transmit the application directly and without delay to the Central Authority of that State and to inform the requesting Central Authority or the applicant. Any new information indicating that the child has been moved to another State should therefore be communicated immediately; it redirects the application but does not require a new request to be prepared.

Where the search for the child is conducted through other authorities or intermediaries, the Central Authority should remain responsible for coordinating the efforts, expediting communications, and informing the requesting State about the progress of the search. In this way, the Central Authority continues to function as the central communication channel between the authorities involved.

Locating the child requires effective coordination between the competent authorities, but it does not determine whether return must be ordered. Central Authorities, courts and law-enforcement bodies must communicate effectively and act promptly on information already available to domestic authorities, including information obtained through ongoing proceedings, school records or other official sources. Failure to use or transmit such information may amount to a failure to fulfil the State's obligations under the Convention.[144] At the same time, police alerts, criminal proceedings and the recognition of custody judgments remain supporting mechanisms: they may assist in locating or recovering the child and in confirming parental rights, but they cannot replace the return application or the judicial assessment required under the 1980 Convention.

[143] HCCH, *Table of Conclusions and Recommendations of previous Meetings of the Special Commission (SC) on the 1980 Convention and the 1996 Convention (1989–2012)*, Prel. Doc. No 6 of July 2017, referring to 1989 SC C&R No V; 1993 SC C&R No 6; 2001 SC C&R No 1.9 <https://assets.hcch.net/docs/a093695a-5310-42df-92bb-068abfde67c2.pdf>.

[144] See also *Edina Tóth v Hungary*, App. no. 51323/14, (ECtHR, 30 January 2018), §§ 55–61. The authorities had information about the father's whereabouts on several occasions but failed to question him effectively about the child's location, transmit relevant information to the bailiff or seek information from schools, although the child was living and attending school in Hungary. The Court found that the authorities had failed to make adequate and effective efforts to secure the child's return, in violation of Article 8 ECHR.

CASE NOTE 135 | **ECtHR** | **F.D. and H.C. v. Portugal** | App. No 18737/18
7 January 2025

The mother submitted a return request under the 1980 Convention, but the Portuguese Central Authority did not initiate return proceedings because it considered the child's whereabouts unknown. However, the father had already brought proceedings before a Portuguese court and had provided the child's address and school information. The child was later located at school through a Schengen seek-and-find alert, and the father was arrested under a European arrest warrant. Instead of activating and completing the return procedure under the Convention, the public prosecutor handed the child directly to the mother on the basis of a French custody decision, without a judicial hearing and without examining the alleged risk upon return. The ECtHR found that the authorities had failed to act on the information already available and had demonstrated a lack of communication and coordination. It further held that the child's location and the foreign custody decision could not replace the procedural assessment required under the 1980 Convention.

3.5. Contact with the child during return proceedings - Article 27(2) Brussels IIb Regulation

The wrongful removal or retention of a child typically deprives the left-behind parent of regular contact with the child. Even where return proceedings are conducted expeditiously, weeks or months typically elapse between the filing of the application and the final decision, and during that period the child's relationship with the left-behind parent can deteriorate – sometimes irreparably.

Until Brussels IIb became applicable on 1 August 2022, there was no express provision in the EU instruments authorising the court seised of the return application to order provisional contact during the proceedings. In practice, national courts addressed the problem by relying on the child's right to maintain personal relations with both parents under Article 8 ECHR and Article 9 of the UNCRC, and by using general provisional-measure powers under national procedural law.

Article 27(2) Brussels IIb now specifically enables the court dealing with the return application, at any stage of the proceedings, to examine whether contact between the child and the person seeking return should be ensured, taking into account the child's best interests. Any contact measure is taken in accordance with Article 15 and must therefore be urgent and available under the law of the Member State in which the child is present. The power is discretionary rather than obligatory and is to be exercised with due regard to the best interests of the child.[145]

This provision is very different compared to the 1980 Convention framework, where access rights under Article 21 operate as a separate procedure requiring a distinct application. Under the 1980 Convention model, an applicant seeking both return and interim contact must pursue them through separate procedural routes; under Article 27(2) Brussels IIb, the return court can address both within the same proceedings.

Two features of Article 27(2) are worth noting:

- The provision uses the broader and more neutral term "contact" rather than the 1980 Convention's "access rights", reflecting the intent to cover any form of communication or time with the child – physical visits, supervised contact, telephone or video calls, correspondence – without allocating substantive custody rights. Additionally, "contact" and "access" are distinct concepts in the Regulation's own vocabulary: "rights of access" under Article 2(2)(10) extends to taking the child away from his or her habitual residence for a limited period – an entitlement that, in an abduction context, would be self-defeating. For details on rights of access see Handbook part 1, Chapter 5.1.E.

- The measures are provisional in nature: they terminate with the return or non-return decision, and they may cease earlier if they become incompatible with adequate arrangements adopted under Article 27(3) or with other provisional measures under Article 27(5). Measures ordered by the court of origin may also take precedence under Article 15(3). Article 27(2) is therefore best understood as a stabilising tool during return proceedings – it

[145] See also Commission Practice Guide for the application of the Brussels IIb Regulation (2022), Section 4.3.4, 'The court may ensure the contact between the child and the person seeking the return – Article 27(2)' <https://aldricus.giustizia.it/wp-content/uploads/2022/09/Practice-Guide-for-the-application-of-the-Brussels-IIb-Regulation_EU_EN.pdf> p 123.

is not a tool for deciding long-term contact, which remains the prerogative of the courts of habitual residence.

Article 27(2) Brussels IIb is in practice a discretionary protective measure. It is anchored in the child's Article 8 ECHR right to family life, limited in duration to the return proceedings themselves.

CASE NOTE 136 | BG | Sofia City Court | 20231100102020
7 July 2023

In proceedings concerning a father's return application, the Sofia City Court expressly invoked Article 27(2) Brussels IIb, together with Article 8 ECHR, to order provisional contact between the father and the child during the pendency of the return proceedings. Acting on the applicant's request, and having regard to the opinion of the competent Social Assistance Directorate, the court determined that personal contacts should take place at a location agreed between the parents, to be maintained until the conclusion of the return proceedings by final decision. The court noted that questions in full regarding parental rights, the child's residence, and long-term contact arrangements would be resolved within the framework of divorce and custody proceedings pending between the parties in other forums.

The child's age and maturity may place practical limits on measures intended to maintain or restore contact during return proceedings. In particular, where an older adolescent consistently refuses contact, the court may recognise that contact cannot realistically be compelled, even though maintaining a relationship with both parents remains desirable.

CASE NOTE 137 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2023:1566
4 August 2023

The return proceedings concerned a girl who was almost sixteen and who had had very little contact with her father for several years. After concluding that the father had not actually exercised his custody rights and therefore that the removal was not wrongful, the Court added that continued contact with both parents remained important. However, given the child's age, she could not be forced to have contact with her father. The Court referred instead to professional support and the possibility that assistance to the family might allow contact to be restored in the future.

3.6. Anticipating and responding to defences

An applicant under the 1980 Convention faces a structural asymmetry. The return application itself is narrowly framed – the applicant establishes wrongfulness under Article 3, and the application is filed. The taking parent's defences, however, are not disclosed in advance: the Model Application Form contains no section where potential defences must be identified, and in most jurisdictions the respondent first discloses their defence strategy in the written response or at the first hearing. The applicant, therefore, prepares without full visibility of what will be contested, and must respond flexibly when the respondent's position emerges.

The defences available to the taking parent are limited and exhaustively listed in the 1980 Convention (see Chapter 4.5) General welfare arguments or broad appeals to the child's best interests, the ECHR, or the UNCRC do not operate as standalone refusal grounds; to succeed, any such argument must be channelled through one of the enumerated defences.

3.6.A. Proactive preparation at the outset

At the time of filing, the applicant cannot predict with certainty which defences the taking parent will raise and should resist the temptation to pre-argue defences that may never be advanced. Overloading the initial application with defensive material risks confusing the issues and slowing the process. At the same time, the applicant can reduce the strength of common defences by ensuring that certain materials are available – not incorporated into the application but held in readiness.

The most useful categories of preparatory material are: documentary proof of custody rights and their actual exercise, which weakens Article 13(1)(a) defences; contemporaneous evidence of the applicant's immediate protest against the removal or retention, which rebuts claims of consent or acquiescence; information about protective frameworks in the State of habitual residence (protection orders, social services involvement, available supervised-contact facilities), which may become relevant if an Article 13(1)(b) defence is raised; and evidence of prompt filing through the Central Authority, which weakens any subsequent argument about settlement or delay.

3.6.B. Responding when defences emerge

The 1980 Convention does not regulate the procedural moment at which a respondent must raise a defence; this is left entirely to the procedural law of the requested State. Some systems require all Convention-based defences to be identified in the first written response. Others admit further defences or supporting evidence at later stages, particularly where fundamental-rights concerns are engaged. The applicant cannot safely assume that the respondent's initial submission contains the full case. Allegations grounding an Article 13(1)(b) or Article 13(2) defence may emerge late, sometimes leaving limited time for rebuttal.

The applicant should therefore maintain procedural alertness throughout the proceedings and be prepared for new defences to surface. Key rebuttal material – evidence of actual custody exercise, protective-framework documentation, Central Authority correspondence – should be kept organised and accessible, not filed prematurely. Where the procedural law of the requested State permits, the applicant's counsel should also consider requesting the court to set a clear deadline for

the respondent to identify all defences relied upon, so that belated allegations cannot derail the timetable.

The grave-risk defence under Article 13(1)(b) of the 1980 Convention is, in practice, the most common ground of opposition in contested return proceedings and warrants specific attention. Where Brussels IIb applies, the applicant benefits from an additional layer: under Article 27(3), a court considering refusal of return solely on Article 13(1)(b) grounds must not refuse if adequate arrangements to secure the child's protection after return have been made or are otherwise established. The applicant's strategic task is therefore to hold ready, at the point the defence is raised, *concrete and specific evidence of arrangements* that address the risk the respondent has alleged.

The full doctrinal treatment of Article 13(1)(b) as a respondent-track defence is found in Chapter 4.5.F. The framework for proposing and coordinating protective measures under Article 27(3) and Article 27(5) Brussels IIb, and the relationship between Brussels IIb measures and Article 15 of the 1996 Convention, is addressed in Chapter 5.9.

Unit 4: Respondents' Litigation Track

4.1. First strategic choice: contest or cooperate?

The first decision a respondent must make is how to position the case: to oppose return, to cooperate with return, or to contest the application while cooperating procedurally and negotiating safeguards. This is a structural choice that shapes everything that follows: the speed of proceedings, the litigation costs, the respondent's exposure to collateral risks, the relationship with the other parent, and the respondent's position in any subsequent custody proceedings. The choice should be made early, deliberately, and on the basis of a clear-eyed assessment of the strengths of the case and the consequences of each path.

The case for cooperation

Cooperation does not mean surrender. It means not opposing return as such **-** accepting that the child will return to the State of habitual residence and using the proceedings to negotiate the conditions of that return – transition measures, phased handover, undertakings from the applicant, mirror orders, financial support during transition, contact arrangements, and protective measures in the receiving State. An additional benefit is that the cooperating respondent may retain substantial agency over how the return takes place, even though they are not contesting whether it takes place.

The advantages are concrete:

- **Proceedings move faster and at lower cost.** Contested return cases can run for months and consume significant resources in evidence gathering, expert reports, and appeal work; uncontested or partially-contested proceedings are typically resolved in weeks.

- **Mediation becomes available as a structured route to agreement** – most Central Authorities offer or facilitate mediation precisely for cases where the respondent is open to settlement, and a mediated outcome can produce more tailored practical arrangements that a court order cannot, because the parties themselves design them.

- **The respondent avoids adverse findings** that may otherwise follow from a contested case: findings about the wrongfulness of the removal, about the absence of grave risk, about the inadequacy of protective measures, or about the respondent's credibility. Such findings, once made, can resurface in later custody proceedings, in criminal prosecutions, or in civil damages claims.

- **Cooperation may preserve the parental relationship.** A respondent who has cooperated with the return retains better position to argue for shared custody, generous contact, or even primary care in the subsequent merits proceedings than one who has been found to have wrongfully retained the child after a hard-fought defence.

- **Cooperation may reduce collateral exposure.** Prosecutors, civil claimants and family courts may distinguish between a respondent who continues to resist after receiving legal advice and one who takes steps to regularise the position, secure a voluntary return and reduce the consequences for the child. The effect depends on the applicable law and the

facts, but a documented cooperative posture may be valuable in criminal, civil and later custody proceedings.

Cooperation is wisest where the legal case is weak – where the wrongfulness of the removal is clear, where the available defences are thin or speculative, where the protective measures available in the State of habitual residence are robust, and where contesting would mainly expose the respondent to adverse findings without a realistic prospect of success.

The case for contesting

Contesting makes sense in two situations: when there is a real defence with a realistic chance of success, and when the consequences of return are serious enough that fighting is worth the cost even with uncertain odds. Genuine grave risk is the clearest example – if the child faces real danger in the State of habitual residence and protective measures cannot fix it, contesting is not just defensible but necessary. The same applies where the child is old and mature enough for their objections to count, or where there is a real fundamental-rights concern.

But contesting comes with costs that go beyond the legal fees. Counsel should walk the client through these before committing to a fight.

- **Criminal prosecution.** In a number of States, the act of wrongful removal or retention is itself a criminal offence under domestic law, and contesting return proceedings does not shield the respondent from prosecution.[146]

- **Protective orders.** Courts can impose return-related safeguards, penalties, passport measures, provisional/protective measures as part of the return decision – especially if the respondent's conduct during proceedings suggests they might run again or refuse to comply.

- **Damages.** The other parent may sue for compensation. Claims can also cover travel costs, lost income, and legal fees the other parent incurred chasing the case.

- **Damage to credibility in custody proceedings.** Article 19 makes clear that a return decision does not determine custody. Nevertheless, the circumstances surrounding a wrongful removal or retention may be considered in later proceedings, particularly where they are relevant to a parent's willingness to respect the other parent's role or comply with legal arrangements. The significance attached to such conduct will depend on the reasons for the removal, its effect on the child and the parent's subsequent conduct. A finding of wrongful removal or retention does not, by itself, determine the outcome of later proceedings concerning custody, contact or relocation.

- **Time and costs.** A contested return case, especially one that goes to appeal, takes months and is expensive.

These risks do not disappear if the respondent wins. A successful defence stops the return order, but it does not legitimise the original removal. Criminal proceedings, damages claims and custody

[146] In a recent Amsterdam Court of Appeal case (ECLI:NL:GHAMS:2025:2073), a parent who had kept his children from their mother for two years received a twenty-month sentence, twelve months suspended, alongside the return order.

litigation may continue. Jurisdiction may eventually pass to the State of refuge, but only when the cumulative conditions under Article 9 Brussels IIb or Article 7 of the 1996 Convention are satisfied. The acquisition of a new habitual residence alone is not enough. The table below maps the respondent's primary objective to the recommended litigation approach, the concrete actions that approach requires, and the main risks.

Table 15: Strategic choices for the respondent in return proceedings, by objective

Respondent's objective	Recommended approach	Key actions	Main risks to manage
Stay in the State of refuge with the child long-term	Contest, if a substantive defence is realistic	Build the strongest available defence (grave risk, child's objection, settlement); gather documentary evidence early; secure expert reports where needed; preserve credibility by cooperating on procedural matters	Adverse findings if the defence fails; criminal prosecution; damages; loss of credibility for later relocation applications
Return with the child but on safe and structured terms	Cooperate, with negotiated safeguards	Engage the Central Authority of the State of habitual residence; request specific undertakings (no criminal complaint, financial support, agreed contact, no-contact orders against the applicant where appropriate); pursue interim arrangements before return	Insufficient or unenforceable undertakings; lack of follow-through once back in the State of habitual residence
Preserve the parental relationship and standing in custody proceedings	Cooperate	Accept the return; use mediation to negotiate transition arrangements; demonstrate willingness to facilitate contact; avoid conduct that could be characterised as obstruction	Appearing to concede facts that may matter in custody proceedings – counsel should clarify in writing what is and is not conceded
Minimise criminal and civil exposure	Cooperate, ideally through mediation	Negotiate a settlement that includes a waiver or non-pursuit of criminal complaint and damages where possible; document the cooperative posture for later use	Criminal proceedings cannot always be waived by the applicant – public prosecutors may proceed independently in some States
Protect the child from a genuine threat in the State of habitual residence	Contest under Article 13(1)(b), with full evidentiary support	Document the risk concretely (medical records, police reports, expert assessments); identify why protective measures in the State of habitual residence are inadequate; engage the child's voice through proper channels where age permits	Article 13(1)(b) has a high threshold; courts often find that protective measures suffice; failure on this ground exposes the respondent to all collateral risks
Relocate lawfully with the child in the future	Cooperate now; pursue relocation through proper channels later	Accept return; comply fully; then bring a relocation application in the State of habitual residence with the other parent's involvement	Cooperation does not guarantee that relocation will be granted; the case must still be made on its merits

4.2. Defence Lines under the 1980 Convention

Return proceedings are not custody cases. The 1980 Convention has a narrow scope: it restores the status quo by securing the prompt return of children wrongfully removed or retained, leaving decisions on custody and long-term welfare to the courts of the child's habitual residence. Article 19 makes this explicit – an order under the Convention is not a determination on the merits of custody rights.

A common pitfall is the respondent who presents broad arguments about who is the better parent or where the child would be happier. Such claims fall outside the Convention. The *court can only consider whether the Convention applies and whether one of the limited grounds for refusing return is established*. Other arguments, however emotionally persuasive, instead of supporting may weaken the respondent's position.

General appeals to the child's best interests, to the preamble of the 1980 Convention, or to human-rights instruments such as the ECHR or the UNCRC do not create independent defences to return. Preambles and general principles may guide the interpretation of the Convention, but they do not add to the refusal grounds set out in its operative provisions. Courts may refuse return only on the grounds provided by the Convention, in particular Articles 12(2), 13 and 20. Generalised welfare considerations, proportionality arguments, or abstract references to Article 8 ECHR, the UNCRC, or the protective purpose of the Convention do not enlarge that list. The respondent must therefore anchor the objection in a specific refusal ground and prove the facts required by that ground.

CASE NOTE 138 | **HU** | **Supreme Court** | Pfv.II.20.046/2022/8
29 March 2022

The respondent opposed the child's return and, in the review proceedings, relied not only on Article 13(a) and Article 13(b) of the 1980 Hague Convention, but also on the preamble to the 1980 Convention, the preamble and Article 3 of the UN Convention on the Rights of the Child, Article 28 of the Hungarian Fundamental Law, and human-rights arguments based on the prohibition of torture and inhuman or degrading treatment. The Court held that the respondent had not advanced any specific factual or legal argument capable of showing a violation of the preamble to the 1980 Convention. It further held that general principles, including the best interests of the child and protection from serious physical or mental harm, are applied in return proceedings through the specific refusal grounds of the Hague Convention. In this context, the relevant operative test was Article 13(b). Since the lower courts had examined the alleged risk to the child under Article 13 and had found the exceptional circumstances unproven, the Court held that no separate violation of the preamble or of general child-protection principles was established.

The three defence lines

The available defences fall into three structurally distinct categories. The order matters as the court should first ask whether the return mechanism is triggered at all; if it is, whether Article 12(2) affects the return obligation; and only then whether one of the refusal grounds in Articles 13 or 20 is established. In practice, however, the respondent should raise all genuinely available objections and defences from the outset, in the alternative.

Defence Line 1 – 1980 Convention return mechanism not triggered at all (Articles 3 and 4). The return mechanism of the Convention operates only where its threshold conditions are met. These conditions are not satisfied where the child was not habitually resident in the requesting State immediately before the alleged removal or retention, where the removal or retention did not breach rights of custody attributed under the law of that State, those rights were not actually exercised, or where the child has attained the age of sixteen. Where any one of these elements is absent, the return mechanism is not engaged, and the application must be dismissed. This is not a defence to return but a threshold failure: the obligation to order return never arises in the first place.

Defence Line 2 – Settlement after one year (Article 12(2)). Where wrongful removal or retention is established, Article 12(2) introduces a temporal qualification: where return proceedings are commenced more than one year after the wrongful act, the court must still order return unless the respondent shows that the child is now settled in the new environment. If settlement is established, the court is no longer bound to order return but may still do so in the exercise of its discretion.

The Explanatory Report treats it separately from Articles 13 and 20: it qualifies the temporal scope of the return obligation rather than creating a discretionary defence.[147] In this sense, Article 12(2) is not an exception in the strict doctrinal sense. However, because the provision can in practice justify a refusal to return, domestic courts must apply the same procedural safeguards as for Articles 13 and 20: a genuine examination of the facts, and individualised reasoning. [148]

Defence Line 3 – Grounds for refusal (Articles 13 and 20). The Convention recognises a closed list of grounds on which the requested authority may refuse to order return. These are the true exceptions:

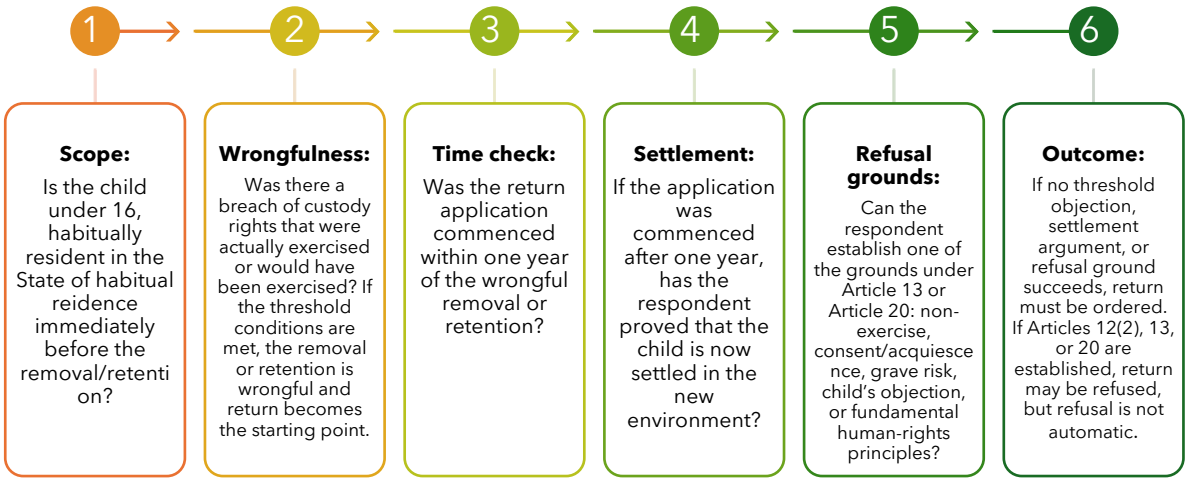
- *Article 13(1)(a)* – the applicant was not actually exercising custody rights at the time of removal or retention (and the non-exercise was not caused by the removal itself) or consented to or subsequently acquiesced in the removal or retention.
- *Article 13(1)(b)* – return would expose the child to a grave risk of physical or psychological harm or otherwise place the child in an intolerable situation.
- *Article 13(2)* – the child objects to return and has attained an age and maturity at which it is appropriate to take account of those views.
- *Article 20* – return may be refused where it would not be permitted by the fundamental principles of the requested State relating to human rights and fundamental freedoms.

These grounds are interpreted narrowly, and they do not impose a duty to refuse return. Even where one of them is established, the court retains discretion: it must weigh the strength of the evidence and the overarching objectives of the Convention – prompt return, deterrence of abduction, and allocation of custody decisions to the courts of the State of habitual residence. The grounds are

[147] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction,* §106 frames Articles 12 and 18 under the heading "Duty to return the child", whereas the Report deals separately with Articles 13 and 20 under the heading "Possible exceptions to the return of the child" in §113.
[148] In the ECHR case-law, Article 12(2) is functionally treated as an exception. See, for example, *G.S. v. Georgia*, ECtHR, Application No. 2361/13, judgment of 21 July 2015, particularly §47, where the Court found a violation of Article 8 because the domestic courts had relied on Article 12(2) automatically, without genuinely examining whether settlement was established or assessing the reasons for the delay.

independent of one another, and a respondent should plead each separately and evidence each on its own terms.

Figure 5: Respondent's defence pathway under the 1980 Convention



4.3. Procedural Timing for Raising a Defence

Neither the 1980 Convention nor the Brussels IIb Regulation prescribes the moment by which a respondent *must raise a defence*. This question is governed entirely by the procedural law of the requested State.

The official EU Practice Guide for the application of the Brussels IIb Regulation as well does not address the timing of submissions: while it elaborates extensively on the six-week deadlines under Article 24 and on procedural cooperation between courts, it does not prescribe a uniform standard for when refusal grounds must be raised.[149] Similarly, the HCCH Guide to Good Practice on Article 13(1)(b) addresses the *substantive* requirements of the grave-risk defence (§40), for instance, that assertions must be of sufficient nature, detail and substance, but is silent on the *temporal* point at which the defence must be invoked.[150] The result is significant divergence among Member States. At the same time, national procedural autonomy is not unlimited: the ECtHR has held in X v. Latvia that the Article 11 expedition requirement does not exonerate domestic courts from undertaking an effective examination of allegations raised under Article 13.[151] National rules on procedural closure must therefore be applied compatibly with this duty.

Because the strategic position of the respondent is fundamentally different from that of the applicant, *time is generally an ally, not an enemy*. The applicant benefits from the Convention's expedition principle and aims at securing a prompt return; delay erodes the applicant's case especially before proceedings are commenced, both because the one-year threshold under Article 12(2) approaches and because the child's integration in the requested State strengthens with time.

[149] European Commission, Practice Guide for the Application of the Brussels IIb Regulation (2022).
[150] HCCH, Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Part VI – Article 13(1)(b).
[151] *X v. Latvia,* App. No. 27853/09 (ECtHR, 26 November 2013), §118.

National procedural systems take broadly two approaches to the timing of defences in return proceedings.

The first is a strict, front-loaded model. Respondents are expected to present their full case at the earliest opportunity, typically in the initial written response. Courts operating under this framework may refuse to entertain new defence grounds introduced later, absent compelling justification. This approach reflects the summary nature of 1980 Convention proceedings, the statutory expectation of speed, and the need for procedural certainty.

The second is a more flexible model, under which domestic law permits the introduction of additional material at a later stage. This is generally more favourable to the respondent as it gives valuable time to develop the case as the evidence emerges, which in turn may leave limited time for the applicant to respond within the expedition framework. It can also be used to:

— Refine the defence as the evidential picture matures – for example, by producing further documentary evidence, expert reports, or witness statements obtained after the initial response.

— Introduce material that emerges later in the proceedings – such as fresh allegations of risk, new incidents of domestic violence, or changes in circumstances in the State of habitual residence.

— Strengthen settlement-based arguments under Article 12(2) – by producing updated evidence of the child's integration in the requested State as the proceedings progress.

— Preserve flexibility on grounds that cannot yet be fully substantiated – pleading them in outline at the outset and developing them as the supporting material becomes available.

As a general matter, the safer course is to *identify all intended threshold objections, Article 12(2) settlement arguments, and refusal grounds under Articles 13 and 20*. A ground not pleaded at the outset may be excluded later in jurisdictions with strict procedural closure. The supporting evidence can then be developed within the procedural framework permitted by national law.

Particular care is required at the *appeal stage*. National procedural rules vary considerably: some jurisdictions exclude the introduction of new grounds on appeal altogether, while others permit it only where set out in the notice of appeal or under limited statutory exceptions. Respondents should therefore not assume that a ground omitted at first instance can be revived on appeal, and should ensure that all intended refusal grounds are properly raised before the court of first instance.

CASE NOTE 139 | NL | The Hague Court of Appeal
ECLI:NL:GHSGR:2012:BX5499
22 August 2012



At the appeal hearing, the mother argued for the first time that she alone held parental authority at the time of removal and that the father could therefore not rely on the 1980 Convention. The court refused to entertain this newly presented argument, noting that she could have raised it earlier and that the father had not consented to its late introduction.

4.4. Contesting whether the return mechanism is triggered

The structure of the 1980 Convention is sequential. The return obligation arises only where a set of threshold conditions is satisfied: the child must be under sixteen, must have been habitually resident in the requesting State immediately before the removal or retention, the removal or retention must have been wrongful within the meaning of Article 3, and the left-behind parent must have held and actually been exercising custody rights at the relevant time.

These are not defences to return – they are the conditions that must be established before any return obligation arises. A respondent who successfully contests one of them does not invoke an exception to an existing obligation; they demonstrate that no obligation arose in the first place. If the court concludes at this initial stage that there was no wrongful removal or retention, or that the child was not habitually resident in the requesting State, or over 16 years of age, the proceedings stop at the threshold, as the legal basis for a return order never arises.

4.4.A. No wrongful removal or retention

The 1980 Convention return mechanism operates only where the removal or retention of the child is wrongful within the meaning of Article 3. Under that provision, a removal or retention is wrongful only where:

- it is in breach of rights of custody attributed under the law of the State of habitual residence (Article 3(a)); and
- at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention (Article 3(b)).

Both elements form part of the threshold applicability test. If either is missing, no return order under the Convention can be made. The respondent may therefore argue at the outset that one of these elements is absent, with the consequence that the proceedings must end at this preliminary stage.

The non-exercise of custody rights can arise at two distinct procedural stages: as a threshold question under Article 3(b), where it prevents triggering the return mechanism at all, or as a discretionary exception under Article 13(1)(a) once it is triggered. The two are conceptually distinct and operate differently. The contrast is set out in detail in Chapter 4.5.C. and Table 17 .

To contest on this ground, the respondent must show that the left-behind parent was not actually exercising custody rights at the time of the removal or retention, and that this lack of exercise existed *independently of the abduction itself*. In other words, the respondent must demonstrate that the parent had already disengaged from the child's life – through prolonged absence, abandonment, or sustained failure to assume parental responsibilities – before the removal took place. Where this is established, Article 3(b) is not satisfied, and the removal is not wrongful.

This is *not* the case, however, where the parent's lack of exercise was caused by the abduction itself – for example, because the removal cut off contact, the child was concealed, or the abductor obstructed any further parental involvement. In such circumstances, Article 3(b) is still satisfied, because custody "would have been exercised but for the removal or retention". The respondent cannot rely on a lack of exercise that is the consequence of their own conduct. The Pérez-Vera Report explains it in §115: if the lack of exercise is caused by the abduction itself, it should not bar the application of the Convention or function as an "exception."[152]

Table 16: When Non-Exercise of Custody Rights under Article 3(b) Prevents the 1980 Convention Return Mechanism from Being Triggered

Example 1 – Article 3(b) not satisfied; the 1980 Convention return mechanism not triggered	Example 2 – Article 3(b) satisfied; the 1980 Convention return mechanism successfully triggered
A father living in State A has had no contact with his child for three years. He has not visited, has not responded to messages from the mother, has missed birthdays and school events, and has played no role in decisions about the child's schooling, healthcare, or daily life. The mother decides to relocate with the child to State B without his consent. Although the father formally retains joint custody under the law of State A, he was not actually exercising those rights at the time of the move, and he would not have been exercising them even if the relocation had not taken place. His disengagement predates the move and is unconnected to it. Article 3(b) is therefore not satisfied. The removal is not wrongful within the meaning of Article 3, and the Convention's return mechanism is not triggered.	A father living in State A is actively involved in his child's life: he sees the child regularly, participates in schooling decisions, and shares day-to-day caregiving with the mother. Following a dispute, the mother takes the child to State B without his consent and refuses to disclose the address. After the removal, the father has no further contact with the child because the mother has cut off all communication. The father's lack of exercise after the removal is entirely the result of the abduction itself – the mother's removal and concealment of the child has prevented him from exercising custody. Before the removal, he was actively exercising parental rights, and he would have continued to do so but for the mother's conduct. Article 3(b) is therefore satisfied: custody "would have been exercised but for the removal or retention". The removal is wrongful, and the return mechanism is triggered.

Where a court concludes that the removal or retention was not wrongful within the meaning of Article 3, the return mechanism is not triggered, and the analysis of exceptions does not arise at all. [153] The Article 13 grounds operate as limitations on the return obligation once that obligation has been established; they cannot be invoked where no such obligation exists in the first place. In practice, however, courts sometimes blur this distinction.

[152] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction*.
[153] For similar analysis see also G. Ruitenberg, De toepassing van het Haags Kinderontvoeringsverdrag in Nederland en het belang van het kind, p. 303, discussing the relationship between Articles 3 and 13.

CASE NOTE 140 | **ECtHR** | **P.D. v. RUSSIA** | App. No 30560/19
3 May 2022

In proceedings concerning the removal of a child from Switzerland to Russia, the Russian courts found that the removal was not wrongful within the meaning of Article 3. At the moment when the mother left Switzerland, an interim Swiss order had divested the father of parental authority and prohibited contact with the child; the Russian court therefore treated the mother as exercising sole custody, including the right to determine the child's place of residence. Although this finding meant that the removal had not breached the father's custody rights, the courts nevertheless proceeded to examine Article 13(1)(b) and refused return also on the ground that the child's return would expose her to a grave risk of harm. The ECtHR noted that, where removal is not wrongful, the 1980 Convention return mechanism will not operate, but left the issue of wrongfulness open and reviewed whether the domestic courts had given sufficient reasons for applying the grave-risk exception.

4.4.B. The child was not habitually resident in that state at the relevant moment

A return application under the 1980 Convention can succeed only if the child was habitually resident in the requesting State immediately before the alleged removal or retention. This follows directly from Article 3 of the 1980 Convention and in the EU, from the definition of wrongful removal or retention in Article 2(2)(11) Brussels IIb (formerly Article 2(11) Brussels IIa), as confirmed by the CJEU in OL (§38).[154] If the respondent can show that the child's habitual residence was no longer in that State at the relevant moment—because the child had already settled elsewhere, was lawfully moved to the requested State, or the factual center of their life had shifted—then the removal or retention is not "wrongful" within the meaning of those instruments. In such circumstances, the return request must be dismissed on that basis alone, without examining the substantive defences.

A respondent may therefore argue that the return mechanism is not triggered by showing that:

- The habitual residence had already shifted to the refuge State: the child was originally habitually resident in the requesting State but had genuinely integrated into the refuge State – through schooling, language, and settled daily life – before any wrongful act arose.
- The habitual residence had already shifted to a third State: before the removal to the refuge State, the child's habitual residence had already moved elsewhere.
- The child never acquired habitual residence in the requesting State at all: the child was born abroad, lived their entire life elsewhere, or the family relocated before the child developed any settled connection with the requesting State. The applicant cannot invoke a habitual residence that never factually existed.
- No habitual residence anywhere: the child had not yet acquired habitual residence in any State – due to very recent birth, a highly mobile or nomadic family lifestyle, or a relocation still in progress at the relevant moment. Article 3 cannot be satisfied where no habitual residence exists anywhere. (see Chapter 2.4.D.)
- Indeterminate habitual residence: the child's life was so equally divided between two States – for example, through a long-standing cross-border shared care arrangement – that no

[154] Judgment of 8 June 2017, *OL v PQ*, Case C-111/17 PPU, ECLI:EU:C:2017:436 §38.

single State can be identified as the centre of their life. The requesting State cannot establish the threshold condition of Article 3. (see Chapter 2.4.F)

CASE NOTE 141 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2014:1103.17UF210.14.00
3 November 2014

The parents jointly agreed that their two children would live with their paternal grandparents in Germany "until further notice." The children stayed for over six months, became integrated in kindergarten, developed German language skills, and even acquired German citizenship. When the mother later demanded their return to the United States, the father refused. The court held that this refusal did not constitute wrongful retention, because by that time the children's habitual residence had already shifted to Germany. Since Article 3 requires habitual residence in the requesting State at the moment of the alleged wrongful act, the return mechanism could not be triggered.

4.5. Invoking exceptions to return

Once the court is satisfied that the removal or retention was wrongful within the meaning of Article 3, the obligation to order return arises. At that point, the respondent's only remaining route is to establish one of the exceptions which the Convention exhaustively enumerates: settlement after one year (Article 12(2)), non-exercise of custody rights, consent or acquiescence (Article 13(1)(a)), grave risk of harm or an intolerable situation (Article 13(1)(b)), the child's objections (Article 13(2)), and incompatibility with fundamental principles of the requested State (Article 20). This section examines each in turn, beginning with how the grounds relate to one another procedurally.

These grounds are narrow, but once properly raised, they must be examined. This is also where the 1980 Convention framework intersects with Article 8 ECHR.

4.5.A. Independence of refusal grounds and practical sequencing

Each of the refusal grounds is drafted as an independent exception to the general obligation of return. There is no legal hierarchy between them, and none is conditional on another being established first. A court may refuse return if any one of these grounds is proven.

CASE NOTE 142 | PL | Supreme Court | II CSKP 365/24
2 July 2024

The Polish Supreme Court confirmed that the five grounds for refusal under the 1980 Convention are independent of one another: Article 13(1)(a) (non-exercise of custody or consent/acquiescence), Article 13(1)(b) (grave risk of physical or psychological harm or intolerable situation), Article 13(2) (child's objection), Article 12(2) (settlement), and Article 20 (fundamental principles). Each ground operates separately, and a court may refuse return on the basis of any one of them without needing to establish the others. Crucially, the Court expressly confirmed that under Article 13(1)(b), it is sufficient that the circumstances of the case disclose only one of the risks enumerated in that provision – physical harm, psychological harm, or an intolerable situation. The three limbs of Article 13(1)(b) are themselves independent: a respondent who establishes any one of them has satisfied the ground, and the court is not required to find that the others are also present.

Legal independence does not prevent a court from giving practical priority to a particular issue because of its gravity. Where an allegation concerns a severe and irreversible harm to the child – for example, a risk of female genital mutilation, serious violence, or other grave physical or psychological harm – the court may examine that allegation before more general objections, such as parental lifestyle, poor communication, cultural differences, or general parental suitability. This is not a hierarchy between refusal grounds, but a practical order of analysis: the court addresses first the issue that, if established, would most clearly justify refusal under the relevant Convention ground.

CASE NOTE 143 | **HU** | **Supreme Court** | Pfv.II.20.046/2022/8
29 March 2022

The respondent relied on several objections to return, including the father's alleged lifestyle problems, communication difficulties with the child, religious and cultural concerns, and an alleged risk of female genital mutilation. The Supreme Court of Hungary treated the alleged risk of genital mutilation as the most serious issue. It stated that even the possibility of such an act was of such weight that it had to be examined before the respondent's other arguments. The court nevertheless upheld the return order, because the lower courts had examined the allegation under Article 13(b) and had found the risk unproven on the evidence.

Although the grounds are legally independent, judicial practice shows that courts diverge on how to handle them once one is established. Two approaches can be identified in the case law: some courts apply the grounds in a conditional sequence and stop once a sufficient ground is established, while others examine all grounds raised, even after one has been found sufficient.

First approach: stop at the first sufficient ground

Under this approach, courts examine first those grounds that may make further analysis unnecessary, and once they conclude that return should be refused on one ground, they do not consider the remaining defences. This approach reflects judicial economy rather than hierarchy and is fully compatible with the structure of the Convention.

Settlement under Article 12(2) often operates as a practical "gatekeeper". Where proceedings are brought more than one year after the wrongful removal or retention, courts commonly begin by examining whether the child is settled in the new environment. If settlement is established, return may be refused on that basis alone, and the court is not required to go on to assess the defences under Article 13. In such cases, children's objections are frequently addressed only in the alternative, in case the finding on settlement were to be overturned on appeal.

Children's objections under Article 13(2) are therefore not legally subordinate to settlement or to grave risk, but they become relevant in practice only if return remains legally open. Where settlement is not established, and where the exceptions under Article 13(1) do not justify refusal of return, the court must then consider whether the child objects to being returned and whether the child has attained an age and degree of maturity at which it is appropriate to take account of those views. Importantly, a grave risk of harm is not a prerequisite for accepting a child's objections. Each defence has its own criteria and must be assessed on its own terms.

This practical sequencing is visible in the case law.

CASE NOTE 144 | UK | High Court of England and Wales
[2021] EWHC 2758 (Fam)
18 October 2021

The court first examined settlement under Article 12(2) and found that the children were settled in England. It refused return on that basis. It then addressed the children's objections only in the alternative, expressly stating that this defence would arise only if the settlement finding were wrong, and separately held that Article 13 also justified refusal.

CASE NOTE 145 | NL | The Hague District Court
ECLI:NL:RBSGR:2009:BK5519
10 September 2009

The Dutch court approached the case from the perspective of Article 13(2), emphasised the independence of the refusal grounds, and refused return on the basis of the child's objections, expressly stating that it was unnecessary to examine the remaining defences.

Second approach: examine all grounds raised

Other courts proceed to examine all grounds raised, even after finding one sufficient. The rationale is twofold. First, resilience on appeal: a decision resting on a single ground is vulnerable, because if the appellate court disagrees with that one finding, the entire refusal collapses and the child must be returned, whereas a decision establishing each ground independently insulates the outcome – the appellate court would have to overturn every limb to disturb the result. Second, signalling that the case is overdetermined: a court finding multiple independent grounds communicates that non-return does not depend on a close factual call, which matters in a system where return is the default, since a multi-ground refusal shows that the Convention's own architecture, applied across several provisions, consistently points away from return and is therefore harder to characterise as an outlier.

CASE NOTE 146 | ES | Malaga Provincial Court | ECLI:ES:APMA:2026:19
28 January 2026

The case concerned a mother's application for the return of her two daughters from Spain to Poland. The court found sufficient ground for rejection of the application in Article 13(1)(a): the mother had left the family home in 2018, moved 200 kilometres away, and had not exercised custody for seven years, with a Warsaw court order confirming the children's residence with the father. That finding alone was sufficient to refuse return. The court nevertheless went on to examine and establish three further independent grounds – the children's own objection under Article 13(2), grave risk under Article 13(1)(b) based on criminal proceedings brought against the mother herself for abduction and unlawful deprivation of liberty, and integration under Article 12(2). Each ground received its own detailed evidentiary treatment.

For practitioners, the practical consequence is that *each refusal ground must be pleaded in full*, since it cannot be assumed that weaker grounds will be analysed if one stronger ground is upheld – the court may never reach them.

The same logic of independence operates across children as well as across grounds: in the same proceeding, the return of siblings may be refused on different 1980 Convention grounds. Just as a court may rest a refusal on multiple independent provisions for one child, it may

also reach different conclusions for different siblings within the same proceeding. Each child is the subject of an individual assessment, and the refusal grounds – child's objections under Article 13(2), grave risk under Article 13(1)(b), settlement under Article 12(2) – apply to each child on their own terms, depending on age, maturity, and individual circumstances. A finding that one child objects with sufficient maturity does not extend automatically to a younger sibling, and a settlement finding for one child does not dispose of the others. At the same time, individual assessment does not mean isolated assessment. Where ordering the return of one child would separate that child from a sibling who is not being returned, the resulting separation may itself constitute an intolerable situation under Article 13(1)(b) – even if the child being assessed has no independent objection or risk profile of their own. The principle is therefore twofold: each child must be assessed individually on each ground, but the decision for any one child must account for the family configuration that the order would create.

CASE NOTE 147 | **NL** | **The Hague District Court** | ECLI:NL:RBDHA:2022:747
1 February 2022

In proceedings concerning the return of two siblings to Spain, the court reached different conclusions for each child. The elder child, nearly twelve, was found to have consistently and sincerely objected to the return. Her views were age-appropriate, emotionally grounded, and not merely the product of influence by the mother. The court therefore refused her return under Article 13(2) (child's objections). The younger sibling, almost ten, had also voiced opposition, but the court considered him not yet sufficiently mature for Article 13(2) to apply. Nevertheless, the court held that ordering his return alone would split him from his sister and the other children in the mother's household, placing him in an intolerable situation. Since no adequate arrangements could prevent this, the return of the younger child was refused on the basis of Article 13(1)(b).

4.5.B. Settlement of the child in the new environment - Article 12(2)

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, ***a period of less than one year has elapsed from the date of the wrongful removal or retention****, the authority concerned shall order the return of the child forthwith.*

The judicial or administrative authority, even where the proceedings have been commenced ***after the expiration of the period of one year*** *referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.*

Article 12 of the 1980 Convention establishes a clear temporal framework for assessing return applications. Where return proceedings are commenced within one year of the wrongful removal or retention, the return of the child must be ordered forthwith, unless one (or more) of the exceptions

is established. In such cases, considerations relating to the child's integration or adjustment in the requested State are not available as an Article 12(2) settlement argument.

Where proceedings are commenced more than one year after the abduction, return must still be ordered unless it is demonstrated that the child is now settled in the new environment. In this situation, the Convention no longer frames the return obligation in terms of immediacy.[155] As explained in the Pérez-Vera Report (§109), the drafters deliberately abandoned the language of "forthwith" return in delayed cases, recognising that return will, by definition, occur well after the abduction and that the focus necessarily shifts from urgency to the assessment of settlement.[156] The burden of proof lies on the taking parent.[157]

Courts should not treat an application made shortly before the one-year mark as if the period had already elapsed. The one-year period in Article 12 of the 1980 Convention is a literal element of the Convention with its own rationale. The distinction the Convention draws between applications made within the year and applications made after the year must be respected. Proximity to the one-year limit does not, on its own, render the settlement defence under Article 12(2) available; that defence is engaged only once the year has actually run.

CASE NOTE 148 | PT | Supreme Court | 976/24.2T8GMR-A.G1.S1
10 December 2024

The mother travelled with the child from France to Portugal in March 2023 and in June 2023 informed the father that she intended to remain there. Return proceedings were instituted on 3 April 2024, shortly before the one-year period under Article 12 had elapsed. The Court of Appeal refused return, reasoning that the one-year deadline was "practically reached" by a matter of days or weeks, and that proximity to the limit justified treating the settlement defence under Article 12(2) as effectively available. The Supreme Court rejected this approach. It held that the one-year period is a literal element of the Convention, not negligible, with its own rationale – and that the distinction the Convention draws between applications made within the year and applications made after the year must be respected.

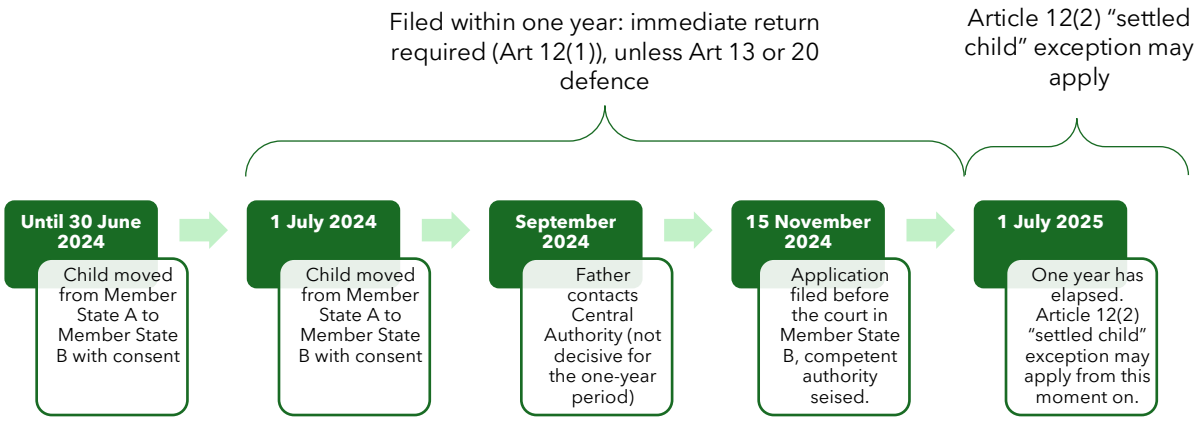
The concept of settlement, therefore, comes into play only where the significant period of time of 1 year has elapsed before the initiation of return proceedings. Article 12 draws a strict distinction based on the time between the wrongful removal or retention and the commencement of proceedings, ensuring that the Convention's primary objective—prompt restoration of the status quo ante—is not undermined by delay attributable to the abducting parent. Within one year, return is mandatory in principle, and settlement cannot be relied upon. After one year, settlement may operate as a ground for refusing return, but only if the abducting parent discharges the burden of proof. The expiry of one year and proof that the child is now settled are cumulative requirements: the passage of time merely opens the door to the settlement inquiry; it does not itself establish settlement.[158]

[155] For analysis see also N Lowe and M Nicholls, 'Revisiting Article 12(2) of the 1980 Hague Abduction Convention' [2019] International Family Law 01.
[156] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction*.
[157] On the range of approaches to the weight of that burden, see Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing, 2013) p 225–226, endorsing a middle path under which the burden is treated as significant but assessed solely on the relevant facts, without adding a gloss to the Convention's wording.
[158] Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) ch 9, pp 225–226, explains that Article 12(2) performs two functions: it recognises that summary return may no longer restore the status quo where the child has become settled after a lengthy period, but also confirms that the mere passage of time does not exclude return; the passage of twelve months and settlement are cumulative conditions.

CASE NOTE 149 | IT | Supreme Court | N. 36150/22
12 December 2022

The Italian Supreme Court of Cassation stressed that the temporal element is decisive. The Court ruled that judges must first examine the interval between the removal and the application. Only if the one-year period has passed should the court consider whether the child has become settled in the new country. Thus, where the application was filed within the year, integration or adjustment of the child abroad could not prevent the order of return.

Example: A mother takes her child from Member State A (Spain) to Member State B (Germany) with the father's written consent to stay until 30 June 2024. When she refuses to return the child after that date, the retention becomes wrongful from 1 July 2024. The father first contacts the Central Authority in September 2024, but the German court (the authority empowered to order return) is not seised until 15 November 2024. For Article 12(1) purposes, the one-year period runs from 1 July 2024 (start of wrongful retention) until 15 November 2024 (when the competent court is seised). Because the application was filed well within one year, the court must order the child's return unless an Article 13 or 20 exception applies. If the father waits until after 1 July 2025 to file, the "settled child" exception in Article 12(2) may then be raised.



The settlement assessment must be evidenced and reasoned with the same rigour as a defence under Article 13. Automatic or formulaic application of Article 12(2) – concluding that the child must be settled because more than a year has elapsed – is incompatible with the procedural duty of effective examination under Article 8 ECHR.

CASE NOTE 150 | ECtHR | G.S. v. Georgia | App. No 2361/13
21 July 2015

The domestic courts refused return solely on the basis of Article 12(2), concluding that because more than one year had elapsed the child was settled. The ECtHR found a violation of Article 8: the Georgian courts had relied on Article 12(2) automatically, without genuinely examining whether settlement was established, without assessing the reasons for the delay, and without balancing the competing interests of the parents and child.

Once more than one year has passed, and settlement is established, the mandatory return regime of Article 12(1) no longer applies. Settlement does not convert the proceedings into a full custody or welfare inquiry but *opens a discretion* for the court to decide whether return should still be ordered. Therefore, once settlement is established, the court must engage more fully with the concrete situation created by the passage of time. This does not mean applying a free-standing "best interests" test, but it does require the court to look beyond the summary logic of immediate return and to consider whether return would still serve the Convention's purposes in the specific case.

In other words, settlement transforms the proceedings: instead of a narrow inquiry focused on prompt restoration of the status quo, the court must evaluate whether ordering return would still be justified in light of the child's current circumstances and the overall purposes of the Convention.

Timing of the settlement assessment - "now settled"

Article 12(2) does not specify the date at which the court must determine whether the child is "now settled", and the case law is not uniform. Two approaches have emerged. Under one approach, settlement is assessed at the date on which the return proceedings were commenced. This prevents developments occurring during the proceedings, including delay in determining the application, from changing the availability of the defence. Under the other approach, settlement is assessed at the date of the hearing, so that the court determines the child's actual situation when the return question is decided.

Under the latter approach, the term "now settled" in Article 12(2) of the 1980 Convention refers to the child's situation at the time the court determines the return application, not at the earlier date when proceedings were commenced. Settlement is therefore typically assessed as at the date of the hearing or decision, on the basis of the child's current factual circumstances. Interpreting "now" as referring to the date of commencement artificially freezes the assessment in the past and is inconsistent with the ordinary meaning of the word, the structure of Article 12, and the purpose of the settlement exception.[159]

CASE NOTE 151 | UK | High Court of England and Wales
[2021] EWHC 2758 (Fam)
18 October 2021

In a return case brought more than one year after the abduction, the taking parent relied on Article 12(2). The left-behind parent argued that settlement had to be assessed as of the date the return application was filed, and that later integration during the proceedings was irrelevant. The court rejected this argument, holding that the word "now" in Article 12(2) refers to the child's situation at the time the court decides the case. Settlement must therefore be assessed as at the date of the hearing or decision, based on the child's current circumstances, not frozen at the moment proceedings were commenced. The court stated in regard to the latter that *"[...] the interpretation … might result in a child who was not settled as at the date of the commencement of proceedings, but who had become settled by the date of trial, being sent back. This would be completely perverse."*

[159] See Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) 228–229, where she records the divergence and prefers assessment at the hearing date, following the approach of the New Zealand Supreme Court in *Secretary for Justice (New Zealand Central Authority) v HJ* [2007] 2 NZLR 289, §57, because it better accommodates the interests of the child and avoids ignoring developments occurring while proceedings are pending. As an illustration of the earlier English approach, see Re H (Abduction: Child of 16) [2000] 2 FLR 51, where the court proceeded on the basis that the question whether a child was "now settled" for the purposes of Article 12(2) fell to be assessed by reference to the situation at the date on which return proceedings were commenced, rather than at the date of the final hearing. This approach has been questioned in later judicial reasoning.

In intra-EU cases, the relevant reference date for determining whether a child is "now settled" under Article 12(2) cannot be assumed: the practitioner should verify the approach followed by the court of the requested Member State. The practical significance of the divergence should normally be reduced by the strict expedition requirements applicable to intra-EU return proceedings under Article 24 Brussels IIb, but it may become important where the proceedings have nevertheless been prolonged.

Starting point of the one-year period

The one-year period for the "return forthwith" of a wrongfully removed or retained child begins to run *from the date on which the wrongful removal or retention occurred*. As explained in the Pérez-Vera Report, §108, for the purposes of Article 12, the one-year period begins to run from the date of the wrongful removal (the moment the child crossed the border of the State of habitual residence and entered another Contracting State) or, in cases of wrongful retention, from the date on which the child should have been returned or the date on which the holder of custody rights refused to agree to an extension of the child's stay outside the place of habitual residence.[160]

The decisive point is the international dimension of the act (the child's physical transfer or retention in another State) and not earlier domestic acts that might already violate custody rights. Accordingly, the court must establish with certainty the exact date on which the child left the State of habitual residence. Evidence such as border-control records, travel documents, or certificates issued by authorities of the State of departure may be used to determine this date. Violations that occur within the State of habitual residence (for example, one parent keeping the child beyond the agreed contact period, refusing to hand them over, or acting contrary to a custody order while still in the same State) do not trigger the return mechanism, since the 1980 Convention only governs cross-border abductions.

CASE NOTE 152 | DE | Munich Local Court | 567 F 7440/21
23 September 2021

A father applied for the return of his two children, who were wrongfully removed from Ukraine to Germany. The mother argued that the one-year period had already expired because the father's custody rights had been violated earlier, when she decided to keep the children with her in Ukraine. The court rejected that argument. It relied on a certificate from the Ukrainian State Border Service confirming that the children left Ukrainian territory at 2:50 a.m. on 3 August 2020, and held that this was the moment of wrongful removal within the meaning of Article 3 of the 1980 Convention. Earlier breaches of custody rights inside Ukraine were irrelevant for determining the time of removal, as the Convention applies only once a child has moved from the State of habitual residence to another Contracting State. Since the return application had been filed within one year of 3 August 2020, Article 12(1) was satisfied, and the court ordered the children's prompt return.

Where a wrongful retention has already occurred and the abducting parent subsequently moves the child through other Contracting States without restoring the pre-abduction situation, those later moves do not necessarily restart the Article 12 one-year period. Once the

[160] See also Rhona *Schuz, The Hague Child Abduction Convention* (Hart Publishing 2013) ch 9, pp 226–227, discussing the starting point of the twelve-month period and supporting the view that, in removal cases, time runs from the child's removal from the State of habitual residence rather than from arrival in the State of refuge.

retention has become unlawful, that moment remains the single, fixed starting point for calculating the one-year period, regardless of how many times or to how many States the abducting parent subsequently moves the child.

CASE NOTE 153 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2023:1116.17UF205.23.00
16 November 2023

The child was wrongfully retained in August 2021, when the mother failed to return the child from Romania to Hungary after the agreed one-month stay. She later relocated the child first within Romania, then to Germany in October 2022. The court held that these subsequent moves did not amount to new removals or renewed wrongful retentions and therefore did not restart the one-year period. Even though a new return application under the Convention was filed in Germany in 2023, the relevant date for Article 12(1) remained the original wrongful retention in August 2021, because later relocations cannot "reset" the 1980 Convention's timeline.

The one-year period under Article 12 runs from the moment of the wrongful removal or retention and is not postponed merely because the applicant does not know the child's precise whereabouts.[161] A common situation in abduction cases is that the abductor not only takes or retains the child wrongfully but also hides where the child is (sometimes for months or years) so that by the time the left-behind parent locates the child and files an application, more than a year has elapsed. The drafters of the Convention deliberately chose a fixed time limit and expressly set aside the difficulties that arise from concealment, in order to avoid the kind of evidential disputes (when did the applicant learn where the child was, what efforts were made, was the delay justified) that a flexible rule would generate.

CASE NOTE 154 | AT | Supreme Court
ECLI:AT:OGH0002:2014:0060OB00109.14V.0709.000
9 July 2014

In an Austrian case, the child was removed from the United States. The father knew that the child had been removed but did not know the child's precise whereabouts. The Supreme Court held that the Article 12 one-year period began with the wrongful removal and was not postponed by the father's lack of knowledge of the child's location. Because the return application was filed more than one year later, Article 12(2) applied. On the findings of the lower courts, the child had become settled in Austria, spoke German and had friends, so return was refused.

This does not mean concealment is irrelevant - it is handled at a different stage. Once the year has elapsed, the substantive question is whether the child has become settled in the new environment under Article 12(2). Concealment does not postpone the one-year period and does not automatically prevent settlement. Its relevance depends on its actual effect on the child's life. A child

[161] See Pérez-Vera Report, §108, explaining that the *"single time-limit of one year (putting on one side the difficulties encountered in establishing the child's whereabouts)"* was deliberately preferred over a conditional approach in order to eliminate the evidential difficulty of proving the circumstances surrounding the locating of the child. In the same line is Lozano v. Alvarez, 572 U.S. 1 (2014), where the Supreme Court of the United States examined whether the doctrine of "equitable tolling" could apply to Article 12 of the 1980 Convention. The question was whether, where the abducting parent had concealed the child, the one-year period should be paused until the left-behind parent could reasonably have located the child and initiated proceedings. The Court held that it should not: the one-year period runs continuously from the date of the wrongful removal or retention, irrespective of concealment. Concerns arising from such conduct are not addressed by extending the time limit, but may instead be taken into account when assessing whether the child is "settled" under Article 12(2).

living underground, frequently moved, isolated from school or social life, or aware of imminent flight will usually not be settled. But if the child has lived for a substantial period in one place, attended school, formed social ties, and lived an ordinary daily life, concealment by the carer does not by itself exclude settlement. The protective work in concealment cases is therefore done not at the threshold but inside the settlement test: the one-year period remains rigid, and the flexibility lies in the substantive assessment of whether settlement has actually occurred.

Ending point of the one-year period

> *The choice of the date of application rather than the date of decision is deliberate: the left behind parent should not suffer for the failings of the competent authorities.*
> *Opinions of the Lords of Appeal for Judgment in the Cause in re D (a child)*[162]

Under Article 12(1), the one-year period stops running only *when return proceedings have been initiated*. The Pérez-Vera Report, §108, clarifies that for the purposes of Article 12, the decisive end point of the one-year period is the date on which return proceedings are commenced, rather than the date of the court's decision, in order to ensure that delays attributable to the competent authorities do not prejudice the parties protected by the Convention.[163]

The 1980 Convention expressly ties the time limit to the *initiation of proceedings before a judicial or administrative authority*. Accordingly, the one-year period does not stop when the left-behind parent contacts the police or takes any other administrative or preliminary step.

Two distinct procedural approaches can be identified in the application of Article 12(1) of the 1980 Convention as regards the moment at which the one-year period stops running. These two approaches do not reflect different interpretations of the Convention itself, but rather different national procedural models for commencing return proceedings, which Article 12 accommodates by referring to the "judicial or administrative authority" designated by the requested State.

In some legal systems, the one-year period stops running when return proceedings have been commenced before courts or central authorities. This is where national law expressly provides that a return application may be submitted either directly to the competent court or *through the Central Authority,* which functions as a legally recognised procedural channel for initiating return proceedings. In such systems, the Central Authority does not merely assist the applicant but forms part of the mechanism by which the competent authority is seised. Accordingly, where the application is lodged with the Central Authority in accordance with national law, the relevant date for assessing compliance with the one-year period under Article 12 is the date of that lodging, even if the court is seised at a later stage.

[162] Opinions of the Lords of Appeal for Judgment in the Cause in re D (a child) [2006] UKHL 51.
[163] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction*.

CASE NOTE 155 | **BG** | **Sofia Court of Appeal** | 20201000504232
23 February 2021

The court held that the decisive date for assessing compliance with the one-year period under Article 12(1) of the 1980 Convention is the date on which the competent "judicial or administrative authority" is seised, as determined by national procedural law. While the Convention distinguishes between the authority empowered to decide on return and the Central Authority entrusted with facilitating functions, Bulgarian law expressly allows a return application to be submitted either directly to the competent court or through the Ministry of Justice acting as Central Authority. Where the application is lodged through the Central Authority, that act constitutes a legally recognised step for initiating return proceedings. Accordingly, the court found that the relevant date was the date on which the application was deposited at the Central Authority, not the later date on which the court was seised.

In other legal systems, return proceedings are considered to be commenced only when the return application is formally filed before the competent court. The Central Authority has no role in seising the court and acts solely as a facilitating or coordinating body. As a result, preparatory steps taken by the left-behind parent–such as contacting the police or submitting an application to the Central Authority–do not interrupt the one-year period. For the purposes of Article 12, the decisive date is therefore the date on which the court is seised of the return application.[164]

CASE NOTE 156 | **UK** | **High Court of England and Wales** | B (A Child), Re [2018] EWHC 1643 (Fam)
15 June 2018

The court held at §41 that "the making of a complaint to police or an application to a Central Authority does not suffice" to interrupt the one-year period. Only the formal seising of the court by filing the return application in the requested State constitutes the commencement of proceedings for the purposes of Article 12(1).

The child's settlement

That the child is "now settled" is not automatically presumed just because one year has passed since the wrongful removal or retention. The passage of one year is not evidence of settlement; rather, it is a procedural threshold that determines whether the court may even consider the question of settlement. For concept of settlement, see Handbook part 1, Chapter 6.3.D.

Habitual residence and settlement both concern a child's connection to a place, but they serve different functions. Habitual residence determines whether the removal is wrongful under the 1980 Convention by identifying the State from which the child was wrongfully removed or retained. Settlement, by contrast, assumes that the removal or retention was wrongful but recognises that, where proceedings were commenced after the one-year period, the child may meanwhile have become sufficiently integrated into the new environment to displace the otherwise continuing

[164] See in the same sense Federal Judicial Center, Hague Convention Guide for Judges (2nd ed.), p. 95, noting that in U.S. the one-year period under Article 12 is interrupted only by the filing of a return application before the court, and that an application to the Central Authority does not suffice. Also, Rhona Schuz, *The Hague Child Abduction Convention* (Hart Publishing 2013) ch 9, p 228, explaining that a number of courts have held that an application to the Central Authority does not stop the Article 12 clock because commencement of proceedings refers to proceedings before a body with authority to order return.

obligation to return. It is a distinct Article 12 inquiry and does not reopen the determination that the original removal or retention was wrongful.

The mere fact that more than one year has elapsed does not automatically mean that the child is settled. Settlement is assessed independently of the one-year time calculation. The one-year requirement functions as a procedural trigger for the possible application of the settlement exception, but it is not a substantive condition that must be re-examined when determining whether the exception applies. The decisive issue under Article 12(2) is whether the child is in fact settled in the new environment, assessed on the basis of concrete factual indicators, not the precise passage of time.

CASE NOTE 157 | LT | Court of Appeal | No. e2-816-407/2022
26 July 2022

The taking parent invoked Article 12(2), arguing that the children had become settled in Lithuania. In assessing this claim, the appellate court did not engage in a detailed recalculation of the one-year period between the children's unlawful removal and the initiation of proceedings. Instead, consistent with established national case law, the court treated the time element as formal and focused exclusively on whether the children had actually adapted to their new environment. The court examined schooling, language proficiency, social ties, and emotional stability, and concluded that adaptation was incomplete. Because factual settlement was not proven, the Article 12(2) exception did not apply, irrespective of the passage of time since the removal.

Settlement requires more than mere adjustment to new surroundings and must be demonstrated by evidence of genuine integration and stability in the child's new environment. To establish settlement under Article 12(2), the parent opposing return must prove that by the relevant assessment date, the child has achieved a real degree of stability in the new environment. Settlement may not be established if the child continues to experience significant linguistic barriers, communication difficulties, emotional sensitivity, or lacks stable social ties, particularly where the child would return to a familiar linguistic, cultural, and family environment in the State of habitual residence.

CASE NOTE 158 | LT | Court of Appeal | No. e2-816-407/2022
26 July 2022

Both children attended school in Lithuania and engaged in educational and extracurricular activities. However, the court found that their adaptation was not sufficient: one child struggled significantly with the Lithuanian language and experienced communication difficulties and emotional sensitivity, while the other adapted more smoothly. The parent opposing return failed to show that the children had formed social ties of such strength that severing them would cause serious harm. By contrast, the children had lived continuously in the United Kingdom since birth and would return to a familiar linguistic and cultural environment with established family connections. The court therefore held that the requirements of settlement under Article 12(2) were not met and ordered the children's return.

Language ability may be an important indicator of settlement, particularly where it affects the child's ability to participate in school and social life. A child who can understand, speak, and use the language of the requested State in everyday life (school, social interactions, contact with

authorities) is more likely to be considered integrated into the social and cultural environment. Conversely, limited or absent language skills strongly indicate that settlement has not yet occurred, even if the child has been physically present in the State for a significant period. Language is therefore not decisive on its own, but it is a central element in evaluating whether removal would cause a disruptive break from the child's current life.

CASE NOTE 159 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2023:1116.17UF205.23.00
16 November 2023

In a return case examined after the expiry of the one-year period, the court assessed whether the child had become settled in the requested State. Although the child had been registered in kindergarten and later at school, the court found that settlement was not established because the child did not speak or understand the local language. During the judicial hearing, the child was unable to understand questions put by the judge without interpretation, attended educational institutions only irregularly, and had not developed meaningful linguistic or social connections. On this basis, the court concluded that the child was not sufficiently integrated into the social and cultural environment and that settlement within the meaning of Article 12(2) had not been proven.

Parental intention is relevant but not determinative of settlement. A child may be regarded as settled in the new environment even if the taking parent has previously hesitated, changed plans, or negotiated a possible return, so long as the child is physically and psychologically integrated into a stable and long-term environment. Parental prevarication, indecision or earlier agreements to return do not prevent a finding of settlement when the objective evidence shows that the child's life in the new State has become established, rooted, and more than merely transient.

CASE NOTE 160 | UK | England and Wales Court of Appeal | Re B (A Child)
[2025] EWCA Civ 1382
4 November 2025

The mother had at various points considered returning to Portugal, and even signed an agreement to do so, but later decided to remain in the new country. The appellate court held that these changes of mind did not prevent a finding that the child was settled. By March 2025, the child was not merely adjusting to the new surroundings: she was physically and psychologically integrated into an environment that was long-term in character, with a home, nursery attendance, regular activities, and a broad family and social network that included continued contact with her father and paternal relatives. The judge at first instance had focused too heavily on the parties' shifting communications and insufficiently on the extensive evidence of the child's actual settled life; the appellate court therefore concluded that the child was settled within the meaning of Article 12(2).

Uncertain immigration status and temporary living arrangements may weigh against settlement, but they are not determinative. Their significance depends on whether they create real instability in the child's present and prospective life and must be assessed together with the child's home, schooling, social relationships, family connections and other indicators of integration.

CASE NOTE 161 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2026:113
30 January 2026

The father argued that the child had become settled in the Netherlands after living there for approximately two years, learning the language, and attending school. The court rejected the settlement defence. The child and the father had entered the Netherlands through the asylum system. Their residence status remained unresolved, and their housing situation depended on temporary arrangements. The court held that these circumstances created significant uncertainty about the child's long-term residence and therefore did not support a finding that the child had become settled in the new environment.

Concealment and repeated relocation may similarly significantly undermine a claim of settlement, but concealment is not an automatic bar. The court must examine the nature of the concealment and its actual effect on the child's physical, emotional and psychological integration. Frequent moves, isolation from school or social networks, or living under continuing fear of discovery may prevent genuine settlement; concealment of the child's whereabouts from the applicant does not necessarily do so where the child has otherwise developed a stable and ordinary life.

A finding of settlement does not remove the court's residual discretion to order return, although return after settlement will be exceptional. Settlement under Article 12(2) does not compel refusal of return; it permits it. Where the delay and the settlement are the product of the abducting parent's own flight – in particular, flight to evade a return order already obtained – the court may treat this as a serious abuse of law and order return despite the child's settlement. Article 12(2) confers a discretion, not an entitlement: a parent who manufactures the very conditions of the defence, by running down the clock and unsettling and re-settling the child through successive moves, cannot then invoke it. The threshold is high. Ordinary wrongfulness will not suffice, since every abduction is by definition wrongful; what is required is conduct of a particular gravity, such as the open defiance of a binding return order or a declared refusal to be bound by any court's decision. Absent such conduct, genuine settlement retains its ordinary weight and the discretion is not displaced.

CASE NOTE 162 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2023:1116.17UF205.23.00
16 November 2023

The court went on to hold that return could be ordered *even if* the child were regarded as settled. The mother had moved to Germany specifically to evade a return order already obtained against her in Romania, declaring that she would remain regardless of any court's decision. The court characterised this as a "serious and obvious abuse of law" (*gravierender und offensichtlicher Rechtsmissbrauch*) and held that, because Article 12(2) leaves the court a discretion, the settlement defence could not be used to defeat a binding return order the abducting parent had chosen to evade. A final return order, the court reasoned, cannot be "levered out" simply by relocating the child to a new State and waiting for the year to expire.

New environment

Settlement under Article 12(2) of the 1980 Convention requires that the child be integrated both physically and emotionally *into their new environment*. The concept of "new environment" is broad and holistic, encompassing the child's home, school, community, friendships, daily activities, and opportunities for development, as well as relationships with family members, including the left-

behind parent. The assessment must reflect the child's overall situation and sense of stability, not merely the parent's intention or the duration of stay.

CASE NOTE 163 | **UK** | **England and Wales Court of Appeal** | Re B (A Child) [2025] EWCA Civ 1382
4 November 2025



The English Court of Appeal reaffirmed that "new environment" covers both physical and emotional elements – "place, home, school, people, friends, activities and opportunities" – and includes regular contact with the left-behind parent as part of the child's lived reality. The Court found that settlement is not defeated simply because the child maintains ongoing contact with the other parent; what matters is whether the child's daily life shows stability, belonging, and integration in the new context.

4.5.C. Non-exercise of custody rights - Article 13(1)(a)

Article 13 allows the respondent to oppose the return of the child by arguing that the left-behind parent was *not actually exercising custody rights* at the time of the removal or retention. In this context, non-exercise operates as a defence against the return order, and the burden of proof lies with the respondent who invokes it.

This defence must be understood in light of Article 3. Article 3 uses the notion of the exercise of custody rights for a different purpose: it forms part of the definition of wrongful removal or retention and determines whether the Convention's return mechanism is triggered at all. The applicant must, therefore, show that the custody rights relied upon were exercised at the relevant time. However, the evidentiary threshold is low because the Convention proceeds from the presumption that a person who has custody normally exercises those rights. As explained in the Pérez-Vera Report (§73), once this initial threshold is met, it is for the respondent to rebut that presumption if they wish to rely on non-exercise under Article 13.[165]

The relationship between the actual exercise requirement in Article 3(b) and the non-exercise defence in Article 13(1)(a) has been criticised as an incoherent duplication, on the basis that a court cannot simultaneously find that custody rights were exercised for the purposes of Article 3(b) and that they were not exercised for the purposes of Article 13(1)(a).[166] In practice, however, the same issue may arise at different procedural stages. Article 3(b) allows a court to dispose of the case at the threshold where the evidence shows that the custody holder was not actually exercising custody. Non-exercise may be established even where some contact existed, particularly where contact was rare or irregular and the parent otherwise took no practical part in the child's life, made no relevant decisions, and did not exercise the rights inherent in custody. Under Article 13(1)(a), the same substantive issue may be raised by the respondent as a defence, with the burden of establishing non-exercise resting on them. The precise relationship between the two provisions remains unsettled.

[165] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction*.
[166] Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing, 2013) pp 158–159, proposing that non-exercise should function exclusively as a discretionary defence rather than a threshold requirement. See similarly Austrian Supreme Court, 15 May 2024, ECLI:AT:OGH0002:2024:0060OB00060.24B.0515.000, §13, §§20–27, referring to Neumayr/Nademleinsky and Nademleinsky's view that actual exercise of custody should not operate as an initial obstacle to the application of the Hague Convention, but should instead fall within the respondent's burden as a defence under Article 13(1)(a).

Although Articles 3 and 13(1)(a) operate at different stages, the *substantive content of "actual exercise"* is the same– the concept itself does not change. [167] What does and does not constitute actual exercise of custody rights, including the cluster of factual indicators identified in the case law, is analysed in detail in Chapter 2.6. What differs at this stage is *procedural:* under Article 13(1)(a), the burden of proof lies on the respondent, and even where non-exercise is established, the court retains discretion to order return.

Table 17: Exercise of custody rights under Articles 3 and 13 of the 1980 Convention: different functions and burden of proof

Dimension	Article 3 – Threshold inquiry	Article 13(1)(a) – Refusal ground
Procedural stage	Considered when determining whether the removal or retention was wrongful.	Considered after wrongful removal or retention has been established or assumed.
Function	Determines whether the return mechanism is engaged at all.	Allows the respondent to oppose return even though the return mechanism has been engaged.
Question for the court	Were custody rights actually exercised, or would they have been exercised but for the removal or retention?	Has the respondent proved that the applicant was not actually exercising custody rights at the relevant time?
Burden of proof	The applicant bears the initial burden, but the threshold is generally low.	The respondent bears the burden and must rebut the presumption of exercise.
Legal effect if established	If actual exercise is not established, there is no wrongful removal or retention, and the court does not proceed to the exceptions.	If non-exercise is proved, the court is not bound to order return, but retains discretion.
Core idea	Custody rights must be real and operative, not merely formal.	Non-exercise may justify non-return despite the formal existence of custody rights.

4.5.D. Consent - Article 13(1)(a)

The taking parent may assert that the left-behind parent agreed to the child's removal or retention. Consent under the 1980 Convention is a *prior or contemporaneous agreement* to the removal or retention. Consent is rarely written, often inferred, and almost always disputed. The 1980 Convention provides no definition, and the case law has built its content piece by piece – what consent must cover, when it must exist, what form it must take, and how clearly it must be expressed. On the notion of consent, see the Handbook part 1, Chapter 6.3.A.

Consent occupies an unusual position in the structure of the 1980 Convention. Formally, Article 13(1)(a) presents consent as a ground on which the requested court is not bound to order return, and the burden of establishing it lies on the person opposing return. Conceptually, however, prior

[167] See, for example, Dutch Supreme Court, 20 October 2006, ECLI:NL:HR:2006:AY7937, holding that the concept of "actual exercise" of custody rights under Article 3(b) and Article 13(1)(a) of the 1980 Convention must be interpreted in the same way as to their substance. See similarly also G. Ruitenberg, *De toepassing van het Haags Kinderontvoeringsverdrag in Nederland en het belang van het kind*, Familie & Recht series, p. 302., and Austrian Supreme Court, 15 May 2024, ECLI:AT:OGH0002:2024:0060OB00060.24B.0515.000, para. 27, treating the factual inquiry into actual exercise as one concerning Articles 3 and 13 of the 1980 Convention together,

or contemporaneous consent is closely connected to the Article 3 inquiry into wrongfulness. A removal or retention is wrongful only if it breaches custody rights actually exercised under the law of the child's habitual residence. Where the left-behind parent clearly and unequivocally agreed to the child's removal or relocation, there may be no breach of those rights and therefore no wrongful removal or retention in the first place. The same structural overlap exists in relation to non-exercise of custody rights (see Chapter 4.5.C), which is both part of the Article 3 wrongfulness test and expressly mentioned in Article 13(1)(a).

Because consent can logically be placed at either stage, courts have not adopted a uniform approach.[168] Some consider it when deciding whether the removal or retention was wrongful under Article 3. The Pérez-Vera Report also acknowledges, in §115, that the conduct of the person seeking return may itself raise doubts about whether a wrongful removal or retention occurred.[169]

CASE NOTE 164 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2016:2675
31 August 2016

In a case concerning children moved from Belgium to the Netherlands, the court examined consent as part of the Article 3 wrongfulness analysis. The father argued that the move was wrongful because he had not consented to the children's relocation abroad. The court accepted that, under Belgian law, an international relocation required his consent, but found that he had in fact consented to the move. In the final paragraph, the court clarified the consequence of that finding: Article 13 did not need to be examined, because once the father's permission had been established, the 1980 Convention was no longer applicable to the case.

Other courts treat it as an exception to be examined only after wrongfulness has been established, in accordance with the Convention's formal structure.

CASE NOTE 165 | DE | Higher Regional Court of Nuremberg | 7 UF 840/21
3 November 2021

The court explicitly clarified that parental consent does not, in itself, remove the wrongful nature of a removal under Article 3, but rather operates as an exception to return under Article 13(1)(a). This interpretation preserves the procedural sequence of the Hague analysis: the court must first establish that the removal or retention was wrongful, and only then determine whether an exception to return applies. This distinction, though subtle, has procedural consequences, particularly for the operation of Article 27 of the Brussels IIb Regulation, which presupposes that a finding of wrongful removal precedes any refusal of return on exceptional grounds.

Where this distinction matters most is in intra-EU cases governed by Brussels IIb. Article 27 of that Regulation *applies only once wrongful removal or retention has been established* – it then sets out the grounds on which return may be refused. If a court treats consent as negating wrongfulness under Article 3, the case never reaches that stage, and Brussels IIb's refusal framework does not come into play. If, instead, the court treats consent as an Article 13(1)(a) exception, wrongfulness has already been found, and Article 27 Brussels IIb is potentially engaged.

[168] Dutch case law is itself not uniform on the procedural placement of consent. See here an example where the Court follows the formal structure of the Convention and examines consent, non-exercise of custody rights, or acquiescence under Article 13(1)(a) as refusal grounds after wrongfulness has been established (ECLI:NL:GHDHA:2016:2191).
[169] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction*.

Timing of consent

Consent operates only as a situation that exists *before* the removal or retention. A removal that was wrongful at the moment it took place cannot be made lawful by anything the left-behind parent says or does afterwards. The decisive question is whether consent existed before the allegedly wrongful removal or before the retention became wrongful.

Consent to a child's relocation under Article 13(1)(a) of the 1980 Convention may be given in advance and remain valid even if the actual move takes place later than initially planned. Where a parent has expressly or implicitly agreed to a permanent change of residence – for example, by supporting logistical arrangements, signing agreements, or recognizing the relocation as part of shared family planning, it may amount to the parent agreeing to the move. The subsequent breakdown of the parents' relationship, or a change in the moving parent's motives (such as separation), does not automatically revoke the prior consent unless it has been clearly and unequivocally withdrawn before the relocation.

CASE NOTE 166 | DE | Higher Regional Court of Nuremberg | 7 UF 840/21
3 November 2021

The father sought the return of his children from Germany to the United Kingdom, claiming that their mother had moved without his consent. The court found that the father had earlier agreed to the mother's eventual return to Germany with the children after the end of her parental leave, as evidenced by a written commitment to pay relocation and housing costs, an email confirming that the children could "live where they wished," and his ongoing awareness of preparations for the move. The court held that this advance consent – given well before the relocation – remained valid despite later marital conflict and the mother's decision to separate. Consequently, the return was refused under Article 13(1)(a) of the 1980 Convention.

Consent within the meaning of Article 13(1)(a) should exist prior to the child's removal or retention. Statements made after the departure, retrospective tolerance, silence, or later attempts to accommodate the situation cannot retroactively legalise an already wrongful removal. The decisive moment is the point of departure (or the moment retention allegedly became wrongful).

CASE NOTE 167 | NL | The Hague Court of Appeal | ECLI:NL:GHDHA:2021:2413
29 November 2021

The mother argued that the father had effectively accepted the move because he later communicated with her, reacted minimally to messages, and did not immediately object after the departure. The court rejected this: none of these post-departure behaviours could amount to valid consent. The only moment that matters is before the removal. Because the father's earlier statements were ambiguous, made in anger, and conditional upon approval by Swedish authorities, they did not constitute clear and unambiguous prior consent. Therefore, the removal was wrongful, regardless of any later tolerance or silence.

Consent to a child's relocation is assessed at the time of departure, based on the parents' actual conduct and shared intentions. If both holders of parental responsibility have jointly planned and implemented the move – for example, by arranging housing, enrolling the child in school, and transferring personal belongings – such actions demonstrate genuine consent to the

relocation. A later change of attitude or breakdown of the parents' relationship does not retroactively revoke that consent or render the removal wrongful.

CASE NOTE 168 | **EE** | **Tallinn District Court** | 2-24-18693
2 June 2025

The mother argued that her agreement to move from Estonia to France was conditional and temporary. The court found, however, that she had participated in every practical step of the relocation – searching for accommodation, enrolling the child in kindergarten, and moving family belongings. These facts showed that both parents intended to settle in France at the time of departure. The mother's later wish to return to Estonia, following the separation, did not make the father's continued stay abroad wrongful under Article 3 of the 1980 Hague Convention.

Clarity of consent

Once it is accepted that consent must exist before the removal, the next question is what kind of expression of agreement counts. The case law sets a high threshold: consent must be real, positive, and unequivocal – and the burden of proving it rests on the parent who relocated. Words said in anger, conditional concessions, or conduct compatible with several interpretations may not be sufficient.

Consent under Article 13(1)(a) requires a real, positive, and unequivocal agreement, assessed strictly at the time of the removal or retention. Courts will examine not only the parents' words but also the surrounding circumstances, discussions, and behaviour to decide whether genuine consent was given. Consent must be more than temporary permission or acquiescence in practical arrangements; it must amount to a conscious decision to allow the child's removal or retention. Where consent is expressed subject to conditions, it may still be valid provided those conditions are clear and mutually binding on both parties; consent attached to vague or unilateral conditions will not suffice.[170] Courts will treat oral or written agreements, conduct such as support for relocation, or later corroborating actions as powerful indicators. Once established, consent is irrevocable – unless it was given subject to a condition that has not been met, or was revoked before the removal took place and before the other party acted in reliance on it.[171]

CASE NOTE 169 | **NL** | **The Hague Court of Appeal**
ECLI:NL:GHDHA:2021:2413
29 November 2021

The mother relocated with the child from Sweden to the Netherlands and argued that the father had previously consented. She relied on a statement he had made some time before her departure, in the context of a deteriorating relationship and an argument, to the effect that she could leave. The Court rejected this. The father had made the statement in an angry mood, well before the actual departure, and had attached a condition – that the Swedish authorities would first have to be consulted on the mother's departure. Read in its proper context, namely the ongoing problems in the relationship and the breakdown of it, the statement could not constitute the clear and unambiguous prior consent that Article 3 requires.

170 See also Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) p 247, explaining that consent or acquiescence must be clear and unequivocal and proved by clear and cogent evidence; where the words or conduct relied upon are ambivalent, the abducting parent will fail to establish the defence.
171 Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing, 2013) p 248, 251, as to that conditional consent is valid provided the conditions are clear and mutually binding on both parties, and that consent may be revoked before the removal takes place, provided the other party has not yet acted in reliance on it.

CASE NOTE 170 | **UK** | **High Court of England and Wales** | Re DQ (A Child) [2023] EWHC 891 (Fam)
23 February 2023

The High Court found that the mother had given clear and unequivocal consent to her daughter's permanent relocation to England. Although she later claimed she had only agreed to a one-year stay, the judge accepted the grandparents' detailed evidence that, in discussions on 13 October 2021, she agreed to permanent residence with the father. Her signing of a written declaration and her subsequent consultation with an immigration lawyer confirmed this conclusion.

Consent to a child's relocation or retention must be genuine and informed. Consent obtained on the basis of false or misleading information does not prevent the ordering of return under the 1980 Convention. Once the parent discovers the misrepresentation and promptly withdraws their consent, the defence of consent cannot be relied upon.

CASE NOTE 171 | **BE** | **Court of First Instance of Antwerp**
Decision No 2198 (Reported Here)

The left-behind parent had initially agreed to the child's move abroad. It later emerged that the consent was given on the basis of inaccurate information supplied by the taking parent. As soon as the truth was revealed, the left-behind parent revoked the consent. The court ordered the child's return, holding that consent vitiated by misinformation and subsequently withdrawn cannot block return. (Court of First Instance of Antwerp (Belgium), decision No 2198, date and case number not reported, summarised in Belgium's Response to the HCCH 2023 Questionnaire on the Practical Operation of the 1980 Child Abduction Convention, Prel. Doc. No 4 of January 2023, Question 3.

The manner of the removal itself can demonstrate the absence of consent – secrecy, concealment, or deception at the moment of departure are inconsistent with consent, and documents produced afterwards cannot displace that. Courts assess consent objectively, on the totality of the record. Where the taking parent's conduct at the moment of the removal shows secrecy, deception, or concealment from the other parent – for example, collecting the child without notice, removing the child's travel documents from the other parent's home without the other parent's knowledge, or departing without informing the other parent – that conduct is itself inconsistent with the existence of consent. Documents produced after the fact, or general claims of prior agreement, cannot displace what the manner of the removal objectively shows.

CASE NOTE 172 | **NL** | **The Hague Court of Appeal**
ECLI:NL:GHDHA:2024:1981
23 September 2024

The father took one child to the Netherlands by collecting her from her kindergarten in Serbia without informing the mother, and taking her passport from the mother's home without the mother's knowledge. He produced, in support of his claim that the mother had consented, two purported consent forms with no return date. The Court of Appeal rejected the defence. The manner of the removal – concealment from the mother, removal of the passport without her knowledge, departure without notice – was itself inconsistent with consent. The mother's contemporaneous WhatsApp messages, sent in the days before and after the removal, repeatedly demanded the children's return and contradicted any claim of agreement. The father's own pleading on appeal included the statement that he "realised he should not have left with the children without the mother's consent". On the totality of the record, no clear and unequivocal consent existed, and the documents produced could not establish permission contrary to the factual reality.

Form, scope and limits of consent

Even where the parents have agreed to something, the question is what they agreed to. The 1980 Convention does not protect every removal that follows from a parental agreement – only those that fall within the actual scope of the consent given. Disputes in this area rarely concern whether something was said or signed; they concern whether what was said or signed extended to the act that actually took place. A consent given for one purpose cannot be stretched to authorise another, and the limits of the original agreement define the limits of the defence under Article 13(1)(a).

Where relocation was genuinely a joint parental decision, there is ordinarily no unilateral removal requiring an Article 13 consent defence; the later issue may instead be whether a subsequent retention is wrongful. Where parents jointly decide to relocate the child to another State, the situation is not analytically one of consent by one parent to the other's act. The "consent" framework under Article 13(1)(a) presupposes a removal or retention by one parent to which the other parent has agreed. Where both parents have jointly taken the decision to relocate – and both have implemented it through concrete acts such as searching for accommodation, registering the child in a new school, and moving to a shared family home – there is no underlying act of removal by one parent that requires the consent of the other. The subsequent breakdown of the parental relationship does not retroactively transform the joint relocation into a unilateral act, nor does it retroactively undo any change in habitual residence that had in fact occurred following the relocation.

CASE NOTE 173 | EE | Tallinn District Court | 2-24-18693
2 June 2025

A French father and an Estonian mother, who had lived in Estonia with their son, jointly decided to relocate to France in the summer of 2024. Both visited prospective schools, signed the joint school registration, and lived together as a family in a rented apartment. In October, the family travelled to Estonia for the autumn school break. The mother was due to return to France with the son on November 2nd but informed the father at handover that she would not return the child and that the relationship was over. She argued in the return proceedings that her agreement to relocate had been conditional on the continuation of the parental relationship. The Court rejected this argument. The parents had taken a *joint* decision to relocate, and the situation could not be analysed as one of unilateral removal to which the other parent had given conditional consent. The subsequent breakdown of the parental relationship could not, by itself, unwind the joint relocation or restore the prior habitual residence in Estonia.

A broad notarised power of attorney granted by the left-behind parent to the taking parent may not, by itself, constitute consent to the child's relocation under Article 13(1)(a) of the 1980 Convention. Where the broad power was accompanied by a specific travel authorisation defining the temporal scope and purpose of the trip, the documents must be read together: the broad power serves as practical backup for contingencies arising during the authorised stay, not as authorisation for permanent relocation. Subsequent unilateral acts of integration by the taking parent – registration at the local town hall, opening of bank accounts, enrolment at school – cannot be invoked as acquiescence by the left-behind parent unless the latter knew of and accepted those acts in advance.

CASE NOTE 174 | **ES** | **Bilbao Provincial Court** | ECLI:ES:APBI:2026:448
5 March 2026

A Colombian father granted the mother a broad notarised power of attorney covering administrative, educational and medical matters concerning their daughter, alongside a separate Colombian migration authorisation permitting the daughter to travel to Spain for tourism. The mother did not return the child at the end of the authorised period and proceeded to register her at the town hall, open a bank account, and enrol her in school. The father revoked the power and sought return. The Court upheld return. It held that the broad power had to be read alongside the specific travel authorisation, which defined the trip as temporary and tourism-purpose; the broad power served as practical backup for contingencies during the authorised stay, not as consent for relocation.

Permission for the child to travel abroad does not, by itself, establish consent to the longer or permanent stay relied upon by the respondent. Where consent to permanent relocation is alleged, the evidence must show that the permission extended to that relocation; its scope should be determined from the wording of the documents and the parties' subsequent conduct.

CASE NOTE 175 | **DE** | **Stuttgart Higher Regional Court**
ECLI:DE:OLGSTUT:2023:0619.17UF103.23.00
19 June 2023

A German father travelled from Morocco to Germany with his four-year-old son, claiming the Moroccan mother had agreed that the child should live permanently in Germany. The father produced two documents: a "travel authorization" and a "departure permit." The court found that neither document proved consent to a permanent relocation. The wording merely authorized the father to travel abroad with the child, not to transfer his residence. Moreover, the mother's immediate reaction—sending multiple messages demanding her son's return—confirmed that no such consent had been given. The court held that consent under Article 13(1)(a) requires an explicit agreement to a change of habitual residence, not merely to a trip or temporary stay abroad. As the father failed to prove such consent, the removal was wrongful, and the child's return to Morocco was ordered.

CASE NOTE 176 | **HU** | **Supreme Court** | Pfv.I.20.219/2024/6
19 March 2024

The taking parent relied on the other parent's agreement to the child's travel and to completing administrative formalities (including registration-related documents) as proof of consent. The court rejected this argument, finding that the agreement concerned temporary travel and administrative cooperation only, and that there was no clear and unequivocal consent to the child's permanent relocation or to a change of habitual residence. As a result, the defence under Article 13(1)(a) failed and the return was ordered.

Tacit consent under Article 13(1)(a) may be inferred from the parent's conduct, where the circumstances show consent to a permanent change of residence, not merely temporary travel or provisional arrangements. Relevant factors may include the child's actual centre of life, childcare arrangements, the parents' work arrangements, the applicant's conduct after separation, and whether the applicant objected promptly or instead behaved consistently with the child remaining in the requested State.

CASE NOTE 177 | AT | Supreme Court | ECLI:AT:OGH0002:2021:E128527
8 July 2020

In an Austrian case concerning return to Germany, the child lived mainly in Austria after the mother returned to work there. The father took parental leave and cared for the child in Austria, agreed to the child's registration in childcare there, returned to Germany without objecting to the mother and child staying in Austria, and later visited the child in Austria almost every weekend. The Supreme Court held that the lower courts were entitled to conclude that the child had a habitual residence connection with Austria and that the father had consented to the child's residence there. The return application was therefore rejected.

Consent once validly given is not undone by a later divorce or other change in circumstances; such events do not, by themselves, amount to a retraction of consent under Article 13(1)(a) of the 1980 Convention. If a left-behind parent has given valid consent for the children to leave their State of habitual residence and reside abroad, it cannot later be presumed to be withdrawn simply because the parents divorced or because the left-behind parent changed their mind. As long as the conditions of the original consent remain, the parent cannot rely on Article 3 to demand the children's return.

CASE NOTE 178 | FI | Helsinki Court of Appeal
H 23/84 (Reported Here)

The father consented to the mother and children relocating from Ukraine to Finland due to the war. After their divorce, he applied for the children's return, arguing the circumstances had changed. The Helsinki Court of Appeal rejected his application, holding that the original consent to reside in Finland during wartime was still effective, and the father could not unilaterally retract it on the basis of the divorce. The removal and stay were therefore not "wrongful" within the meaning of the Convention.

4.5.E. Acquiescence – Article 13(1)(a)

Acquiescence occurs *after the wrongful removal or retention has taken place*. It refers to the subsequent acceptance by the left-behind parent of the new situation, either explicitly or implicitly, and may arise through actions, conduct, or statements that demonstrate acceptance of the child's relocation.

Unlike consent, which precedes the wrongful removal or retention, acquiescence is concerned with what the left-behind parent has done since. The doctrine has been developed extensively in case law across jurisdictions, and although courts differ in the weight they give to subjective intent as opposed to objective conduct, the core principles have formed a relatively coherent body of rules (see Handbook part 1, Chapter 6.3.A).

Who can acquiesce and what conduct is required

Acquiescence is a doctrine directed at the conduct of the left-behind parent. The question of whose conduct can ground a finding of acquiescence is not always straightforward, particularly where rights of custody are held by an institution or court rather than an individual, or where the parent's own

subsequent behavior (including relocation to the State of retention) is said to demonstrate acceptance. The starting point is that acquiescence requires voluntary and intentional acceptance of the new situation by the holder of custody rights, and that the conduct relied upon must come from the rights-holder themselves rather than from any third party.

Where a court holds rights of custody, it is doubtful it can acquiesce in a wrongful removal or retention for the purposes of Article 13(1)(a). Acquiescence requires voluntary and intentional acceptance of the new situation by the holder of custody rights. A judicial body, unlike a parent, lacks a singular will or intention and cannot form the kind of subjective acceptance that acquiescence presupposes. Judicial inaction, delay, or procedural passivity are not expressions of consent to a child's relocation and may not be treated as substitutes for the clear and informed conduct required of an individual rights-holder.

CASE NOTE 179 | UK | England and Wales Court of Appeal | B, Re
[2025] EWCA Civ 1603
11 December 2025

The Court of Appeal considered whether the Romanian court's procedural conduct , including its failure to progress the father's return application, could amount to acquiescence under Article 13(1)(a). The court expressed doubt about whether a judicial body could ever acquiesce in principle, on the basis that a court lacks the singular will and intention that voluntary acceptance requires. On the facts, the Romanian court had declined jurisdiction only in respect of the 1980 Convention application, which was correctly brought in England, while separately asserting jurisdiction over substantive welfare matters and confirming that the child remained habitually resident in Romania. That conduct was held to be inconsistent with acquiescence.

Where a left-behind parent relocates to the State in which the child is being wrongfully retained, this may be a significant indicator of acquiescence. Relocation alone is not conclusive, but where it forms part of a broader pattern of conduct – such as taking up employment, securing long-term housing, enrolling the child in local childcare, or filing custody proceedings in that State – courts may infer that the parent has reconciled themselves to the child's permanent residence there rather than merely seeking to maintain contact pending return proceedings.

CASE NOTE 180 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2024:2025
1 November 2024

The Court found that the father had acquiesced in the child's retention: although the father claimed he had consented only to a three-week holiday, the court left that question open and focused instead on his subsequent conduct. Over the following year, he relocated to the Netherlands, took up housing, employment and education there, searched for local childcare for the child, and filed a Dutch custody petition in which he explicitly stated he had resigned himself to the move. The court held that this pattern of conduct, taken as a whole, demonstrated that he had reconciled himself to the child's permanent residence in the Netherlands and rejected his application for return.

Form of acquiescence

The form acquiescence must take varies between jurisdictions. EU courts focus on whether the left-behind parent's own objectively verifiable conduct demonstrates acceptance of the child's new

residence.[172] Acquiescence is a strict standard, the burden lies on the person opposing return, and the parent's conduct (not the taking parent's perception of it) is decisive.

Acquiescence must be assessed exclusively from the left-behind parent's own conduct, both active and passive, and not from how others – including the taking parent or third parties – have interpreted or understood that conduct. The decisive question is whether it can be inferred from objective circumstances that the left-behind parent has accepted that the child's primary residence will henceforth be in the new State. That threshold is a strict one.

CASE NOTE 181 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2023:1400
25 July 2023

The mother argued that the father had acquiesced in the child remaining in the Netherlands. She relied on several WhatsApp messages. The court rejected this defence because the father's own behaviour showed the opposite: within two weeks of the removal he initiated proceedings before the French court seeking the child's return to France and determination of residence with him. These objective actions demonstrated that he never accepted the child's relocation. Since acquiescence must be inferred solely from the left-behind parent's conduct – not from the mother's interpretation of his messages – the court held that no acquiescence existed under Article 13(1)(a).

Acquiescence can, in some circumstances, be established on the basis of a single, brief act, provided it is unambiguous and considered, and provided the strict conditions for acquiescence are otherwise met. The court treats this not as a relaxation of the standard but as an application of it – a single or short-lived, but unequivocal and considered, acceptance may suffice to establish acquiescence.

CASE NOTE 182 | NL | Supreme Court | ECLI:NL:HR:2010:BN6126
1 October 2010

The mother had remained in the Netherlands with the child after a permitted three-month stay expired, and the father had filed a return application some months later. The mother argued that the father had acquiesced in the child's permanent residence in the Netherlands. The Supreme Court upheld the courts below in rejecting that defence, finding that the father's conduct did not amount to genuine and considered acceptance of the child's permanent relocation. In doing so, however, the court confirmed the broader principle: a one-off expression of consent may suffice for acquiescence, but only where it clearly and deliberately accepts the child's permanent residence in the new State – the strict conditions for acquiescence must still be met in full.

Acquiescence can be inferred from consistent conduct over time, and once established, it is generally treated as irrevocable. Under Article 13(1)(a) of the 1980 Convention, a left-behind parent is treated as having acquiesced if their words and actions show that they have "gone along with" the wrongful act, even if they later claim otherwise.[173] The test focuses on the parent's actual state of mind, but this is assessed primarily through contemporaneous behaviour. In practice, this

[172] English courts, while ultimately concerned with the parent's subjective state of mind, assess that intent primarily through contemporaneous words and actions. See, for example, *B (A Child) (Abduction: Acquiescence: Article 13(b))*, [2025] EWHC 2144 (Fam).
[173] See also Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing, 2013) p 251, noting that the irrevocability of acquiescence is linked to reliance by the other party – where the taking parent has not yet acted in reliance on the acquiescence, revocation before that point remains theoretically possible. In practice, however, given the summary nature of Convention proceedings, this distinction is rarely determinative.

means that if a parent delays in bringing proceedings and at the same time supports or tacitly accepts the child's integration abroad, courts may find acquiescence.

CASE NOTE 183 | **FI** | **Supreme Court** | ECLI:FI:KKO:2019:37
17 April 2019



The child's mother argued that her trip with the child from Belgium to Finland was merely a holiday and that she had not consented to a permanent move. The Court disagreed, noting that the family had left Belgium without housing or belongings there, and the mother had not taken steps to re-establish life in Belgium. Her last-minute text message could not override this broader pattern of conduct. The Court found that she had tacitly acquiesced to the move.

CASE NOTE 184 | **UK** | **High Court of England and Wales** | B (A Child) [2025] EWHC 2144 (Fam)
12 August 2025



The father waited five months before issuing proceedings, despite being aware of his rights under the Convention. During that period, he congratulated the mother on securing employment in England, raised no objection to the child's enrolment in preschool, and arranged for the family home in New Zealand to be rented out. The court held that this conduct, taken as a whole, went beyond mere attempts at reconciliation and demonstrated that the father had formed a subjective intention not to seek the child's return. His application was refused on the basis of acquiescence.

What does not amount to acquiescence

Not every conciliatory or ambiguous statement by a left-behind parent will amount to acquiescence. Courts recognise that parents under emotional pressure, or seeking to shield children from conflict, may make remarks that fall short of the deliberate and unequivocal acceptance the doctrine requires.

Remarks made to children, or silence during conversations with them, may not suffice to establish acquiescence. Parents often temper their words to avoid involving children in parental conflict. Such statements, even if they give the impression of acceptance, cannot be interpreted as legally relevant acquiescence unless they unmistakably convey consent to the relocation and are addressed to the parent or authority entitled to act.

CASE NOTE 185 | **NL** | **The Hague District Court**
ECLI:NL:RBSGR:2010:BN8746
19 August 2010



The father argued that the mother had acquiesced because she told the children over the phone that if they wished to stay in the Netherlands, she would agree. The court rejected this, holding that the mother's immediate initiation of return proceedings proved the contrary. What she allegedly said to the children was treated as an attempt to shield them from the conflict, not as an unequivocal expression of consent.

Acquiescence may not be inferred from a fleeting impression or conditional statement made in the immediate aftermath of a removal. Courts recognise that parents may initially appear to tolerate or even verbally accept the child's stay abroad, but such reactions—often given under emotional pressure—do not amount to lasting and unequivocal acceptance. What matters is whether, looking at the parent's overall conduct, there is clear evidence that they intended to accept the child's new residence as permanent.

CASE NOTE 186 | NL | The Hague Court of Appeal
ECLI:NL:GHSGR:2010:BN8159
22 September 2010

The mother told the father she would agree to the children's residence in the Netherlands if that was their express wish, which gave an initial impression of acquiescence. However, within weeks, she filed for their return. The court held that such conditional statements, made in the short period before initiating return proceedings, did not constitute acquiescence. The decisive factor was her prompt action to seek return, which outweighed any earlier appearance of consent.

Courts should be cautious about treating reconciliation efforts or attempts to negotiate a voluntary return as evidence of acquiescence. Engaging in discussions about whether the family can be reunited, or attempting to negotiate the child's return, is not in itself an indication that the parent has accepted the new situation. Parents need space to explore options without their conduct being held against them – though this protection has its limits, and conduct that goes beyond reconciliation or negotiation and into active support for the child's integration in the new State will lose this protective character.[174]

CASE NOTE 187 | UK | High Court of England and Wales | B (A Child)
[2025] EWHC 2144 (Fam)
12 August 2025

The court accepted in principle that judges should be slow to infer acquiescence from reconciliation attempts, but held on the facts that the father's conduct went beyond such attempts. He was not merely exploring the possibility of restoring the family unit; he was actively supporting the mother's efforts to break her ties with New Zealand and build a new life for herself and the child in England. That conduct fell outside the protection given to genuine reconciliation efforts and amounted to acquiescence.

Negotiations, including informal or community-mediated negotiations, do not by themselves establish acquiescence under Article 13(1)(a). The respondent must prove either that the left-behind parent actually accepted the child's continued presence in the requested State, or that the parent's words or conduct clearly and unequivocally led the respondent to believe that they would no longer insist on summary return. Where negotiations do not result in a concluded agreement and the parties leave with different understandings, acquiescence is not established.

CASE NOTE 188 | UK | England and Wales Court of Appeal | B, Re
[2025] EWCA Civ 1603
11 December 2025

Following the child's removal from Romania to England, the parties attempted to resolve their dispute through negotiations conducted by Roma community elders. The mother relied on those negotiations, including the alleged payment of €13,000 by her family, as evidence that the father had acquiesced in the child remaining in England. The court found that no concluded agreement had been reached. The elders had communicated separately with the parties, each side left with a different understanding, and there was no agreement that the child would remain in England. The father's conduct before and after the negotiations also showed that he consistently sought the child's return. The Court of Appeal therefore upheld the rejection of the Article 13(1)(a) acquiescence defence.

[174] See also Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing, 2013) p 240–241. Although writing in the context of Article 12(2), Schuz's principle that the Convention's deterrent objective cannot justify prejudicing the welfare of the particular child equally relates to the judicial reluctance to treat conciliatory conduct as acquiescence under Article 13(1)(a).

4.5.F. Grave risk of harm / intolerable situation - Article 13(1)(b)

Overview and method of assessment

Article 13(1)(b) is the most frequently invoked, and often the most contentious, exception under the 1980 Convention. The taking parent argues that returning the child would expose them to a grave risk of physical or psychological harm or otherwise place them in an intolerable situation. Although raised in a substantial proportion of contested return proceedings, the exception succeeds in only a minority of cases, reflecting both its restrictive design and its exceptional character.

The HCCH Guide to Good Practice on Article 13(1)(b) (2020)[175] provides **step-by-step analysis** to this exception set out in Section II.1.a (§§38–42). The starting point is that the Convention provides *one test, not several*. Whatever the underlying allegation — physical or sexual abuse of the child, exposure to domestic violence between the parents, separation from the taking parent or from siblings, or severe security, health, educational or economic concerns in the State of habitual residence — the same threshold and the same analytical method apply (Guide, §39).[176] Some categories of risk, particularly those touching the child's physical or psychological integrity directly, are more often found to meet the threshold in practice, but this is a function of the facts, not of a different legal test.

The analysis proceeds in two steps:

1. **Step one (§40).** The court asks whether the assertions, taken at their highest, are of such a nature and of sufficient detail and substance that they *could* constitute a grave risk. Broad or general assertions will not survive this filter. If they could not constitute a grave risk even if true, the inquiry ends, and return is ordered.

2. **Step two (§41).** If the assertions clear the first step, the court evaluates the evidence and information before it, *together with* the evidence on protective measures available in the State of habitual residence and decides whether a grave risk has been established. Protective measures are not a separate stage tacked on at the end; they are part of the grave-risk evaluation itself. Even where elements of potential harm or an intolerable situation is present, the court must consider the circumstances as a whole and ask whether adequate protective measures are available, or could be put in place, to address the risk.

The outcome (§42):

[175] It was approved by all 83 HCCH Members in December 2019, reflects a global consensus on how the grave-risk exception should be applied, and offers the single most authoritative source of methodological guidance for courts. The Guide is, however, a soft-law instrument and, by its own terms, is "purely advisory in nature" and not intended to direct the interpretation of Article 13(1)(b) in individual cases (§§7–8). Its drafting history spanned more than seven years and required compromise across very different legal traditions, and its final form has attracted critical comments, including on the prominence given to protective measures in the step-by-step analysis and on topics that the Working Group ultimately did not address. See, in particular, M.H. Weiner, "The Article 13(b) Guide to Good Practice", *Domestic Violence Report*, October/November 2019, available at <https://law.uoregon.edu/sites/default/files/dvr-2501-weiner-article_13b_guide_author.pdf>pp. 7, 21–23, and Weiner, Merle Hope and R. Schuz, A mistake waiting to happen: the failure to correct the Guide to Good Practice on Article 13(1)(b) [2020] IFL 87 available at <https://ssrn.com/abstract=4573485>.

[176] HCCH, Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Part VI – Article 13(1)(b) paras 38–42; also Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) pp 270–273.

— if the evidence (including on protective measures) does *not* establish a grave risk, the court orders return;

— If it *does* establish a grave risk, the court is not bound to order return, but retains a discretion to order return nonetheless.

Equally important is what the court must *not* do at any stage of this analysis. Article 13(1)(b) does not authorise a comparative welfare assessment between the two States, a pre-judgment of custody, or a general welfare investigation of the kind reserved to the courts of the State of habitual residence (Guide, Section I.1.b – I.1.c, p. 22).[177] The Convention proceeds on the premise that the courts of the State of habitual residence are best placed to decide custody and to assess the child's full welfare (Section I.1.a.iii, p. 22). The court must also start from the presumption that the authorities of the requesting State are capable of protecting the child and may displace that presumption only on clear evidence of inadequacy in the particular case. Finally, the taking parent cannot rely on a state of affairs created by their own wrongful conduct – the *fait accompli* – to defeat return; allowing this would let the abductor benefit from the abduction and undermine the Convention's restrictive design (Section I.1.g, p. 24).

First and foremost, a defence under Art. 13(1)(b) must be presented as an *arguable* claim – particularised, evidenced, and tied to a specific exception, to trigger the duty of examination. The 1980 Convention and Article 8 ECHR do not require the return court to conduct an in-depth examination of the entire family situation – which would transform the summary return procedure into a custody trial – but it does require an *effective* examination of any arguable claim under the Convention's exceptions, and a decision whose reasoning shows that the claim was genuinely considered.

CASE NOTE 189 | ECtHR | X v. Latvia | App. No 27853/09
26 November 2013

The Grand Chamber held that the ECHR cannot be interpreted in a vacuum but must be applied in harmony with the general principles of international law, including the 1980 Convention and – in intra-EU cases – the applicable EU instruments. Article 8 requires the domestic courts to conduct a genuine examination of arguable allegations under the Convention's exceptions and to give reasoned decisions, without converting return proceedings into a full custody inquiry. This contextual, harmonious approach is itself a human-rights requirement: only by considering the full framework of available safeguards can the domestic courts satisfy their Article 8 obligation of genuine examination, adequate reasoning, and non-automatic decision-making.

Article 13(1)(b) is ordinarily considered where the person opposing return raises a grave-risk objection; the court is not expected to investigate the exception in the abstract. Once such an objection is raised, the court must examine whether the circumstances relied upon establish a grave risk of physical or psychological harm or an intolerable situation.

CASE NOTE 190 | PL | District Court in Ostrołęka | I Ca 82/16
20 April 2016

The left-behind parent argued that the first-instance court wrongly applied Article 13(b). The appellate court underlined that this provision operates only when invoked, and here the mother *had* raised a grave-risk objection. Because of that explicit allegation, the court was required to examine whether the child's return would expose her to serious psychological harm or place her in an intolerable situation.

[177] ibid.

Although Article 13(1)(b) must normally be invoked by the respondent, courts should aim to recognise specific factual allegations that inherently raise a grave-risk scenario. If the respondent describes circumstances such as domestic violence, threats, serious psychological instability, or other dangers to the child, the court must examine those allegations substantively—even if the respondent does not label them expressly as "Article 13(1)(b)."

CASE NOTE 191 | RO | Bucharest Tribunal | Decision of 3 March 2017
3 March 2017

In proceedings concerning the return of a child to the United Kingdom, the mother did not expressly invoke Article 13(1)(b), but argued that the father's aggressive behaviour created a serious risk. The court treated these allegations as falling implicitly under Article 13(1)(b) and assessed them. (Case number not reported)

Facilitating unsupervised contact or overnight stays may undermine the credibility of an allegation that the other parent presents an immediate danger to the child. Its weight depends on the circumstances of the contact. In particular, it may be significant where the respondent voluntarily encouraged additional and overnight contact while simultaneously alleging grave risk.

CASE NOTE 192 | NL | The Hague District Court
ECLI:NL:RBDHA:2024:12688
8 August 2024

The father opposed return of the children to Serbia under Article 13(1)(b), alleging that the mother suffered from depression, used cannabis, and had exposed the children to a dangerous incident involving a stranger. The court found none of these allegations established. It further noted that during the proceedings, the father had himself facilitated contact between the children and the mother, had agreed at the hearing that the children could stay with her an additional day, and had permitted overnight stays. The court held that this conduct was irreconcilable with a genuine assertion of grave risk and provided no support for the claimed danger. Return was ordered.

Article 13(1)(b) of the 1980 Convention does not permit courts to compare the quality of life, parenting conditions, or developmental prospects available to the child in the State of refuge with those in the State of habitual residence. The Convention proceeds on the premise that prompt return normally serves the child's best interests, even where living conditions in the State of removal or retention may appear objectively better. The only question under Article 13(1)(b) is whether ordering the child's return would expose the child to a grave risk of physical or psychological harm or place the child in an intolerable situation in the State of habitual residence, assessed in light of the child's situation prior to the wrongful removal or retention.

CASE NOTE 193 | **PL** | **Supreme Court** | II CSKP 457/23
19 October 2023

In a return case, the respondent argued that the child had better educational opportunities, greater emotional stability, and improved living conditions in the State of refuge. The court rejected this line of argument as legally irrelevant under Article 13(1)(b). It held that the Hague Convention does not authorise courts to decide where a child would thrive more. Instead, the court examined whether returning the child to the State of habitual residence would recreate conditions exposing the child to a serious risk of harm or an intolerable situation, based on the circumstances existing before the wrongful removal. Because no such risk was established, the return was ordered despite evidence that the child's material circumstances were superior in the State of refuge.

A child's integration in the requested State is not, by itself, a ground for refusing return under Article 13(1)(b), particularly where the return proceedings were commenced within one year of the wrongful removal or retention. Article 12 draws a deliberate distinction based on time (see Chapter 4.5.B). Where proceedings are commenced within one year, Article 12(1) requires the child's prompt return and does not permit refusal merely because the child has meanwhile settled or become integrated in the new environment. Settlement becomes an express consideration under Article 12(2) only where proceedings are commenced after the expiry of the one-year period. A respondent cannot therefore circumvent that structure by presenting ordinary integration, stability, schooling, friendships or adaptation in the requested State as a grave risk under Article 13(1)(b). Those circumstances may be relevant only insofar as the evidence shows that return itself would expose the child to the substantially higher threshold of grave physical or psychological harm or an intolerable situation.

CASE NOTE 194 | **FR** | **Supreme Court** | ECLI:FR:CCASS:2022:C100263
16 February 2022

The mother had removed the child from Canada to Guadeloupe. The French prosecutor initiated return proceedings within seven months of the removal. The Court of Appeal refused return, citing the child's integration in Guadeloupe and her lack of relationship with her father. The Cour de cassation quashed this decision, holding that adaptation to the new environment cannot in itself amount to a grave risk under Article 13(1)(b). The court emphasised that judges must identify specific dangers to the child; otherwise, return remains the rule when proceedings are timely.

CASE NOTE 195 | **NL** | **Supreme Court** | ECLI:NL:HR:2007:BB3193
28 September 2007

A child was wrongfully retained in the Netherlands after having her habitual residence in Hawaii, and the return application was lodged within one year of the retention. The mother opposed return under Article 13(1)(b) of the 1980 Convention, arguing that the child had become deeply rooted in the Netherlands and that returning her to Hawaii would therefore not be in her best interests and would place her in an intolerable situation. The court rejected this defence, holding that integration or rooting in the State of refuge, and the disruption caused by breaking that settlement through return, are normal consequences of a wrongful removal or retention and cannot, by themselves, amount to a "grave risk" or an "intolerable situation" within the meaning of Article 13(1)(b) when the one-year period under Article 12(1) has not expired.

CASE NOTE 196 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2021:2413
29 November 2021

The mother argued on appeal that the child had become so settled in the Netherlands that return to Sweden would expose her to grave risk within the meaning of Article 13(1)(b). The court rejected this argument without hesitation. It held that settlement in a new environment can only justify refusal of return under Article 12(2), and only where the one-year period has elapsed. The mere fact that a child has integrated into her new surroundings does not create the kind of situation contemplated by Article 13(1)(b). The court ordered return.

When assessing whether return would expose a child to a grave risk of physical or psychological harm, courts look forward and consider whether circumstances have improved, whether safeguards are in place, and whether professional assessments in the State of habitual residence indicate that the child can safely be cared for there. This means that historic difficulties between the parents, or even earlier concerns about a parent's capacity, may not be sufficient by themselves to trigger the Article 13(1)(b) exception. What matters is whether these problems persist, whether they remain serious, and whether protective or supportive measures are available. If evidence shows that the parent has taken steps to address past issues – for example, by undergoing therapy, receiving home support, or being positively evaluated by professionals – then the risk threshold is not met.

CASE NOTE 197 | NL | The Hague Court of Appeal |
ECLI:NL:GHDHA:2023:990
25 May 2023

The mother argued that the father posed a danger because he had never cared for one of the children and had previously struggled with psychological issues. The court acknowledged that there had been problems in the past, particularly around the parental separation, but emphasized that the father had since received support, and reports from his home-support provider were positive. Moreover, the Belgian court had already conducted an interim assessment and found that, while "concerns exist," the father's situation showed a "positive evolution" and that "the safety of both children is best guaranteed in the paternal environment." This forward-looking evaluation meant that Article 13(1)(b) could not justify refusing return.

Courts should ordinarily proceed on the basis that the administrative, judicial and social-service authorities of the requesting State are capable of protecting children effectively, unless the contrary is shown. This general confidence in the requesting State does not, however, dispense with the need to establish what will actually happen on return where the circumstances require concrete protective arrangements. If the evidence shows that the child cannot safely be returned without such arrangements, the court must be sufficiently satisfied that effective protection will in fact be available. The Article 13(1)(b) exception may therefore be established where the evidence shows that the requesting State is unable or unwilling to implement the necessary protective measures, or where, despite appropriate enquiries, there remains material uncertainty about how the child will be protected on return.

CASE NOTE 198 | **UK** | **High Court of England and Wales** | G v D
[2020] EWHC 1476 (Fam)
8 June 2020

The children were living safely in foster care in the UK and were subject to ongoing child-protection proceedings, while neither parent was able to care for them if returned. The requesting State - Belgium - indicated that the children should not be returned and declined, on a reasoned basis, to specify any protective measures that would be put in place upon return, beyond stating that ad hoc arrangements might be considered if a return order were made. As a result, the court was unable to determine who would care for the children, under what legal framework, or how their protection would be ensured following return. In these circumstances, the court held that ordering return would expose the children to an intolerable situation within the meaning of Article 13(1)(b).

The "grave risk" threshold

The word "grave" qualifies the risk, not the harm.[178] The Convention does not require certainty that harm will occur, but the risk must be of a sufficiently high degree of probability and seriousness to cross the threshold. Ordinary risk, ordinary harm, or the disruption inherent in any return will not suffice.[179] The threshold is therefore higher: a real but low-level risk, a serious but speculative risk, and a risk of harm that does not rise above the difficulties any child experiences when uprooted will all not be enough.

The relationship between the gravity of the risk and the gravity of the potential harm is not fixed but inversely proportional. Where the potential harm is extreme – death, serious abuse, exposure to acute violence – even a relatively low probability may suffice to meet the threshold. Where the potential harm is less severe, a higher degree of probability is required. In every case, the assessment is forward-looking and concrete: courts must examine the actual circumstances awaiting the child on return and ask whether protective measures available in the State of habitual residence would reduce the risk to a level below "grave." Where such measures can adequately address the risk, the threshold is not met and return must be ordered. The "grave" threshold, therefore, operates as a filter that excludes from the exception any risk that, however real, is either insufficiently serious in its potential consequences, insufficiently likely to materialise on return, or sufficiently capable of being addressed by available protective measures in the requesting State.

CASE NOTE 199 | **IE** | **High Court** | R. and I., Minors | [2022] IEHC 733
14 December 2022

The Court considered the child's repeated threats that she would harm herself if returned to Sweden. The Court found no evidence of past self-harm, no medical or psychological records supporting such a risk, and no reason to believe Swedish authorities could not address her needs. The judge concluded that while the threats reflected genuine distress, they did not establish a grave risk under Article 13(1)(b). The return could therefore not be refused on this ground. The Court also stressed that for Article 13(1)(b) to apply, the risk must be grave, and that the identified concerns did not meet that high threshold.

[178] This is expressly stated in HCCH, *Guide to Good Practice under the 1980 Child Abduction Convention, Part VI – Article 13(1)(b)* (2020), para 34 and n 50, referring to *Re E (Children) (Abduction: Custody Appeal)* [2011] UKSC 27, para 33.
[179] The drafters chose this formulation deliberately. The Pérez-Vera Report warns at §34 that the Article 13 exceptions must be applied restrictively or the Convention will become "a dead letter," and the HCCH Guide to Good Practice expressly endorses this restrictive approach (§35 and §38).

Intolerable situation

Neither the 1980 Convention nor the Guide to Good Practice provides a closed definition of "intolerable situation," and this is deliberate. The Guide applies a single analytical framework to all Article 13(1)(b) assertions regardless of which limb is invoked (§39), and national courts across EU Member States have consistently examined intolerable situation ground with grave risk of physical or psychological harm, rarely independently.[180] Where harm cannot be established, the intolerable situation argument is typically dismissed without separate analysis rather than assessed on its own terms.

Perhaps the most useful formulation of what the ground requires comes from the UK House of Lords: an intolerable situation is one that *this particular child in these particular circumstances* should not be expected to endure – a child-specific and objective standard, assessed forward-looking at what awaits the child in the State of habitual residence, not backwards at the disruption caused by leaving the refuge State.[181] The ECtHR has not developed a separate substantive definition of an "intolerable situation". It has, however, made clear that the procedural requirements of Article 8 apply to Article 13(1)(b) as a whole: an arguable allegation falling within the provision must be effectively examined and addressed by specific reasons. Failure to engage with such an allegation may therefore result in a violation of Article 8 ECHR.[182]

In practice, courts have accepted the ground in a narrow range of situations that do not fit neatly within the physical or psychological harm categories. What these situations share is that the child's circumstances on return – assessed concretely, not comparatively – cross a threshold of objective unacceptability that cannot be addressed by undertakings or protective measures. The Guide confirms that protective measures are part of the assessment (§41): where they can adequately address the situation, it ceases to be "intolerable", and return must be ordered.[183] It is only where no available measure can bring the child's situation within what can reasonably be expected of them that the ground is established. Courts should therefore be alert to the distinction between an intolerable situation in this sense and a situation that is merely disadvantageous, disruptive, or less favourable than what the child currently enjoys – the latter should not suffice.

The "intolerable situation" limb is therefore most likely to have independent practical significance where return would itself place the child in an objectively untenable family or care situation, rather than where the case is more naturally characterised as exposing the child to physical or psychological harm. This may arise, in particular, where return would entail an unavoidable and seriously disruptive separation from a primary carer, the splitting of a closely dependent sibling group, or another return arrangement which would leave the child in circumstances that he or she could not reasonably be expected to tolerate. This is illustrated by Case Note 219 where the anticipated separation from the primary-carer mother was treated as creating an intolerable situation, and by Case Note 250 and Case Note 251, concerning respectively separation from a sibling/family unit and the splitting of a sibling group.

[180] See HCCH, Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part VI – Article 13(1)(b) (2020), paras 31–34, recognising physical harm, psychological harm and an intolerable situation as three separate forms of grave risk, while noting that they are often relied upon together and have not always been clearly distinguished in case law. See also Rhona Schuz, The Hague Child Abduction Convention: A Critical Analysis (Hart Publishing 2013) pp 276–277, observing that the intolerable-situation limb has very rarely been established independently and criticising the tendency to treat it as merely another expression of physical or psychological harm, since this risks depriving the third limb of independent content.
[181] Baroness Hale in *Re D (Abduction: Rights of Custody)* [2006] UKHL 51.
[182] For example, *X v Latvia*, Grand Chamber, 26 November 2013, §§106–107, 115–120, especially §116.
[183] HCCH, Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Part VI – Article 13(1)(b).

The "intolerable situation" limb of Article 13(1)(b) is not confined to risks arising from the conduct of the left-behind parent or of those who would care for the child upon return. The provision is concerned with the existence and seriousness of the risk as a foreseeable consequence of return, not with its source. An intolerable situation may therefore be engaged by the absence of family in the State of return, by the institutional nature of the available care, or by other objective conditions in that State that, judged realistically, would expose the child to psychological harm or place them in circumstances they cannot reasonably be expected to endure. Where a child's "habitual residence" consists of placement in a residential care facility without meaningful family relationships, and where the requested State has become the child's de facto family environment, as assessment of the concrete conditions awaiting the child on return forms part of the Article 13(1)(b) assessment.

CASE NOTE 200 | PL | Supreme Court | II CSKP 1196/22
4 February 2022

In an unusual fact pattern, the Polish Supreme Court refused return under Article 13(1)(b) (intolerable situation) where the child's habitual residence in Austria was a residential care facility (a children's village) rather than a family home. The mother was in prison, mentally ill, and had a history of substance abuse and suicide attempts; the father had lost custody in the child's early childhood and had made no effort to care for her; the only other relative in Austria, an older sister, was herself in care and using drugs. The relative who removed the child to Poland had given her a family home and emotional security. The Court held that returning the child from this family environment to institutional care, where she had no family relationships, would expose her to psychological harm and place her in an intolerable situation. The Court was explicit that the wrongfulness of the removal was conceded, but did not control the outcome – Article 13(1)(b) prevailed on the facts.

Temporal horizon of the Article 13(1)(b) assessment

Article 13(1)(b) of the 1980 Convention does not specify the temporal perspective from which the existence and seriousness of grave risk should be assessed. The Guide to Good Practice confirms that the exception is "forward-looking" and at §36 that the assessment is not confined to circumstances existing at or before the wrongful removal or retention; the court must look to the future and assess the circumstances *as they would be if the child were returned forthwith*. The relevant time horizon is therefore the conditions awaiting the child on return and in the immediate period thereafter, not the situation as it stood when the abduction occurred.

This forward-looking character has its limits. The Guide's reference to circumstances "if the child were returned forthwith" anchors the assessment in realistically foreseeable consequences of the return itself. Distant or speculative chains of events, or possibilities that cannot be excluded but that depend on contingent future developments unrelated to the return, may fall outside the scope of the analysis. A refusal cannot be based on what might happen years later through a sequence of hypothetical occurrences; the risk must be a realistically anticipated consequence of the return itself, foreseeable as it materialises in the period immediately following return.

The grave risk must be, in this sense, a realistically anticipated consequence of the return itself, not of circumstances that might or might not develop afterwards.

CASE NOTE 201 | **PL** | **Supreme Court** | II CSKP 1298/22
8 September 2022

In a return case raising grave-risk objections, the Polish Supreme Court addressed the temporal dimension of the Article 13(1)(b) assessment. The Court held that the assessment must be confined to realistically foreseeable consequences of the return. Refusal cannot be based on remote, speculative scenarios in which a serious risk might materialise through some chain of contingent future events. The risk must exist and be foreseeable as a direct consequence of the return itself.

The Article 13(3) information obligation

Under Article 13(3) of the 1980 Convention, when assessing the circumstances relevant to Articles 13(1)(a) and 13(1)(b), the court *shall take into account* information regarding the child's social situation provided by the Central Authority or other competent authority of the State of the child's habitual residence. For the evidentiary operation of Article 13(3), including the scope and use of information obtained from the State of habitual residence and its relationship with other evidence before the return court, see Chapter 5.4.C.

The obligation is mandatory as regards information that has been provided: the court must take it into account. Article 13(3) does not, however, impose an unconditional duty to obtain such information in every case. Such information should be obtained where necessary, with due regard to the need for expeditious proceedings.[184] The Guide to Good Practice (53) as well explains that Article 13(3) facilitates the receipt of relevant welfare, school, medical or other social-background information from the State of habitual residence, but that such information should be obtained only where necessary and with due regard to expedition. Where such information was available and was not considered at all, the decision, however, may be vulnerable to challenge on that ground.

CASE NOTE 202 | **PL** | **Supreme Court** | II CSKP 1298/22
8 September 2022

The Supreme Court held that, when assessing circumstances under Article 13, the court must take into account information concerning the child's social situation supplied by the Central Authority or another competent authority of the State of habitual residence. It stated expressly that "should" in Article 13(3) is to be understood as "must". The Court referred to this obligation both in relation to non-exercise of custody under Article 13(1)(a) and to grave risk under Article 13(1)(b).

Risks arising from violence, abuse, and failure of protection

Domestic violence and child abuse are among the most frequently raised and most difficult Article 13(1)(b) assertions and are a major focus of the Guide to Good Practice's elaboration on this provision.[185] For a fuller discussion of domestic violence in return proceedings, see Chapter 5.8, and the separate Chapter 5.9. on protective measures and adequate arrangements.

[184] See Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) pp 271–272, nn 13–14, noting that Article 13(3) is rarely used in practice, apparently to avoid delay, and discussing *RFamA (SC) 6039/12 Ploni v Plonit* (13 August 2012). See also HCCH, *Guide to Good Practice, Part VI – Article 13(1)(b)* (2020), para 53, stating that social-background information should be obtained only where necessary and with due regard to the need for expeditious proceedings.
[185] HCCH, Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Part VI – Article 13(1)(b).

§§57–59 of the Guide set out the framework:[186]

— domestic violence assertions can take many forms;

— what matters is whether the violence will produce grave-risk-level harm to the child on return;

— and even where it would, return may still be ordered if protective measures in the State of habitual residence can adequately shield the child.

Documented domestic violence and protective measures cannot be minimised in Article 13(1)(b) assessments. Where the taking parent produces official, objective evidence of domestic violence – such as criminal complaints, medical records, or protective or restraining orders issued by the authorities of the State of habitual residence – courts must treat that violence as a serious and relevant factor in the assessment of grave risk. It is a misapplication of the Convention to downplay such evidence by relying on assumptions about reconciliation, forgiveness, lack of prosecution initiative by the victim, or alleged inactivity of foreign authorities, where the record objectively shows repeated violence and formal protective intervention. Once recidivist violence and child exposure are established, courts may not characterise the risk as "incidental" or legally insignificant without distorting the factual basis of the Article 13(1)(b) analysis.

CASE NOTE 203 | PL | Supreme Court | I NSNc 36/21
14 April 2021

The Polish Supreme Court set aside a return order to Ireland where the lower courts had dismissed documented violence as "incidental". The mother had produced an Irish District Court barring order from October 2016, issued under penalty of imprisonment, prohibiting the father from violence or threats against her and the children, together with medical evidence of the underlying incidents and a diagnosed anxiety disorder in the older son who had witnessed the violence. The lower courts treated the violence as incidental on the basis that the mother had previously reconciled with the father in 2014 and that later incidents had not led to prosecution. The Supreme Court held this reasoning to be a misapplication of Article 13(1)(b): the documented record established a pattern of recidivist violence, formal protective intervention by the Irish authorities, and proven psychological harm to the child – none of which could be neutralised by speculation about the mother's conduct or the absence of subsequent prosecution.

Where the taking parent has already sought protection in the State of habitual residence through available channels (complaints, reports to authorities, engagement with welfare services) and those efforts produced no protective measures, courts may find that adequate protection upon return is unavailable. The forward-looking assessment of grave risk must take into account not only what protection exists in theory but whether it has proven effective in practice for this family. A left-behind parent who denies the underlying violence and shows no willingness to change provides no basis for confidence that the situation will be different upon return.

CASE NOTE 204 | NL | The Hague District Court
ECLI:NL:RBDHA:2014:3537
11 February 2014

The return of two children to Morocco was sought. The mother had previously filed a criminal complaint, obtained a forensic medical certificate documenting injuries, and engaged welfare services in Morocco. None of these steps had resulted in any protective measures being taken. The father denied all allegations and disputed the existence of any unsafe situation. The court found that, given the complete failure of prior protective efforts and the father's categorical denial, there was no basis to expect that return would be accompanied by effective protection. Return was refused under Article 13(1)(b).

A child's exposure to domestic violence can itself give rise to a grave risk of psychological harm, even where the child is not the direct target of the violence. For the purposes of Article 13(1)(b), a child need not be the direct target of violence for a grave risk to arise. Where a child has witnessed domestic violence against a parent or its immediate consequences, courts must recognise that such exposure can itself amount to serious psychological harm. Treating domestic violence as relevant only to the adult victim, or as legally insignificant unless the child is physically harmed, constitutes a flawed risk assessment. The evaluation of grave risk must therefore encompass the developmental and normative impact on the child of growing up in an environment marked by violence and coercive dominance.[187]

CASE NOTE 205 | **PL** | **Supreme Court** | I NSNc 36/21
14 April 2021

The court held that a child's repeated exposure to acts of violence against the mother – and to their aftermath – was likely to have serious repercussions on the child's development and attitudes, even if the child was not directly assaulted. The court emphasised that such exposure risks normalising violence and reinforcing a model of dominance and subordination within the family, which is incompatible with the fundamental value of equal human dignity protected by domestic constitutional principles. On that basis, the court concluded that the harm arising from witnessing domestic violence could not be dismissed as indirect or incidental and had to be fully integrated into the Article 13(1)(b) grave-risk analysis.

CASE NOTE 206 | **NL** | **The Hague District Court** | ECLI:NL:RBDHA:2014:3537
11 February 2014

The older child had been diagnosed with PTSD in the Netherlands and was undergoing EMDR therapy. The therapeutic records contained the child's specific recollections of violence against the mother by the father, as well as direct violence against the child and his brother. The court found this material credible and directly probative of the risk upon return, noting that the child's fears related specifically to the situation in Morocco and not to his current circumstances in the Netherlands. The child's own statements in chambers confirmed the same picture. The court treated the diagnosis and the underlying therapeutic evidence as establishing that return to the same environment would expose the child to a grave risk of serious psychological harm. Return was refused under Article 13(1)(b).

Even where injuries are documented, the court must still assess whether they are sufficiently connected to the alleged violence and whether that violence creates a grave risk for the child on return. Domestic violence allegations require careful examination under Article 13(1)(b), but the existence of injuries alone may not establish the exception where their cause is disputed or unclear. The assessment remains forward-looking and child-specific: the question is whether the evidence as a whole shows that return would expose the child to a grave risk of physical or psychological harm or an intolerable situation.

CASE NOTE 207 | **NL** | **The Hague District Court** | ECLI:NL:RBDHA:2020:96
8 January 2020

The mother sustained facial injuries and alleged that they were caused by serious abuse by the father. The father claimed the injuries resulted from a bicycle accident, and hospital records contained inconsistent statements. The court found that it could not establish the cause of the injuries.

[187] See also Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) pp 282–284, criticising older approaches that required direct violence against the child or gave insufficient weight to the psychological effects on children of witnessing violence against the taking parent.

CASE NOTE 208 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2021:1738
15 September 2021

The mother alleged domestic violence by the father and submitted hospital letters and documents from the Belgian police and prosecution service. The Court of Appeal found that the parents' accounts diverged sharply and that the submitted documents recorded only the mother's own statements: there was no evidence of any criminal investigation or prosecution of the father, no evidence that he had physically harmed the children, and no evidence of trauma to the children attributable to him. The certified care institution, present during the children's first video-call contact with the father in months, reported that the children did not appear afraid of him. On that record, the court could not establish that domestic violence had occurred.

A conviction for violence against one child in the family does not automatically establish a grave risk for a sibling. The risk assessment under Article 13(1)(b) must be individualised: the question is whether this particular child faces a serious risk upon return, not whether the left-behind parent has been violent towards other family members. Where no incidents of violence against the child concerned have been established, and the relationship between that child and the left-behind parent is positive, a conviction relating to a sibling may not suffice.

CASE NOTE 209 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2020:2063
26 October 2020

A return of a child to Germany was sought, and the mother relied on a criminal conviction of the father for assault of an older sibling. The court acknowledged the conviction but noted that it was under appeal and, more importantly, that it concerned a different child. No physical or psychological abuse of the child whose return was at issue had been established, and no real risk of such abuse upon return was demonstrated. The father and the older sibling continued to have contact, including holiday visits to Germany. The court concluded that the conviction was insufficient to establish a grave risk for this child within the meaning of Article 13(1)(b) and ordered return.

A distinction may need to be drawn between substantiated patterns of abuse that bear directly on the child's situation and isolated or insufficiently established incidents whose relevance to the risk on return is unclear. Under Article 13(1)(b), the key question is not simply whether some violence occurred, but whether the evidence shows that return would expose this child to a grave risk of physical or psychological harm or an intolerable situation.

CASE NOTE 210 | NL | The Hague District Court | ECLI:NL:RBDHA:2020:96
8 January 2020

Even if the father had used violence on a specific date, this single incident was insufficient to justify refusal of return. The mother had not shown that the violence was ongoing or that it posed a continuing risk to the child. There was no evidence of repeated abuse in Iran, no complaints filed, and no documents substantiating a pattern of danger. Without a proven causal link between the alleged violence and a present grave risk to the child, Article 13(1)(b) could not be applied.

Sexual abuse allegations must be substantiated, but direct proof is not always required. For Article 13(b), mere allegation, suspicion, or fear expressed by the taking parent is, as a rule, not enough. At the same time, courts should not require impossible proof: sexual abuse of a young child may occur without witnesses, without physical traces, and without evidence that can be reproduced

directly before the court. Where direct proof is unavailable, the allegation may be assessed through indirect evidence: expert psychological assessment, the child's statements, behavioural indicators, therapeutic records, and the development of the child's symptoms over time. The threshold may be reached where those elements create a justified and evidence-based suspicion of sexual abuse and show that return would create a concrete risk of serious psychological harm, renewed trauma, or interruption of necessary treatment.

CASE NOTE 211 | **BG** | **Sofia Court of Appeal** | 20201000503753
2 February 2021



The mother alleged that the child had been sexually abused by the father while living in the Netherlands. The court did not treat the allegation itself as sufficient. It expressly recognised that, where sexual abuse is alleged in relation to a very young child, direct proof may be difficult or impossible: such acts usually do not occur before witnesses and may leave no material traces. The court, therefore, examined whether the allegation was substantiated indirectly. It relied on the psychological expert evidence, the child's statements, and the child's behavioural manifestations over time. The expert considered that, at the child's age, the child could show sexualised behaviour or make statements because of something seen or experienced, but could not simply invent the specific verbal account in the same way an adult might. On that basis, the court found an evidence-based suspicion of sexual abuse.

A protection order recognising domestic violence is powerful evidence when assessing Article 13(1)(b) of the 1980 Convention, but it may not automatically amount to grave risk. Courts must evaluate the type of order, its legal effect, and whether effective protective arrangements exist in the State of habitual residence. Its evidentiary weight depends on its substantive content and procedural foundation – specifically, whether it was issued following a risk assessment, with the other party heard, and supported by psychological or other expert evaluation. An order that lacks these features, and that has not been followed by any criminal prosecution or conviction in the years since its issuance, generally carries insufficient weight to satisfy the grave-risk threshold. Crucially, a protection order directed at the adult applicant may not establish risk to the child unless the order itself addresses that risk expressly.

CASE NOTE 212 | **ES** | **Madrid Provincial Court** | ECLI:ES:APM:2026:2057
20 February 2026



The mother resisting return to Peru relied on a protection order issued by the Peruvian National Police in December 2021, supported by two subsequent family court resolutions from 2021 and 2022. The Madrid court engaged with these documents substantively but found them evidentially insufficient on multiple grounds: the order had been issued without any risk assessment, without hearing the father, and without psychological examination of either party. No criminal proceedings had been brought against the father in the years since. He had not been convicted of any offence, and the order itself contained no evaluation of risk to the child. The court refused to treat the order as establishing grave risk, holding that its mere existence – unsupported by subsequent proceedings, conviction, or any child-specific risk finding – could not satisfy the Article 13(1)(b) threshold.

CASE NOTE 213 | **BG** | **Sofia Court of Appeal** | 20201000504232
23 February 2021

The court examined the existence of a protection order restricting the father's proximity to the child's home and school for ten months. The protection order was not treated in isolation but was weighed together with the other circumstances. In the court's view, this cumulative assessment demonstrated that return would expose the child to serious psychological strain, and return was therefore refused. To reach its conclusion, it considered the child's disrupted connection to her home environment in the United States, her strong emotional bond with her mother, and the deterioration of her relationship with her father.

In some national cases, courts have treated a final domestic protection order as binding evidence of harm, effectively equating its findings with the determination of grave risk under Article 13(1)(b). This approach however departs from the mainstream interpretation in three respects: it treats the protection order as evidentially conclusive rather than as one factor among others; it conflates a finding of past violence in domestic proceedings and the forward-looking grave-risk assessment Article 13(1)(b) requires; and may bypass the protective-measures stage of the analysis, which the Guide to Good Practice treats as integral to the grave-risk evaluation (Section II.1.b, p. 34).[188]

CASE NOTE 214 | **BG** | **Sofia City Court** | 20161100115734
18 December 2017

The mother produced a final protection order issued under the Domestic Violence Protection Act, prohibiting the father from approaching the child. Because the order was final and binding, the court hearing the return application considered itself obliged to accept its findings as res judicata and treat the father as a perpetrator of domestic violence. From that starting point, return to Greece would mean placing the child back under the care of a person judicially recognised as violent towards her. The court therefore treated the protection order itself as sufficient to establish that return would put the child in an intolerable situation within the meaning of Article 13(1)(b) and refused return on that basis.

Proven violence against a child cannot be dismissed merely because it is described as occasional or disciplinary; it must be examined seriously as part of the Article 13(1)(b) risk assessment. In practical terms, courts must conduct a genuinely child-centred harm assessment: once allegations of physical or psychological ill-treatment are substantiated, even in summary proceedings, they must be examined seriously and cannot be dismissed as "occasional," "mild," or unlikely to recur. A court that trivialises violence fails to apply Article 13(1)(b) correctly and violates the procedural guarantees of Article 8 ECHR. Violence against a child, regardless of its frequency or perceived severity, cannot be treated as a minor inconvenience of return; it is an indicator of potential grave risk that must be evaluated with full respect for the child's dignity and rights.

[188] HCCH, Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Part VI – Article 13(1)(b).

CASE NOTE 215 | ECtHR | O.C.I. and Others v. Romania
App. No 49450/17
21 May 2019

The ECtHR found a violation of Article 8 ECHR where Romanian courts had ordered the children's return to Italy despite established physical violence by the father. The mother had submitted recordings of past episodes of abuse, and the father had admitted in court that he had used physical force to discipline the children; the domestic courts established that the children had been subjected to physical force at his hands. Those courts nonetheless ordered return, characterising the violence as "occasional" and unlikely to reoccur "often enough to pose a grave risk", and treating the children's right not to be subject to domestic abuse as "to a larger or lesser extent debatable". The ECtHR held that this reasoning ran counter to the absolute prohibition of corporal punishment of children under Romanian law and cast doubt on the decision-making process. The risk of domestic violence against children, the Court emphasised, cannot pass as a mere inconvenience linked to the experience of return; it concerns a situation that goes beyond what a child might reasonably bear (§43). The Court added that mutual trust between EU child-protection authorities under Brussels IIa does not require sending children back to an environment of grave risk simply because the authorities of the State of habitual residence are capable of dealing with abuse cases (§45). The domestic courts should have given greater consideration to the potential risk of ill-treatment and should at least have ensured that specific protective arrangements were in place before ordering return.

Risks arising from the care environment and parental capacity on return

Although Article 13(1)(b) is not a custody assessment, the immediate care environment into which the child would be returned is part of the forward-looking risk evaluation. Where the left-behind parent's parenting capacity, lifestyle, or material circumstances are seriously deficient, this may contribute to a grave-risk finding – but only where the deficiencies translate into a concrete and serious risk to the child, not merely a less favourable environment. The boundary between relevant evidence of caregiving incapacity and inadmissible welfare comparison is one of the persistent difficulties in Article 13(1)(b) practice.

A risk arising from a third party may fall within Article 13(1)(b), but the court then should assess whether that risk can be adequately addressed by the authorities and protective mechanisms of the State of habitual residence. Allegations against third parties (such as a parent's new partner) may not in themselves be sufficient to block return.

CASE NOTE 216 | BG | Sofia City Court | 20251100102462
12 June 2025

The father objected to the return of the child to Norway, alleging sexual abuse by the mother's new partner and producing a Bulgarian protection order. The court acknowledged the seriousness of the allegations but found that the provisional Bulgarian protection order did not by itself establish the exception. The proper course was for Norwegian authorities – courts, social services, and child protection agencies – to investigate and, if necessary, impose safeguards. Because those protective mechanisms were available and had not been shown to be ineffective, the Bulgarian court ordered the child's return.

Parental behaviour that undermines caregiving capacity may be relevant in abduction proceedings. Even though return proceedings are not custody disputes, courts may consider

evidence of a parent's inability to provide adequate care if it directly affects the assessment of exceptions, such as Article 13(1)(b) (grave risk) or the credibility of the child's objection under Article 13(2). A lifestyle showing serious neglect, addictions, or harmful behaviour (e.g. excessive computer use, pornography, or lack of involvement in daily childcare) may thus indirectly influence the outcome.

CASE NOTE 217 | RO | Bucharest Court of Appeal | 105/2016
3 February 2016

The court considered evidence that the father spent substantial amounts of his free time at the computer and was consequently less involved in family and childcare responsibilities. The mother and witnesses also referred to pornography and online sexual contacts, and the mother had previously sought seizure of the computer in proceedings in Italy. The court treated these circumstances as relevant to the quality of the father's relationship with the child and to the broader factual context in which the child's objection to return was assessed. The conduct was therefore not irrelevant to the return proceedings, even though it was not itself an independent ground for non-return under Article 13(1)(b).

Where return would place the child in an immediately precarious care situation – with no realistic safe landing – this may constitute an intolerable situation within the meaning of Article 13(1)(b), independently of any finding of violence. The relevant question is not whether the left-behind parent is unfit in the abstract, but whether the concrete circumstances upon return would expose the child to a serious developmental risk. This may be established where the child is very young and vulnerable, the left-behind parent has had no sustained caregiving role and no recent contact with the child, and the only realistic alternatives upon return are emergency shelter placement or abrupt transfer to that parent's sole care.

CASE NOTE 218 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2016:1714
15 June 2016

The court could neither establish nor exclude domestic violence, but refused return on the basis of the care situation the children would face in Belgium. The mother had no independent housing upon return, meaning the children would either be placed in an emergency shelter – if a place could be found – or transferred to the father's sole care. The father had not seen the children for years and had never independently provided long-term care for them. Given the children's very young age and established vulnerability, the court found that both options posed a serious risk to their development. This assessment was confirmed by a Child Protection Council report, which had independently identified the children's situation as seriously threatening to their development. The court refused return under Article 13(1)(b).

Where the taking parent is the sole primary caregiver of a very young child and is in a critical attachment phase, a serious and documented risk of mental collapse of that caregiver upon return may constitute a grave risk that the child will be placed in an intolerable situation under Article 13(1)(b). The risk to the child is not hypothetical separation but the foreseeable breakdown of the only caregiving relationship the child has known. This proposition applies where the evidence shows that the prospect of return has already triggered severe psychiatric deterioration in the taking parent, that the child has been exclusively cared for by that parent since birth, and that the left-

behind parent has had only minimal involvement in the child's daily care. The young age of the child and the critical nature of the attachment phase are central to the assessment.

CASE NOTE 219 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2024:893
30 April 2024

In a case concerning a two-year-old child, the mother – the child's sole caregiver since birth – had suffered a psychotic episode when previously faced with the prospect of removal to Poland following rejection of her asylum application, causing the child to be temporarily placed with a foster family. Medical documentation confirmed serious ongoing mental health concerns directly linked to the prospect of return. The father had been largely absent due to work abroad and had only seen the child for short periods; his role as caregiver had been minimal. The child was in a critical attachment phase and entirely dependent on the mother as his primary attachment figure. The court held that ordering return to Poland without the mother would expose the child to a renewed attachment rupture in circumstances where his mental stability had already been seriously affected, and refused return under Article 13(1)(b).

The fact that the taking parent may face criminal proceedings, conviction, or imprisonment in the State of habitual residence does not, by itself, establish a grave risk under Article 13(1)(b). Otherwise, return could be avoided in every case where child abduction is criminalised. However, criminal exposure becomes relevant where it creates a concrete obstacle to the child's safe return – for example, where an arrest warrant would prevent the child from returning with the primary caregiver and would expose the child to separation, institutional placement, or serious psychological harm. In that situation, the court must examine whether the obstacle can be removed, managed, or neutralised through protective measures.

CASE NOTE 220 | AT | Supreme Court
ECLI:AT:OGH0002:2013:0060OB00134.13V.0828.000
28 August 2013

In an Austrian case concerning return to France, the main practical obstacle was an outstanding French arrest warrant against the mother. The Supreme Court did not treat the warrant as an automatic Article 13(1)(b) defence. It stressed that possible prosecution or imprisonment of the abducting parent is generally irrelevant as a standalone objection, because the Convention would otherwise be ineffective in States that criminalise child abduction. But the warrant mattered because it affected the feasibility of safe return: if the mother were arrested, the children could be separated from their primary caregiver and exposed to serious harm. The Court therefore held that the lower court had to investigate whether and how that obstacle could be removed, possibly with the father's involvement, since he had filed the criminal complaint that contributed to the obstacle.

Foreign custody order issued by the State of habitual residence after the abduction may be relevant to assess whether return would be futile, destabilizing, or expose the child to harmful "ping-pong" movements. If the foreign court has provisionally placed the child with the abducting parent in the refuge State, a return order may create intolerable instability, because the abducting parent could immediately remove the child again pursuant to the foreign order. In such cases, the reasoning of the foreign decision may justify refusal of return under Article 13(1)(b).

CASE NOTE 221 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2015:0318.17UF44.15.0A
18 March 2015



After the mother wrongfully removed the child from Italy to Germany, the Italian court–seised of custody–issued a provisional order stating that the child's habitual residence pending proceedings would be with the mother in Germany. The German court noted that a return to Italy would be pointless and harmful: once back in Italy, the mother could lawfully bring the child to Germany again under the Italian order, causing a destabilizing back-and-forth. Treating the Italian order's reasoning as relevant under Article 17 of the Convention, the court held that enforcing return would expose the child to an intolerable "shuttle" situation, and therefore refused return pursuant to Article 13(1)(b).

Financial instability of the left-behind parent may reinforce a grave risk finding. A parent's ability to provide stable living conditions is not inherently relevant to the risk assessment, but where evidence shows that the left-behind parent cannot reliably secure housing, income, or daily care, this may weigh in favor of a finding that return would place the child in an intolerable situation.

CASE NOTE 222 | BG | Sofia Court of Appeal | 20201000503753
2 February 2021



The father asserted a monthly income of €3,000, but the record showed irregular employment and long periods of unemployment, which had even led to his release from child maintenance obligations in the Netherlands. The Court of Appeal concluded that this financial instability undermined his ability to guarantee a safe and stable environment, and considered it among the factors pointing the balance toward refusal under Article 13(b)(1).

Parental lifestyle or new relationships alone in principle do not establish grave risk. Courts normally do not refuse return under Article 13(1)(b) simply because the left-behind parent disapproves of the other parent's personal choices, social conduct, or new partner. Allegations of alcohol abuse, inappropriate behaviour, or excessive time spent online with a new partner must be substantiated with concrete evidence that such conduct places the child at risk of physical or psychological harm. Even controversial actions, such as introducing a new partner to the children as "their new father," do not automatically amount to a grave risk unless linked to demonstrable harm to the child's well-being. The focus remains strictly on whether the child faces serious danger if returned, not on judging the parent's morality or lifestyle.

CASE NOTE 223 | NL | The Hague District Court
ECLI:NL:RBSGR:2007:BB3806
18 September 2007



The father argued that the return of the children to Norway would expose them to grave risk because the mother consumed alcohol excessively, behaved inappropriately at parties, and spent long hours online with a boyfriend from Damascus, whom she introduced to the children as their "new father." The court rejected these arguments, finding that the father had not substantiated his claims, that there was no evidence of neglect, and that the mother's lifestyle choices did not in themselves demonstrate danger to the children. Accordingly, the exception under Article 13(1)(b) was not met.

General living conditions or comparative standards of life in the two States are irrelevant to Article 13(b). The grave risk exception under Article 13(b) is concerned with threats to the child's safety, welfare, or fundamental rights–not with whether one country offers a higher standard of living, better social opportunities, or more comfort than another. Allowing courts to refuse return

because of differences in social or economic conditions would undermine the Convention's core aim: to deter abductions and restore the child's habitual residence as the proper forum for custody disputes. Comparative assessments of quality of life are therefore outside the scope of return proceedings.

CASE NOTE 224 | BG | Sofia Court of Appeal | 20201000503753
2 February 2021

The mother argued that the Netherlands offered a less favorable environment for the child compared to Bulgaria. She pointed to potential difficulties in adapting to the Dutch social and cultural environment and a lower perceived quality of life. The court dismissed these claims as irrelevant, emphasizing that such arguments fall outside Article 13(b). The court reiterated that differences in standard of living or comfort cannot constitute "grave risk," and that these considerations must be addressed in custody proceedings before the competent court of the child's habitual residence.

Requests for an investigation by child protection authorities in the requested State into the suitability of the other parent's home or parenting capacity do not fall within the scope of Article 13(1)(b). Such investigations do not correspond to the framework of the 1980 Convention proceedings, which are not designed for in-depth welfare inquiries. If an investigation is warranted, it can take place in the State of habitual residence, where custody proceedings are the appropriate forum.

CASE NOTE 225 | NL | The Hague Court of Appeal | ECLI:NL:GHDHA:2016:67
20 January 2016

The mother argued that the father's home in Belgium was unsuitable and that his alleged behaviour toward the child justified an investigation by the Dutch Child Protection Council into both the living situation and his parenting capacity. The court refused, holding that such an inquiry does not belong in return proceedings. It further noted that a certified institution had already examined the child's situation and found no evidence of an intolerable situation, and that any further investigation could take place in Belgium in the context of proceedings already initiated there. The court accordingly rejected the mother's request and ordered return.

Risks arising from child-specific health, psychological or developmental vulnerability

These arguments require careful handling. The Guide to Good Practice (§62) makes clear that, in health-related cases, the focus should normally be on the *availability and accessibility of treatment in the State of habitual residence*, not on a comparison between the quality, convenience, climate, or general conditions in the two States.[189] A grave risk will usually arise only where urgent treatment is needed and cannot realistically be provided after return, or where the child's medical condition makes travel itself unsafe. The fact that treatment, schooling, therapy, or daily routines are currently better arranged in the State of refuge is typically not enough. Article 13(1)(b) is not a best-interests comparison between two welfare systems.

[189] HCCH, Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Part VI – Article 13(1)(b).

At the same time, child-specific vulnerability cannot be dismissed as ordinary hardship. Where the evidence shows that return would interrupt essential treatment, destabilise recovery from trauma, leave a very young or vulnerable child without adequate care, or expose the child to a substantiated risk of serious psychological harm, the exception may become relevant. The decisive question is therefore not whether the child is vulnerable in general, but *whether return would expose this particular child to a grave risk* that cannot be sufficiently neutralised by protective or practical measures, such as medical arrangements, health insurance, financial support, school transfer, therapeutic continuity, or child-protection involvement in the State of habitual residence.

A child's medical condition does not, in itself, establish a grave risk under Article 13(1)(b). Where the taking parent argues that return would be harmful because of the child's health needs, the court assesses whether the claimed risk is sufficiently serious and whether the necessary treatment is available and accessible in the State of habitual residence. The fact that a chronic condition is well-managed in the State of refuge does not itself prove that it would not be adequately managed on return. Climate, lifestyle, or environmental differences between the two States are not, in themselves, evidence of grave risk where the State of habitual residence has functioning healthcare capable of providing the necessary treatment. The burden remains on the taking parent to demonstrate that return would create a serious risk of physical or mental harm, not merely that conditions in the State of refuge are more favourable to the child's comfort or convenience.

CASE NOTE 226 | BE | Ghent Court of Appeal
ECLI:BE:HBGNT:2010:ARR.20101223.8
23 December 2010

Among several grounds advanced by the taking mother against the return of the child from Belgium to Florida, she argued that the child's asthma and eczema made a return to Florida's warm and humid climate harmful to the child's health. She submitted that the conditions were under control in Belgium following a change of medication, and produced a medical certificate from the child's Florida physician confirming treatment. The Court of Appeal rejected this ground and held that the fact that the child's asthma and eczema were under control in Belgium did not lead to the necessary conclusion that return to the United States would cause a flare-up. The Court further observed that the necessary medical care for these conditions was available in the United States. The medical-condition argument, therefore, could not establish a grave risk of physical or mental harm sufficient to refuse return under Article 13(1)(b).

Interruption of necessary ongoing therapeutic treatment may contribute to a finding of grave risk, particularly where the treatment addresses trauma relevant to the asserted risk on return. Where a child is receiving psychological treatment aimed at overcoming trauma allegedly caused by the left-behind parent, courts may consider the therapy itself as a protective factor under Article 13(1)(b). Disrupting such treatment risks undoing progress and aggravating the child's vulnerability. The causal link between the abuse, the therapy, and the child's recovery strengthens the argument that immediate return would expose the child to grave risk.

CASE NOTE 227 | BG | Sofia Court of Appeal | 20201000503753
2 February 2021

The child was undergoing therapy at a Center for Social Rehabilitation and Integration after showing behavioural signs consistent with sexual abuse attributed to the father. The experts emphasised that treatment was stabilising her condition and must be completed to avoid relapse. The court treated the need to complete the therapy as one of the factors supporting its conclusion that return would expose the child to a serious risk to her psychological development.

Childcare logistics alone do not meet the Article 13(1)(b) threshold, but the child's age and lack of adequate caregiving arrangements in the state of origin may affect the assessment of the "intolerable situation". Practical concerns, such as a parent's work schedule or residence in another city, do not establish a "grave risk" of harm under Article 13(1)(b). Such issues typically belong to the merits of custody and are for the courts of the child's habitual residence to resolve. However, it may be considered where evidence shows that, due to the child's age and the practical circumstances of the custodial parent's life, return would leave the child without adequate daily care. The grave risk assessment may therefore include the absence of a reliable caregiving arrangement in the State of habitual residence.

CASE NOTE 228 | BG | Sofia City Court | 20161100115734
18 December 2017

The father worked full-time and had not shown that anyone else could assume care for the young child during his absence. The court found that returning the child to Greece under these circumstances would place her in an intolerable situation, as her age required constant care and supervision. Taking it together with the other circumstances, the court held that the Article 13(1)(b) exception was established and refused the return.

Young age may be relevant, but not sufficient on its own to reject a return application. A child's young age may be a relevant contextual factor in assessing their situation, but it cannot, on its own, provide sufficient grounds for rejecting a return application under the 1980 Convention. The exceptions require a concrete, evidence-based justification, not general assumptions tied to age or developmental stage. Reliance on young age as an autonomous reason for non-return broadens the scope of the Convention's exceptions.

CASE NOTE 229 | ECtHR | İlker Ensar Uyanik v. Turkey
App. No 60328/09
3 May 2012

The domestic court refused return partly on the basis that the child was very young and that non-return would not impede her relationship with her father. The ECtHR held that this reasoning made the father-child relationship effectively illusory and failed to recognise that young age is not, by itself, a sufficient basis for non-return under the 1980 Convention. The court had to identify specific evidence showing that return would expose the child to harm or fall within another exception, which it did not do.

Allegations that the child has threatened or attempted self-harm in response to the prospect of return may, if substantiated, justify refusal under Article 13(1)(b). The decisive question is the existence of a real risk to the child, not the cause of the child's psychological state. Courts must assess such allegations rigorously: bare assertions of distress, without medical or psychological substantiation and without evidence that the State of habitual residence cannot address the child's needs, will not meet the threshold.

CASE NOTE 230 | **CZ** | **Constitutional Court** | II. ÚS 3345/20
8 April 2021

The mother relied on an allegation that one of the children had attempted suicide in connection with the prospect of return to Italy. The Constitutional Court characterised such an allegation as exceptionally serious and held that, in principle, it could justify non-return under Article 13(1)(b). The decisive question is whether there are reasonable and objective grounds to believe that the child might take their own life or seriously harm themselves in reaction to the return order; the cause of the child's psychological condition is not decisive. Such allegations must therefore be carefully examined and the court must explain why it considers them substantiated or not. On the facts, however, the Court upheld the return arrangements, finding no established tangible danger and considering that appropriate protective guarantees could be provided. (§48).

CASE NOTE 231 | **IE** | **High Court** | R. and I., Minors | [2022] IEHC 733
14 December 2022

The Irish High Court considered the child's repeated threats that she would harm herself if returned to Sweden. The Court found no medical or psychological records supporting such a risk, and no reason to believe Swedish authorities could not address her needs. The judge concluded that while the threats reflected genuine distress, they did not establish a grave risk under Article 13(1)(b). The return could therefore not be refused on this ground. The Court also stressed that for Article 13(1)(b) to apply, the risk must be grave, and that the identified concerns did not meet that high threshold.

School difficulties and bullying alone may not amount to grave risk. Problems such as bullying, learning difficulties, or poor support in one school do not reach that threshold if there are reasonable alternatives in the State of habitual residence (e.g. transferring to another school, accessing child welfare services). Courts expect parents to first use the remedies available locally before claiming that return itself would create an intolerable situation. Differences in educational support are not sufficient either: the Convention does not allow a "best interests comparison" between States. A return cannot be refused simply because the child would have better or more convenient support in the refuge State. The relevant test is whether the child would face a grave risk if returned – meaning that adequate services do not exist, or cannot realistically be accessed, in the State of habitual residence.

CASE NOTE 232 | **NL** | **The Hague District Court**
ECLI:NL:RBDHA:2014:13019
22 October 2014

The father argued that the child was dyslexic, heavily burdened by homework, and bullied in his Austrian school. The court accepted that the child was unhappy but held this was insufficient to establish a grave risk under Article 13(1)(b). The decisive point was that the child did not necessarily have to return to the same school: other suitable schools were available in Austria. Moreover, there was no concrete evidence of the extent of the bullying or of serious steps taken to address it with school authorities. The court added that Austria providing dyslexia support outside school hours, unlike the Netherlands, where it was integrated into the school day, did not meet the Article 13(1)(b) threshold, since Austria had child welfare services able to provide support. The fact that support was more convenient or better organised in the Netherlands was irrelevant.

Risks arising from the taking parent's refusal to return with the child

Approximately three-quarters of contemporary abductions are carried out by the child's primary carer, typically the mother, and a substantial proportion of Article 13(1)(b) assertions are accordingly framed in terms of the taking parent's inability to accompany the child back to the State of habitual residence.[190] The starting point in the case law is firm: a return order concerns the child's return to the State, not to the left-behind parent; the taking parent is therefore normally free to accompany the child, and a self-imposed refusal to do so cannot, by itself, manufacture a grave risk.

The case law nonetheless distinguishes between objective and subjective obstacles, and between a credible refusal rooted in genuine vulnerability and a strategic refusal designed to defeat return. Section II.2.e of the Guide identifies the principal categories of asserted obstacles: criminal prosecution (sub-section i), immigration issues (sub-section ii), lack of effective access to justice (sub-section iii), medical or family reasons (sub-section iv), and unequivocal refusal to return (sub-section v). National courts handle these scenarios with increasing precision, requiring the court to assess both the credibility of the refusal and whether protective measures or undertakings in the State of habitual residence can dissolve the alleged obstacle.

The ECtHR has emphasised that courts must also address this issue explicitly in their reasoning. Under Article 8 ECHR, domestic courts must examine whether the taking parent could realistically accompany the child to the State of habitual residence or maintain meaningful contact if they choose not to return. Failure to analyse these questions may constitute a procedural defect in the decision-making process. As the Court noted in Z v. Finland (§50) and earlier in X v Latvia, the proportionality assessment required by Article 8 demands that courts consider the practical consequences of return for the child's family relationships.[191]

A taking parent should not be able to rely on the factual consequences of their own wrongful action – or on the fait accompli - to resist return. Where the abducting parent has created a situation – such as the child's separation from the left-behind parent, or the child's integration into a new environment – through their own wrongful removal or retention, as a rule they may not invoke that situation as a ground for refusal of return under Article 13. The Guide to good practice explicitly notes in §72 that, as a rule, a taking parent should not be permitted to create through the wrongful removal or retention a situation potentially harmful to the child and then rely on that situation to establish grave risk. The policy rationale is straightforward: if the consequences of wrongful action could themselves defeat return, the Convention's deterrent function would be nullified, and the wrongful parent would benefit from their own conduct. Courts must therefore assess grounds for refusal with attention to whether the factual basis of the claimed risk or hardship is attributable to the abducting parent's own actions.[192]

[190] In the HCCH 2021 global statistical study, 75% of taking persons were mothers, 94% of whom were the child's primary or joint-primary carer.
[191] *Z and others v. Finland*, App no 42758/23 (ECtHR,16 December 2025); *X v. Latvia,* App no 27853/09 (ECtHR, 26 November 2013).
[192] For the divergent view see Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) pp 302–304, accepting the concern that a taking parent should not profit from wrongful conduct but arguing that this consideration cannot override the protection of the child where return would in fact expose the child to grave harm, particularly where the taking parent's refusal to return is reasonable.

CASE NOTE 233 | BE | Ghent Court of Appeal
ECLI:BE:HBGNT:2010:ARR.20101223.8
23 December 2010

The mother argued that return would traumatise the child because the mother had functioned as the child's primary attachment figure, and that return to the father in Florida would constitute an intolerable separation from her. The Ghent Court of Appeal rejected this argument. It held that, before removing the child to Belgium and thereby de facto suspending contact with the father, it was incumbent upon the mother to consider the possible consequences of her own actions. She knew or could have known that the father would not simply accept the situation. The mother could not invoke the de facto state of affairs that she had consciously created as an argument against return. The Court further held that the mother's potential imprisonment upon return to the United States – cited as a separate ground of hardship – was the result of her own conduct (her conviction for fraud and violation of probation conditions by leaving the country) and therefore could not support a refusal of return. The Court ordered the child's return.

Where the only Article 13(1)(b) argument advanced is the taking parent's potential separation from the child due to his own criminal prosecution, and no independent circumstances of physical or psychological danger to the child are alleged, the exception is unlikely to succeed. To allow this would reward the wrongdoing twice: first by the removal itself, and again by using its legal consequences to defeat return. The potential separation from the child that would follow from such prosecution is, moreover, a situation the taking parent has already imposed on the other parent through the wrongful removal itself.

CASE NOTE 234 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2021:2646
8 September 2021

The father had wrongfully removed a young child from Spain to the Netherlands. He opposed return under Article 13(1)(b), arguing that the mother had filed criminal complaints against him in Spain for child abduction and assault, and that he risked arrest and imprisonment upon return, which would separate him from the child. The court rejected this. It noted that any prosecution would not necessarily result in permanent separation, and that in any event the father could not rely on legal consequences flowing directly from his own wrongful conduct to defeat return. The court further observed that the separation the father described as intolerable already existed – caused by the father himself – since the child had been separated from his primary caregiver, the mother, since the wrongful removal, with the father allowing only minimal contact. Return to Spain was ordered.

Return to the State of habitual residence does not necessarily require separation from the taking parent. A return order under the 1980 Convention concerns the child's return to the State of habitual residence, not the child's placement with the left-behind parent. Return does not require separation from the taking parent, who remains free to return with the child and continue caring for them, whether in the same or a different place of residence (where the refusal does not result from genuine legal, safety, immigration, medical or other practical obstacles). A stated refusal to return does not therefore establish grave risk merely because separation would follow; the court must assess both how likely the refusal is to be carried through and whether the resulting separation would expose the child to a grave risk.

CASE NOTE 235 | LT | Court of Appeal | e2-816-407/2022
26 July 2022

In a Lithuanian case concerning the return of two children to the United Kingdom, the taking parent argued that return would cause serious harm because the children would be separated from their mother. The court rejected this argument, emphasising that the proceedings concerned return to the United Kingdom as a State, not return to the applicant parent. The court noted that the mother was free to return with the children and continue living with them, either in the same or a different residence. As the alleged risk arose solely from the mother's choice not to return, the court held that it was self-created and legally irrelevant for the purposes of Article 13(1)(b).

A parent cannot rely on their unilateral change of residence or personal freedom of movement to resist return. The Convention safeguards children against unilateral decisions by one parent that alter the child's habitual residence. A parent's right, as an EU citizen or otherwise, to choose freely where to live does not extend to changing the child's place of residence without the other parent's consent or a court order. Freedom of movement cannot be used to justify wrongful retention or to shield against return under the Convention. The underlying principle is that return proceedings are not about the parent's individual rights, but about restoring the child's pre-abduction status quo and protecting the rights of both holders of custody.

CASE NOTE 236 | BG | Sofia Court of Appeal | 20201000503753
2 February 2021

The mother argued that, as a free EU citizen, she was entitled to decide where to live and raise the child. The appellate court rejected this reasoning as irrelevant under the Hague Convention. It stressed that her personal right to choose residence did not override the child's habitual residence in the Netherlands or the father's joint custody rights confirmed by the Dutch courts. The Convention's goal of restoring the factual situation prior to the wrongful retention meant that the mother could not invoke her own unilateral action to defeat return.

A taking parent's unequivocal refusal to return with the child does not, by itself, establish grave risk. The court should examine whether separation from that parent would in fact expose the child to a grave risk under Article 13(1)(b), and whether any protective measures or practical arrangements could address that risk. As a rule, a parent should not be permitted to create, through the wrongful removal or retention, a situation potentially harmful to the child and then rely on that situation to resist return. At the same time, where the refusal is genuine and separation would itself meet the grave-risk threshold, the court must assess the actual consequences for the child rather than treating the refusal as automatically irrelevant.[193]

193 See HCCH, *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part VI – Article 13(1)(b)* (2020), paras 63–65, 72, especially para 72, concerning an unequivocal refusal by the taking parent to return and the principle that, as a rule, a parent should not create through the wrongful removal or retention a situation potentially harmful to the child and then rely on it to establish grave risk.

CASE NOTE 237 | PL | Supreme Court | II CSKP 457/23
19 October 2023

The taking parent argued that she could not return with the child to the Netherlands and that separation would therefore be intolerable. The court found no objective obstacle: she had lived and worked there for over eight years, remained employed after leaving, and faced no legal or structural barrier to return. Her relocation was assessed as voluntary and strategic, aimed at improving her position in disputes with the other parent. The court held that a self-created refusal to return cannot be relied upon to establish grave risk and ordered the child's return.

CASE NOTE 238 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2022:2156
12 October 2022

In a case concerning two children wrongfully removed to the Netherlands from Italy, the mother claimed she could not return due to lack of work and housing, risk of arrest, and family reasons. The court examined each obstacle and dismissed all of them: the mother had Italian nationality and a long work history there, had herself resigned her Italian employment, housing was available, and the father confirmed he would withdraw the criminal complaint upon her return. The court further noted that the mother's statements had been inconsistent throughout – oscillating between willingness to sacrifice herself for her daughters and an absolute refusal to return – and treated this inconsistency as undermining the credibility of her refusal. No objective impediment was established, and return was ordered.

The court must consider the reasons behind the refusal and their credibility. Because it is unusual for a primary carer to separate from a young child, the judge should examine the parent's explanation carefully, taking into account history, health, possible influence of the dispute, and whether the stance might change after an order.[194]

CASE NOTE 239 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2014:1976
4 June 2014

In proceedings concerning return to Spain, the mother argued that if the child were ordered back, she would not accompany him. She claimed she had no job or housing in Spain and that returning would cause her family unit to break apart. The court dismissed these arguments, noting first that there was no evidence of an arrest warrant or any other legal impediment preventing her from returning. It further held that the absence of housing or income was a temporary difficulty and did not render relocation impossible. The court therefore considered the mother's decision not to accompany the child as a voluntary choice rather than an obstacle capable of justifying refusal. In reaching this conclusion, the court also took into account the father's willingness to facilitate contact and the fact that the mother had sole custody of her other child, which meant she was free to bring that child with her to Spain. The return order was therefore upheld.

[194] For discussion of the evidential assessment of a taking parent's stated refusal to return and criticism of inconsistent approaches in UK case law to unsupported assertions of non-return, see Ruth Kirby KC and Sulema Jahangir, 'Abducting Parents' Refusal to Return – Implications for Lawyers, Litigants and International Relations', *Family Law Week Journal*, Annual Review, p 33–42.

CASE NOTE 240 | **UK** | **Court of Appeal of England and Wales** | Re C
[2021] EWCA Civ 1236
10 August 2021

The mother insisted she would not return to France even if the child were ordered back. The court rejected her position, finding it was unlikely she would separate from her child and that protective measures offered sufficient security. Article 13(b) was not established, as the alleged risk depended entirely on her own refusal (§34, §§49–51).

A parent's refusal to return must be assessed carefully to distinguish misuse from genuine vulnerability. The court must guard against parents defeating the Convention by relying on their own refusal, yet recognise that a refusal rooted in genuine incapacity, fear, or domestic abuse may legitimately support an Article 13(1)(b) defence.

CASE NOTE 241 | **UK** | **Court of Appeal of England and Wales** | Re R
[2024] EWCA Civ 1296
30 October 2024

The mother stated that she would not return to France with the parties' three young children. The Court of Appeal acknowledged the Convention concern that a taking parent should not be able to defeat return simply by refusing to accompany the child, referring to the warning in *C v C* that such an approach could "drive a coach and four through the Convention" (§33). At the same time, it emphasised that a stated refusal must be assessed rather than dismissed: the court must make a reasoned assessment of how likely the parent is actually to remain behind, taking account of the family history, health evidence, reasons for the refusal, possible tactical motivation and whether the position may change after a return

A grave risk to the child may not be based solely on the abducting parent's personal circumstances, such as economic hardship, loss of housing, or pending asylum status, if it is reasonable to expect the parent to accompany the child to the State of habitual residence. The rationale is that the danger of separation arises only because the parent refuses to return. A parent cannot rely on a situation they themselves create by refusing to accompany the child. The Hague Convention assumes that, where possible, the abducting parent will accompany the child, and that ordinary material or administrative difficulties (such as uncertain residence status, poverty, or fear of inconvenience) do not meet the threshold of a *grave risk of harm* under Article 13(1)(b). Difficult living conditions, general hardship in the country of origin, or uncertainty about employment or residence are insufficient.

CASE NOTE 242 | **DE** | **Stuttgart Higher Regional Court**
ECLI:DE:OLGSTUT:2021:1227.17UF282.21.00
27 December 2021

A Gambian mother retained her three-year-old child in Germany after lawfully travelling from Italy. She claimed return would expose the child to a grave risk due to poor living conditions and her uncertain asylum status in Italy. The court dismissed this defence, finding that such economic and administrative difficulties concerned the mother, not the child. Since she could reasonably return and the father offered housing and support, there was no grave risk under Article 13(1)(b). The return to Italy was ordered.

The court must not simply take a parent's stated refusal to return at face value. A parent cannot create a grave risk defence just by saying they will not return with the child. The judge must assess how likely it really is that the parent will act on that refusal. This means looking at the wider context: whether the parent has always been the child's main carer, how realistic it is that they would separate from the child, whether the reasons they give are credible, and whether their position might change once a return order is made. Only if the court concludes that the refusal is genuinely likely can it play a role in the Article 13(1)(b) analysis.

CASE NOTE 243 | UK | Court of Appeal of England and Wales | Re R [2024] EWCA Civ 1296
30 October 2024

The mother stated that she would not return to France with the parties' three young children. The first-instance judge proceeded on the basis that he was required to take that assertion at its highest and refused return after finding that separation from their primary carer would be intolerable. The Court of Appeal held that this was the wrong approach: the court must assess, rather than assume, the likelihood that the parent will actually refuse to return. Relevant considerations include the family history, health evidence, reasons for the refusal, possible tactical motivation and whether the position might change after a return order. On the facts, however, the Court of Appeal concluded that the judge would still have found a high degree of likelihood that the mother would not return, and therefore dismissed the father's appeal. (§36, §41, §45).

Risks arising from separation of the child from a primary caregiver or siblings

Separation from the abducting parent does not *ordinarily* constitute a grave risk under Article 13(1)(b), because the taking parent is free to accompany the child back and a return order does not decide custody (Art. 19). The Guide to Good Practice in §63 and following explains that such arguments are frequently raised where the taking parent is unable or unwilling to return, but that courts have only rarely upheld the exception on this basis. In this sense, separation *may* contribute to a grave-risk finding where the taking parent is genuinely unable or unwilling to return, and the evidence shows that the resulting separation would expose this particular child, having regard to factors such as age, attachment, health or psychological vulnerability, to grave psychological harm or an intolerable situation.[195]

The Guide to Good Practice (§§73-76) recognises *sibling separation* as a possible Article 13(1)(b) argument, but only exceptionally.[196] The fact that siblings may be separated is not usually enough to establish grave risk. The assessment must focus on the particular child before the court and on whether separation would affect that child so seriously as to create a grave risk or intolerable situation. It must not become a general best-interests assessment. The Guide also warns against allowing the taking parent to rely on a risk created by their own choices, for example, by deciding that one sibling will not return.[197] A return order also does not necessarily mean permanent separation, since contact or future living arrangements may still be addressed in the State of habitual residence.

[195] HCCH, Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Part VI – Article 13(1)(b). See also Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) pp 285–286, 302–303, describing the differing approaches to sibling separation and arguing that greater weight should be given to the strength of the children's de facto relationship, including where the Convention does not apply to one sibling or the taking parent bears responsibility for the situation that has arisen.
[196] ibid.
[197] ibid.

Separation from the abducting parent does not normally justify refusal under Article 13(1)(b), because the parent can typically return with the child, and the return order does not determine custody. Only where objective obstacles make joint return impossible, and separation would expose the child to serious psychological harm or create an intolerable situation, may Article 13(1)(b) be engaged.

CASE NOTE 244 | **PL** | **Suwałki Regional Court** | I.Ca 119/17
24 April 2017

The Court held that although separation from the abducting parent is usually insufficient to establish grave risk, the particular circumstances of the case justified refusal of return. The child was under three years old, strongly attached to the mother, and dependent on her as the primary caregiver for daily care and emotional security. The court considered that the mother's return to the UK could relate to breakdown of the relationship, lack of independent housing and employment there, and the absence of family support. Since return would, in practice, separate the child from her primary caregiver, and the expert evidence indicated that such separation could seriously disrupt the child's psychological development, the court upheld the refusal of return under Article 13(1)(b).

CASE NOTE 245 | **ECtHR** | **G.S. v. Georgia** | App. No 2361/13
21 July 2015

The child had been wrongfully retained in Georgia by the father. The Georgian authorities argued that return to Ukraine would separate the child from the father and paternal family and would cause psychological trauma. The ECtHR rejected this reasoning. It emphasised that the abducting parent cannot benefit from a situation created by his own wrongful conduct, and that Article 13(1)(b) must be interpreted strictly. Separation from the taking parent, however difficult, does not automatically establish grave risk. In the absence of expert evidence on the impact of separation and without a concrete assessment of the child's living conditions in Ukraine, the domestic courts had not identified direct and convincing evidence of psychological harm or an intolerable situation.

The separation of the child from the abducting parent can establish the required grave risk, where expert evidence shows that separation would foreseeably cause serious harm or place the child in an intolerable situation. Where the child is deeply attached to the taking parent, abrupt removal and forced return to the State of habitual residence may create severe psychological distress or trauma. Courts must assess whether the child's well-being would be endangered by the break in continuity of care and attachment, even when the left-behind parent has adequate living conditions or parental capacity.

CASE NOTE 246 | **BG** | **Sofia Court of Appeal** | 20251000500756
23 April 2025

Psychological expertise established that the child was strongly bonded with the mother, who had been his primary caregiver. The expert warned that separation from her would be a "catastrophic event" for his psychological development, especially given his stress-induced epileptic episode. The court underlined that the mother's unlawful conduct in removing the child cannot override the grave risk posed by separating the child from her. Although the father could provide appropriate living conditions in Greece, the decisive factor was the grave risk arising from the child's forced separation from the abducting parent, leading the court to apply Article 13(1)(b) and deny return.

In exceptional circumstances, separation of a very young child from the primary carer with whom the child has lived continuously since birth may amount to an intolerable situation where the evidence shows that the particular attachment relationship makes forced separation seriously harmful. Where a child of around three years of age or younger has had a single primary attachment figure throughout her life, the rupture of that bond through return to the other parent – particularly where the other parent's circumstances are poorly established – may expose the child to an intolerable situation within the meaning of Article 13(1)(b). The analysis is child-specific: it turns on the child's age, the duration and quality of the primary attachment, the comparative knowledge of each parent's living conditions, and the foreseeable consequences of the separation for the child's personality development.

CASE NOTE 247 | PT | Supreme Court | 20/22.4T8VVC-A.E1.S1
13 September 2022

A child just under three years old was wrongfully removed from France to Portugal by her mother. She had lived continuously with the mother since birth and maintained close affective ties with both the mother and a sister living in Portugal. Although the lower courts had ordered return, the Supreme Court refused return under Article 13(1)(b). It held that requiring the child to return to France and be placed in the exclusive care of the father would deprive her, for an indefinite period and without alternation, of the close daily care of the mother from which she had always benefited. In the circumstances, the court considered that return would expose the child to a grave risk of an intolerable situation and would be clearly more harmful than remaining in Portugal with the mother.

Where the separation of the child from the taking parent upon return is the consequence of a custody decision of the competent court of the State of habitual residence – and would occur regardless of whether return is ordered or of any criminal prosecution – it may not amount to an intolerable situation under Article 13(1)(b). The taking parent cannot invoke a separation that is not caused by return but by a substantive decision of the court that is best placed to determine the child's living arrangements. To allow otherwise would permit the taking parent to use the consequences of the merits proceedings in the State of habitual residence – proceedings that exist precisely because of the wrongful removal – as a shield against return.

CASE NOTE 248 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2023:990
25 May 2023

The mother opposed the return of the two children to Belgium, arguing that a European Arrest Warrant against her meant she faced prosecution and imprisonment in Belgium, which would separate her from the children. The court rejected this. The Belgian court – the court competent to decide on the merits – had already provisionally determined that the children should reside primarily with the father. That decision governed the children's living arrangements independently of any criminal prosecution and independently of the return order. The court expressly noted that the separation the mother invoked would occur even if she were not prosecuted at all in Belgium. The separation was therefore not a consequence of return but of the custody decision of the competent court, and could not constitute an intolerable situation within the meaning of Article 13(1)(b).

Separation from a biological parent who has never lived with the child in a family setting may not constitute an intolerable situation under Article 13(1)(b). The relevant attachment relationship for the purposes of the exception is the one that has functioned in practice, not biological parentage as such. Where another person has fulfilled the daily caregiving role throughout the child's life, separation from a biological parent who has been absent from the family unit does not meet the threshold, particularly where contact can be maintained after return.

CASE NOTE 249 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2022:2156
12 October 2022

The mother argued that the return of one child to Italy would separate her from her biological father, with whom she had maintained contact since birth. The court rejected this argument, noting that the child had lived her entire life in a family unit with the mother's partner as her day-to-day caregiver, and had never lived with her biological father in a family setting. Separation from him upon return was therefore insufficient to establish an intolerable situation. The court further noted that return to Italy did not mean the child would be entirely deprived of contact with her biological father.

Where siblings have lived together throughout their lives and form a particularly close family unit, separation through the return of only one of them may, in the particular circumstances, amount to an intolerable situation under Article 13(1)(b). The sibling bond in such circumstances is not merely a matter of preference or comfort but constitutes the child's entire relational world. A return order that breaks that bond, leaving one child behind while returning the other, interferes with the children's family life in a manner that cannot reasonably be demanded of them.

CASE NOTE 250 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2023:2066
27 October 2023

Return of the younger child to Algeria was sought. His older sister was remaining in the Netherlands following a successful objection under Article 13(2). The court found that returning the younger child alone would separate him from the only family unit he had ever known: he had lived his entire life together with his sister and knew no other situation. The court held that this separation would place him in an intolerable situation within the meaning of Article 13(1)(b) and would constitute an unlawful interference with the children's family life. Return of the younger child was accordingly refused.

Sibling separation may constitute an intolerable situation where the children share a traumatic history and their fragile stabilisation depends on remaining together. The assessment is child-specific: it is not enough that separation would be difficult or disruptive in general. What matters is whether, given the particular vulnerability and shared history of these children, separating them would cross the threshold of grave risk for each child individually.

CASE NOTE 251 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2018:296
14 February 2018

In a case involving four children, the court refused return on the basis that separation of the sibling group would place each child in an intolerable situation. The children shared a history marked by domestic violence, frequent relocations, and repeated school changes. At the time of the proceedings, stabilisation had only recently been achieved: therapy had just commenced, a support network had formed around the family, and the children were experiencing stability for the first time in years. The court held that even a temporary return – pending custody proceedings in the State of habitual residence – would constitute yet another damaging disruption that could not reasonably be demanded of these children. Notably, the court acknowledged that adequate provisions existed in the State of habitual residence and that services could, in principle, be transferred, but held that under these specific circumstances and for these particular children, those provisions could not be considered adequate. The court refused return under Article 13(1)(b).

Risks arising from wider social, legal and cultural environment in the state of return

General conditions of instability, background hostilities, abstract risks associated with armed conflict, or travel warnings alone may not be sufficient; the danger must be current, individualised, and specifically threatening to the child in the circumstances of the case. Return to a war zone or an area affected by civil war may constitute a grave risk within the meaning of Article 13(1)(b) of the 1980 Convention. However, the parent opposing return must typically demonstrate that the conflict creates a particularly serious, concrete, and imminent danger to the child. A general travel warning or security advisory for the country of return reflects only an abstract or generalised risk and cannot replace the court's duty to conduct a concrete, child-specific assessment. Only where the circumstances underlying such a warning translate into a specific, credible, and individualised threat to the child can they contribute to establishing a grave risk.

CASE NOTE 252 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2024:0523.17UF71.24.00
23 May 2024

In a case concerning return to Israel, the court acknowledged both the existence of an official travel warning and references to hostilities, missile attacks, and regional tensions. Nevertheless, it held that these factors did not amount to a grave risk under Article 13(1)(b). The court found no concrete danger to the child in her area of residence, noting that daily life continued normally there and that isolated attacks, increased vigilance, and general instability did not reach the threshold of a serious, individualised risk. The situation amounted to a generalised risk affecting the population at large, not a specific and imminent threat of serious harm to the child.

Alleged loss of national, linguistic, cultural or religious identity may be framed as a risk arising from return, but it does not in itself establish grave risk or an intolerable situation. The respondent must show a concrete risk to the child, not merely that the requested State would better preserve one aspect of the child's identity. Where the child is bilingual, has already developed the relevant identity in the State of habitual residence, and both parental environments remain capable of supporting the child's language, culture or religion, return will not normally be refused on identity grounds alone.

CASE NOTE 253 | **HU** | **Constitutional Court** | 3037/2025. (I. 21.) AB
17 December 2024

The father opposed the child's return from Hungary to Romania and argued, among other things, that return would lead to the loss of the child's Hungarian national and religious identity, language and culture. He submitted that the child's Hungarian and Christian identity could be preserved only by remaining in Hungary. The ordinary courts rejected that argument. They found that the child was bilingual, spoke both Hungarian and Romanian, and had acquired both languages while living in Oradea. The mother also spoke Hungarian, and the child's Hungarian identity had already developed in the State of habitual residence. The courts further noted that, under the Romanian custody arrangement, the child had been cared for by both parents and could continue to receive cultural and religious influences from both parental environments. The Constitutional Court refused to reopen that assessment as a constitutional issue. (§27).

4.5.G. Child's objections - Article 13(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 attained an age and degree of maturity at which it is appropriate to take account of its views.

Two features of the provision shape everything that follows. First, it is an exception to the return obligation and, like the other exceptions, is interpreted restrictively: it does not give the child a right to choose where to live. Second, it is the only exception that turns on the position of the child rather than on the conduct of the parents or on external risk, which is why the case law concentrates so heavily on how the child's views were formed, expressed, and ascertained.

The defence must be distinguished from the child's right to be heard. The obligation to give the child a genuine and effective opportunity to express views under Article 26 of the Brussels IIb Regulation, Article 24(1) of the EU Charter, and Article 12 UNCRC applies in every return case, whether or not any party invokes Article 13(2), and is addressed in Chapter 5.5. Article 13(2) is narrower: it attaches a specific legal consequence – a discretion to refuse return – to a specific finding, namely that the child objects and has the requisite age and maturity. This distinction explains why the child should ordinarily be heard even where Article 13(2) is unlikely to succeed. The right to participate serves broader procedural and dignity interests, whereas Article 13(2) concerns only the limited question whether the child's objection justifies refusing return.[198]

As a general rule, the objection must be genuinely examined, but it is not a veto. The ECtHR reviews Article 13(2) decisions through the procedural lens of Article 8: where the exception is raised, the domestic court must genuinely take it into account and issue a reasoned decision on the point, sufficient to allow the ECtHR to verify that the question was effectively examined; a return ordered automatically or mechanically violates Article 8.[199] The converse is equally established: a child's opposition does not confer a veto. The case law has expressly endorsed the restrictive reading of Article 13(2) – a wish to remain in the requested State, even clearly expressed by a child of sufficient maturity, is not an "objection" within the meaning of the Convention.

[198] See Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) p 373–375 (explaining that the child's right to be heard applies more broadly than the Article 13(2) defence and that participation has independent procedural value).
[199] *X v. Latvia,* App no 27853/09 (ECtHR, 26 November 2013) §§106-107.

The 2023 HCCH Special Commission Conclusions and Recommendations expressly confirms in p. 38 that the Article 13(2) child-objection exception is separate from Article 13(1)(b) and does not depend on establishing grave risk or an intolerable situation.

CASE NOTE 254 | ECtHR | Rouiller v. Switzerland | App. No 3592/08
22 July 2014

The Swiss courts ordered return to France although the children, including a child close to the Convention's age ceiling, had stated that they preferred to stay in Switzerland. The ECtHR found no violation of Article 8: the Swiss courts were entitled to conclude that the children's statements expressed a preference for remaining in Switzerland rather than an objection to return within the meaning of Article 13(2), and the Hague Convention does not associate the child's wish with a right of veto.

CASE NOTE 255 | ECtHR | Raw and Others v. France | App. No 10131/11
7 March 2013

In enforcement proceedings, the French authorities relied in part on the resistance of the children, then adolescents, to justify inaction. The ECtHR found a violation of Article 8: although the children's views must be taken into account, their opposition did not by itself release the authorities from their obligation to take the measures that could reasonably be expected of them.

CASE NOTE 256 | ECtHR | M.K. v. Greece | App. No 51312/16
1 February 2018

Conversely, at the enforcement stage the clearly expressed wish of a child aged 13, who "had attained an age of understanding at which his views were bound to carry significant weight," combined with a radical change in the family situation, justified the authorities' decision not to enforce a final return order; no violation.

When return application concerns more than one child, each child must be assessed individually, but individual assessment does not require different outcomes. Article 13(2) requires the court to assess each child individually when determining whether there is an objection to return. However, where the relevant factors—such as loyalty conflict, parental influence, and the nature of the child's reasons—operate similarly, the court may lawfully reach the same conclusion for multiple children.

CASE NOTE 257 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2023:213
9 February 2023

The father argued that the court failed to assess each child separately. The court rejected this argument, noting that although the children differed slightly in age and personal circumstances, both were affected by the same loyalty conflict and parental dynamics. After examining each child's statements individually, the court concluded in respect of both that their expressed wishes amounted to a preference to remain with the father in the Netherlands rather than a legally relevant objection to return to Poland.

Article 13(2) is ordinarily relied upon by the person opposing return, although, unlike Article 13(1), the Convention does not expressly allocate the burden of proving the child's objection. In practice the material on which the court acts comes largely from the child – through a judicial

interview, a guardian ad litem or special curator, or a welfare report, depending on the procedure of the requested State. The Convention deliberately sets no minimum age: the drafters left both elements – age and maturity – to case-by-case assessment, subject only to the Convention's upper limit of sixteen years (Article 4), beyond which the Convention ceases to apply at all.

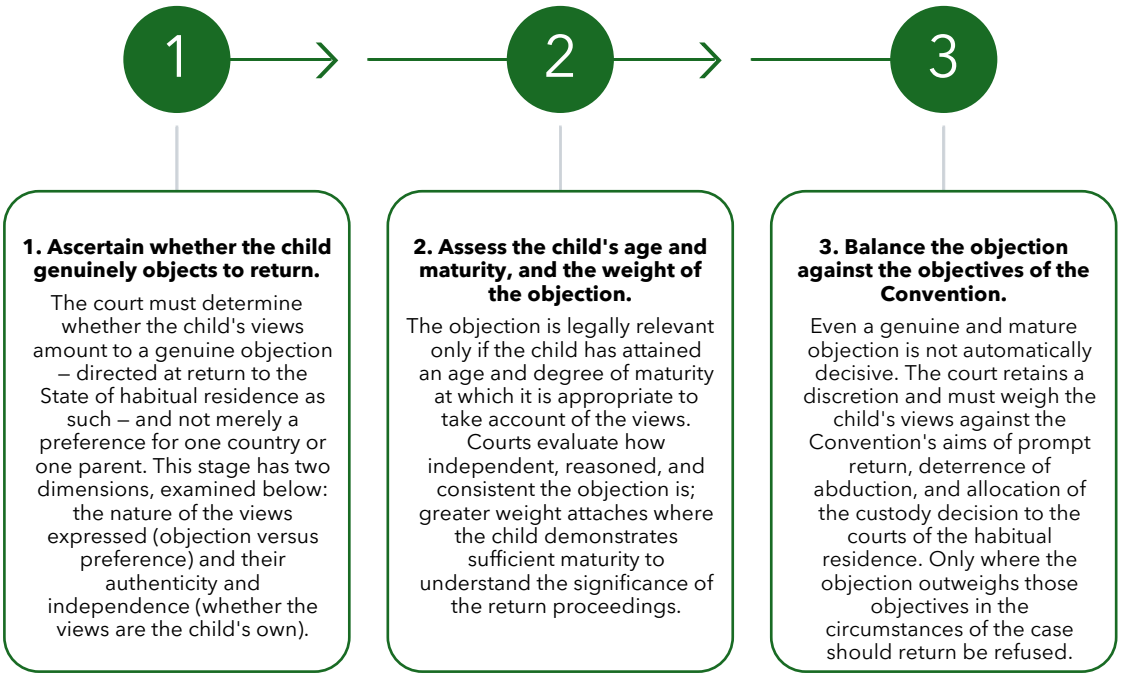
Within the EU, the ground carries an additional structural consequence: where return is refused on the basis of Article 13(2) (alone or together with Article 13(1)(b)), the refusal opens the override procedure of Article 29 Brussels IIb, under which the courts of the child's habitual residence may still examine the substance of custody and issue a decision entailing return (see Chapter 6.4.) A successful Article 13(2) defence in an intra-EU case is therefore not necessarily the end of the litigation.

The Three-Stage Test for Article 13(2) Objections

The staged structure matters because each stage has a different function and a different consequence. If the statements do not amount to an objection, the analysis ends there – age, maturity and the Convention's objectives are never reached. If the objection exists but the child lacks the requisite age and maturity, the views are noted but carry no legal consequence under Article 13(2). Only where both are established does the court acquire a discretion, and even then the objection is one factor among several.

Courts across jurisdictions have converged on a staged analysis that gives the provision a workable structure. The formulation below follows the approach articulated by the Irish High Court.[200]

Figure 6: The three-stage test for assessing a child's objections under Article 13(2) of the 1980 Hague Convention.



[200] In J.K. v. L.E. [2022] IEHC 733, the Irish High Court structured its Article 13(2) analysis in these three stages: whether the child objects, the weight of the objection in light of age and maturity, and the balance against the Convention's objectives.

The sequence of the analysis reflects both the wording of Article 13(2) and the approach adopted in the case law. The provision first requires the court to determine whether the child *objects* to being returned and then whether the child has attained an *age and degree of maturity* at which it is appropriate to take account of those views. Courts have generally followed this analytical order: they first ascertain whether the child has expressed a genuine objection, rather than a mere preference, before considering whether the child is sufficiently mature for that objection to carry legal significance. Only if both requirements are satisfied does the court proceed to the final stage, namely the exercise of its discretion, balancing the child's objection against the objectives of the 1980 Convention.

Stage one (a): the nature of the objection — objection versus preference

The first question is one of characterisation: do the child's statements amount to an objection to returning to the State of habitual residence, or to something less – a preference for the current environment, a comparison of living conditions, or a reaction to the parental conflict? The common thread is the *target of the resistance*: what matters is not whether the child's feelings are sincere or strongly expressed, but whether they are directed at return as such rather than at circumstances that are incidental to it or remediable within it.

An objection under Article 13(2) requires more than a child's wish or preference to remain in the requested State. The child's statements should amount to an objection to returning to the home country, not just a general wish. Resistance under the Convention requires more than a mere preference for one country or parent. The objections must be serious and directed against return itself, not simply the wish to stay with the abducting parent or to remain in a more comfortable environment. The exception is interpreted restrictively: it does not grant the child a right of choice but applies only where there is strong and reasoned resistance to returning to the State of habitual residence, rather than a mere preference to remain with one parent or in a familiar environment. The objection must be genuine and independent, not the result of influence or alignment with the abducting parent's views.

CASE NOTE 258 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2019:1223.17UF198.19.00
23 December 2019

Two sisters, aged 12 and 6, were taken from Serbia to Germany by their mother. The older child expressed the wish to remain in Germany, citing fear of her father and better living conditions. The Court accepted that she was sufficiently mature, but held that her statements reflected alignment with her mother's perspective and did not demonstrate unusually strong resistance to return to Serbia. It emphasized that Article 13(2) of the Hague Convention does not grant a right of choice, and that reluctance to return, even if sincerely expressed, must reach a high threshold of intensity and autonomy. The Court therefore ordered the children's return.

CASE NOTE 259 | AT | Supreme Court
ECLI:AT:OGH0002:2014:0060OB00217.14A.1215.000
15 December 2014

Two children, aged approximately 10 and 12, had been removed from Spain to Austria by their mother. They were well integrated in Austria, had friends and extended family there, and said they wanted to stay. The Austrian Supreme Court held that this was insufficient for Article 13(2). A wish to remain in the present environment, or with the abducting parent, does not by itself amount to an objection. The court must examine the strength and reasons for the child's resistance, whether the views are authentic or influenced by the taking parent, and then weigh them against the objectives of the Convention. On the facts, the children's statements reflected a preference for Austria rather than a sufficiently serious objection to return to Spain.

CASE NOTE 260 | UK | High Court of England and Wales
[2016] EWHC 1227 (Fam)
27 May 2016

The 13-year-old child told the social service officer that she wanted to remain in England with her mother and older sister. The officer described this as a "clear preference" but not an "objection." The judge disagreed, finding that the child's views went further: she resisted the idea of returning to France, and her stance reflected more than a simple wish. The court therefore held that the Article 13(2) threshold of an "objection" was satisfied (§26, §§29–32).

CASE NOTE 261 | IE | High Court | R. and I., Minors | [2022] IEHC 733
14 December 2022

The 12-year-old child stated that she did not want to return to Sweden and expressed this in strong, resistive terms, including saying that she would rather be dead than go back and that she would chain herself to her bed and refuse to move. The High Court accepted that these statements amounted to an objection, not merely a preference, because they reflected intense feelings and active resistance to return rather than a simple wish to stay elsewhere. By contrast, her younger sister's statements that returning would be "a bit hard" and that she liked Ireland because of family and lifestyle were treated as a preference only, insufficient to meet the Article 13(2) threshold (§5.6, §§8.1–8.3).

Objections should relate to the return, not merely to the parent. What is required is a clear, reasoned, and emphatic resistance to return to the State of habitual residence, not simply to a wish to remain with the abducting parent, particularly where that parent could also return.

CASE NOTE 262 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2022:472
22 March 2022

The court distinguished between feelings about the father and objections to return. While both children had grievances about the father (communication, lack of understanding), the court found their resistance was primarily directed against the idea of return to Spain itself. The objections were about their life circumstances in Spain and their emotional well-being, not only about parental conflict (§5.18, §5.21). This confirmed that the objections were valid within the meaning of Article 13(2).

The child's resistance must be directed at the return to the State of habitual residence as such, not at combination or remediable circumstances. Article 13(2) requires that the child's objection be aimed at returning to the State of habitual residence *as such*. Objections based on

comparative advantages, improved circumstances in the requested State, or dissatisfaction with specific and remediable aspects of life in the State of origin—such as a particular school, household dynamics, or general comfort—do not amount to resistance within the meaning of the Convention.

CASE NOTE 263 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2022:2156
12 October 2022

The child stated that she did not want to return to Italy because she had been bullied at school there, experienced stress due to parental conflicts, and was now enjoying school and daily life in the Netherlands. The court held that these reasons reflected a comparison between living conditions rather than resistance to return as such. Bullying at a specific school and family tensions were circumstances that could change upon return, particularly since the parents would no longer live together and schooling arrangements could differ. A preference for better conditions in the Netherlands therefore did not amount to an objection within the meaning of Article 13(2).

Everyday discomforts may not amount to objection. Courts distinguish between genuine resistance to return and complaints about daily circumstances. Disliking chores, homeschooling, or other domestic arrangements may explain a child's preference, but such reasons do not meet the Convention's threshold – particularly where the parent has shown willingness to change the disputed arrangements.

CASE NOTE 264 | NL | The Hague District Court
ECLI:NL:RBSGR:2010:BN8746
19 August 2010

A child objected to returning to the United States because of homeschooling, isolation, and household chores. The court found these concerns insufficient. The mother had already discontinued homeschooling and was ready to re-enroll the children in school. Household chores, while unpopular with adolescents, were not unreasonable given the single-parent context. The court concluded that these objections reflected a preference for the more comfortable life with the father's family in the Netherlands, not genuine resistance under Article 13(2).

School-related distress does not amount to an objection to return. Dissatisfaction at school in the State of habitual residence—such as bullying, lack of friends, or feeling happier in the requested State—does not in itself constitute an objection under Article 13(2). School-related distress concerns potentially remediable circumstances and does not amount to resistance to return to the State of habitual residence as such.

CASE NOTE 265 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2021:1840
30 September 2021

In assessing a child's stated refusal to return to the United Kingdom, the court noted that the child's principal reasons were that he had been bullied at school, had few friends, and felt happier in the Netherlands. While the court took these feelings seriously and listened carefully to the child, it held that such factors did not demonstrate intrinsic opposition to return. The court concluded that school dissatisfaction, even when repeatedly expressed and genuinely felt, amounts to a preference for current living conditions, not an objection within the meaning of Article 13(2), and therefore could not justify refusal of return.

Cultural discomfort or identity preference does not amount to an objection under Article 13(2). A child's resistance to return that is based primarily on cultural preference, identity alignment, or feeling "more at home" in the State of refuge does not constitute an objection within the meaning of Article 13(2). Objections must be directed at the return to the State of habitual residence as such, not at differences in lifestyle, mentality, or cultural affinity.

CASE NOTE 266 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2023:213
9 February 2023

The child explained that she felt more at home in Dutch culture, identified strongly with the Netherlands, and experienced Poland as unfamiliar and distant. Although the court acknowledged these feelings, it held that resistance rooted in cultural preference and identification with the abducting parent's environment was insufficient to establish an objection under Article 13(2), particularly where the child had previously functioned well in the State of habitual residence.

A child's fear of separation from the taking parent does not constitute an objection under Article 13(2) if that separation is avoidable. A child's opposition grounded in fear of separation from the taking parent does not satisfy Article 13(2) where separation is not an inherent or unavoidable consequence of return. If the abducting parent is able to return with the child, and no objective impediment to joint return is established, the child's fear cannot be attributed to the return order itself and therefore cannot qualify as a valid objection.

CASE NOTE 267 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2022:2156
12 October 2022

The child expressed fear of returning to Italy because she did not want to be separated from her mother. The court rejected this as an Article 13(2) objection, holding that separation was not an inevitable consequence of return. The mother was able to return to Italy, and the father had indicated that housing arrangements could be made so that the mother could reside in the former marital home. Since joint return was possible, fear of separation from the abducting parent could not be attributed to the return order itself.

Repeated and consistent statements that a child does not wish to return do not necessarily amount to an "objection" under Article 13(2). The court must examine the reasons underlying those statements and determine whether they amount to genuine resistance to return, rather than a preference arising from particular circumstances or parental dynamics. Consistency is relevant, but is not by itself decisive.

CASE NOTE 268 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2021:1840
30 September 2021

The child had repeatedly told different persons that he did not want to return to the United Kingdom. The court held that this was not sufficient in itself to establish an objection under Article 13(2): more was required than the mere wish not to return. In the child interview, his principal reason was that he had been unhappy at school, where he had been bullied and had few friends. The court found that these reasons did not demonstrate intrinsic resistance to return. It also noted his negative feelings towards the father, but considered those views in the context of the serious loyalty conflict in which the child found himself and the absence of contact with the father since the removal. The Article 13(2) defence therefore failed.

An objection may concern anticipated future circumstances, provided it is serious, authentic and the child's own. The reasons relied upon by the child need not themselves establish an objectively proven Article 13(1)(b) risk; the question under Article 13(2) is whether they amount to genuine resistance to return. A child's objection can justify refusal of return even if it is based on feared future consequences rather than on proven factual risks, provided the child is sufficiently mature, the objection is genuinely their own, is clearly directed against return, and shows a real understanding of the consequences. The court does not test whether the fear is objectively correct; it tests whether the child's resistance is authentic, serious, and autonomously formed. This rule marks the outer boundary of the exclusions above: what disqualifies preferences, comparative complaints, and situational reactions is not their forward-looking character but their failure to constitute reasoned resistance to return as such.

CASE NOTE 269 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2025:2221
13 October 2025

A 12-year-old objected to returning to Iran because she feared she would lose personal freedom, be pressured into religious practices, and possibly be separated from her mother. These outcomes were disputed by the father and not objectively proven. The court nevertheless accepted the objection because the child articulated her views consistently, understood the implications of return, and demonstrated independent, mature reasoning; her subjective, forward-looking fears sufficed to engage Article 13(2) and justified refusing return.

Stage one (b): authenticity and independence of the objection

> *I would just add the following. First, "authentic" is typically used when a child's views are not considered to be the product of or reflecting, in particular, the influence of the taking parent.*
>
> *Re D (a child), [2023] EWCA Civ 1047*[201]

A statement that qualifies as an objection on its face must also be the child's own. Here the court examines not the content of the views but their formation: spontaneity, emotional depth, whether the reasoning tracks one parent's narrative, and the presence of a loyalty conflict. The assessment rests largely on the observations of curators, welfare services and the court's own impression from the hearing. Some alignment with the taking parent is often inevitable and does not in itself disqualify the objection; the question is one of degree. Two further limits apply: statements made within a loyalty conflict must be read in context rather than at face value, and the objection must be expressed by the child – it cannot be inferred from attachment patterns, expert assessments or family dynamics.

The authenticity and independence of the child's views are relevant to the assessment, but parental influence or loyalty conflict does not automatically negate an objection. Their nature and degree may affect whether the court finds a genuine objection and, in particular, the weight given to it in the exercise of discretion. Where the child's views are shaped – consciously or unconsciously – by the abducting parent's attitudes or by the emotional burden of the dispute, the objection may not be treated as determinative.

[201] Court of Appeal of England and Wales, *Re D (a child), [2023] EWCA Civ 1047*, §84.

CASE NOTE 270 | NL | The Hague District Court | ECLI:NL:RBDHA:2021:14705
29 December 2021

The Dutch court heard both children directly, received a report from the special curator, and considered input from Youth Protection and the Child Care and Protection Board. All professionals observed that the children were heavily burdened by the parental conflict and had internalised the mother's negative portrayal of the father and of life in the UK. Although the children said they preferred the Netherlands because they liked their school, friends, and activities, the special curator and the court found that their views were not independent: the children were in a significant loyalty conflict, had limited freedom to form their own opinions, and their objections were not authentically their own. Their resistance was not genuine opposition within the meaning of Article 13(2), and the defence failed.

In assessing whether a child's objection is authentic and independent, the court may draw common-sense inferences from the evidence about parental influence, loyalty conflict, and inconsistency in the child's stated wishes. The court does not act as an expert merely because it observes that a child's views appear to mirror the feelings or expectations of the parent with whom the child is currently aligned. However, such conclusions must be grounded in the evidence before the court and not in unsupported assumptions about child psychology.

CASE NOTE 271 | CY | Second Instance Family Court | (2008) 1 AAD 1311
30 December 2008

The appellant argued that the trial court had improperly transformed itself into a child psychology expert by concluding that the child's changing wishes reflected the expectations of the parent with whom he was emotionally close. The appellate court rejected that argument. The trial court had evidence that, when the child was with the mother, he appeared devoted to her and expressed negative feelings towards the father, while when he was with the father, he presented the opposite picture and said he did not want to return to the mother. On that basis, the appellate court held that the trial court was entitled to observe that the child's views reflected parental expectations and that children may say different things to different parents. This was not expert evidence masquerading as judicial knowledge; it was an application of judicial experience, common sense, and the evidence in the case.

The authenticity of a child's objection is strengthened where the child presents a balanced and nuanced account rather than an exaggerated or one-sided narrative. A child who distinguishes between genuine concerns and matters that did not occur demonstrates independent reasoning and a commitment to accuracy, supporting the conclusion that the objection is genuinely the child's own rather than the product of parental influence.

CASE NOTE 272 | UK | High Court of England and Wales
[2026] EWHC 1237 (Fam)
26 March 2026

A 13½-year-old boy objected to returning to Hungary. In explaining his objections, he described witnessing conflict between his father and stepmother, but carefully clarified that he had not seen any physical violence. The High Court regarded this balanced account as a hallmark of authenticity, noting that the child had been careful to distinguish between what he had experienced and what he had not. Together with the consistency of his views and the guardian's assessment that they were independently formed, this persuaded the court that the objections were genuinely his own and justified refusing return. (§§42–44).

The court must assess both the content and the formation of the child's views. The court examines not only what the child says, but how the child arrived at those views: whether the statements reflect independent reasoning and personal experience, or are the product of influence, pressure, loyalty conflict, or exposure to parental narratives. Even where the child is of sufficient age and maturity, undue parental manipulation can justify attaching less weight to the child's wishes; views formed under such conditions cannot, without more, amount to an objection within the meaning of Article 13(2).

CASE NOTE 273 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2020:1025
13 May 2020

In evaluating the children's statements, the court did not confine itself to their expressed unwillingness to return to the United States. It analysed the origin of those views, noting that the reasons given closely echoed the father's position and were expressed without emotional depth. The court found that the children were caught in a loyalty conflict and had aligned themselves with one parent. Because their views were shaped by pressure and influence rather than by independently formed objections to the State of habitual residence, the court held that Article 13(2) was not satisfied and ordered return.

CASE NOTE 274 | UK | England and Wales Court of Appeal | Re D (A Child)
[2023] EWCA Civ 1047
14 September 2023

The court accepted that the child objected to returning to Singapore but concluded that his views were heavily shaped by the father's persistent and manipulative messages. The Court of Appeal upheld that reasoning, noting that while the child's objections were genuine to a degree, they could not be given decisive weight because they had been significantly influenced by the father (§§41–42, §83).

Where a loyalty conflict is present, the child's statements must be assessed contextually, not at face value. Even where a child expresses clear and consistent views against return, the court must assess those statements in light of the relational context in which they were formed. Where the child is seriously caught in a loyalty conflict between the parents, the court must evaluate whether the expressed objections genuinely reflect opposition to return, or whether they are shaped by parental alignment, emotional pressure, or the dynamics of the conflict.

CASE NOTE 275 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2023:213
9 February 2023

The court accepted that both children clearly and consistently stated that they did not want to return to Poland. However, relying on reports from the special curator and the child interviews, the court found that the children were seriously stuck between their parents and felt compelled to choose sides. The court therefore assessed the children's statements against the background of this loyalty conflict and concluded that their expressed resistance could not be taken at face value as autonomous objections to return within the meaning of Article 13(2).

The objection cannot be presumed; it should be expressly articulated by the child. A child's objection cannot be inferred from emotional attachment to one parent, caregiving preferences, family dynamics, or expert assessments. General child-rights provisions – Article 12 UNCRC and corresponding constitutional guarantees – impose a duty to hear the child and to consider the child's

views, but they do not allow courts to substitute inferred preferences, emotional attachment, or expert assessments for the child's own clearly expressed objection.

CASE NOTE 276 | PL | Supreme Court | II CSKP 457/23
19 October 2023

Expert evidence showed that the child was strongly attached to the mother, perceived her as the primary caregiver, and had weakened relations with the father, and it was argued on that basis that the child must oppose return. The court rejected this reasoning, holding that no express objection to return had been articulated by the child, and that Article 13(2) requires an actual and ascertainable objection, not an assumption drawn from family dynamics or attachment patterns. The conditions for refusing return on the basis of the child's objections were not met, despite evidence of emotional bonds and the child's sense of security with the taking parent.

Stage two: threshold conditions — age and maturity

Stage two is a gateway: it determines whether the objection can be taken into account at all, not whether it prevails. The Convention sets no minimum age and requires age and maturity cumulatively, assessed individually at the time of the hearing. The inquiry applies to both directions: a young child with coherent, persistent and informed views may satisfy the test, while an older child whose statements are hesitant or derivative may not. A child may be mature enough for the views to be heard and still not be objecting within the meaning of the Convention. The maturity finding should be made and reasoned separately.

The older the child, the more their objections must be respected; the younger the child, the less independent weight their views will usually carry. Courts must respect the views of children who object to return, but the strength of those views varies with the child's developmental stage. Objections expressed by older children approaching adolescence will normally carry significant weight, while those of younger children must also be heard but may carry less independent influence, as they are more susceptible to misunderstanding or parental influence.

CASE NOTE 277 | UK | High Court of England and Wales
AB and CD (Children) | [2024] EWHC 3520 (Fam)
6 December 2024

The court heard objections from two brothers, aged 14 and 9. The judge accepted that both opposed return, but emphasised that "the views of a 14-year-old and, inevitably to a somewhat lesser extent, a 9-year-old, will always demand respect." The older boy's objections were therefore given greater weight in the discretionary balance (§63).

CASE NOTE 278 | PL | Supreme Court | II CSKP 457/23
19 October 2023

The child was of pre-school age. Although expert evidence showed that she was closely attached to her mother and regarded her as the primary caregiver, the Court held that her age and developmental stage meant that her views could not be treated as carrying independent, decisive weight. The Court emphasised that, unlike adolescents, younger children generally lack the maturity required to understand the purpose and consequences of return proceedings and to formulate an autonomous objection to return. It therefore rejected the argument that the child's emotional bonds or inferred preferences could justify refusing return under Article 13(2), confirming that the younger the child, the more limited the legal weight of their expressed or inferred views.

Age and maturity have to be present cumulatively at the time of the hearing. A child's objection can justify refusal of return only if two conditions are met: the child has attained both a sufficient age and a sufficient degree of maturity. These criteria are cumulative, not alternative. Age alone is not enough if the child lacks maturity, and maturity alone cannot substitute for a child who is still too young. Courts therefore examine not only chronological age but also the child's ability to reflect, articulate views independently, and understand the implications of return. Where either element is missing, the child's opinion cannot be given decisive weight.

Age alone does not determine maturity. Even a 13-year-old may lack the maturity to form and express an independent objection. What matters is whether the child can articulate a reasoned view, free from undue influence or simple loyalty to the abducting parent, and whether the child appears able to grasp the consequences of his or her preference. Courts therefore look beyond chronological age and assess: consistency of the child's objection over time; coherence and reasoning in the child's statements; understanding of the situation and its implications (awareness of the parental conflict and of the consequences of return or non-return); and independence of the opinion (absence of manipulation or undue influence by one parent). An objection may thus be decisive even at a younger age if the child demonstrates sufficient maturity, while at an older age it may be discounted if shown to be influenced or inconsistent.

CASE NOTE 279 | **RO** | **Bucharest Court of Appeal** | 105/2016
3 February 2016



An 8-year-old girl objected to returning to Italy, saying she wished to remain in Romania with her mother. She explained that she liked seeing and speaking to her father but did not want him to take her back to Italy. The court, assisted by a psychologist, found her objection coherent, persistent, and informed. Importantly, the child showed no hostility towards her father, which convinced the judges that her views were genuine and not induced by the mother. Despite her young age, the court considered she had reached sufficient maturity within the meaning of Article 13(2) and refused to order her return.

CASE NOTE 280 | **NL** | **The Hague District Court**
ECLI:NL:RBSGR:2010:BN8746
19 August 2010



A 13-year-old boy told the court that he wished to stay with his father in the Netherlands rather than return to the United States. However, the court found that his statements were hesitant, lacking spontaneity, and possibly shaped by loyalty to his father. His inability to explain his views in either Dutch or English, his timid presentation, and the similarity of his answers to those of his sister suggested pre-planning rather than genuine resistance. The court therefore held that, despite his age, he had not reached the maturity required for his views to carry weight under Article 13(2). By contrast, his younger sister was found to have reached a sufficient level of maturity. She was able to express her feelings clearly and age-appropriately in chambers, and the court considered her capable of understanding and anticipating the consequences of her statements. Her views were therefore taken into account.

A child may have reached an age and degree of maturity sufficient for the court to take their views into account, without those views amounting to an "objection" within the meaning of Article 13(2). Age and maturity allow the court to listen to the child, but they do not predetermine whether the child's views meet the substantive threshold of resistance required by the Convention.

CASE NOTE 281 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2023:105
26 January 2023

Concerning the alleged objection of a nearly twelve-year-old child to return to Croatia, the court expressly accepted that the child had reached an age and level of maturity justifying that his opinion be taken into account. The child was able to articulate his views clearly, showed insight into the situation, and consistently expressed a wish to remain in the Netherlands. However, the court nevertheless held that no objection within the meaning of Article 13(2) was established. The child's statements reflected a preference for life in the Netherlands—where he enjoyed school, friendships, and greater emotional closeness to his mother—rather than resistance to return to Croatia as such. Although the child was mature enough to be heard, his views did not go beyond a wish to stay with the abducting parent and did not amount to intrinsic opposition to the State of habitual residence. The Article 13(2) defence therefore failed.

Stage three: judicial discretion when the objection is established

Establishing the objection and the age-and-maturity gateway produces a discretion, not a result: taking account of the child's views means neither that the court must follow them nor that it may ignore them. The factors examined at the earlier stages return here as matters of weight – the strength and autonomy of the objection, the degree of influence, the child's age – balanced against the Convention's objectives of prompt return and deterrence and the child's wider welfare. The availability of arrangements in the State of habitual residence that address the substance of the child's concerns is often decisive, since it may remove the basis of the objection without displacing the return obligation.

A finding that a child objects under Article 13(2) does not of itself prevent an order for return: the court retains a broad discretion. Once the gateway test is met, the judge must consider all relevant factors "in the round": the strength and authenticity of the child's objections, the extent of any parental influence, how the objections align or conflict with the child's wider welfare, and the overarching aims of the Convention to secure prompt return and deter abduction.

CASE NOTE 282 | UK | High Court of England and Wales
[2016] EWHC 1227 (Fam)
27 May 2016

The court accepted that the 13-year-old objected to returning to France. However, her objections were partly influenced by her mother and based on misunderstandings about what would happen if she returned. Balancing these factors with the Convention's policy, and noting that protective arrangements were available in France, the court exercised its discretion to order the child's return (§34–36, §41).

CASE NOTE 283 | UK | England and Wales Court of Appeal | P (A Child)
[2024] EWCA Civ 1569
16 December 2024

The Court of Appeal held that the trial judge had wrongly treated the 15-year-old's objections as decisive. Although the child said he did not want to return to Romania, his reasons were inconsistent with the evidence and had been shaped by his father. The Court of Appeal stressed that objections must be considered as part of a wider balance, alongside welfare and the Convention's policy aims of deterring abduction and ensuring disputes are resolved in the child's State of habitual residence. On that balance, the discretion came down firmly in favour of a return order (§§63–74, §§88–94).

The consequences of separating siblings may be relevant when the court exercises its discretion after a child's objection has been established. Each child's objection, age and maturity must be assessed individually. However, where applying Article 13(2) separately would produce a split result, the court may take account of the effect of separating the siblings when deciding whether return should nevertheless be ordered.

CASE NOTE 284 | FI | Supreme Court | ECLI:FI:KKO:2021:93
23 December 2021

Two siblings, aged 13½ and 11, objected to their return to Spain. The Supreme Court considered their views individually but also emphasised the importance of preserving the sibling relationship. It held that siblings should not be separated without particularly weighty reasons and refused the father's application for return, thereby avoiding a result in which the children would be separated.

4.5.H. Fundamental rights and freedoms - Article 20

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

Article 20 is the least invoked and least successful of the Convention's exceptions. Its wording was deliberately confined so that it could not function as one: the refusal must rest on the fundamental principles of the *requested* State on the protection of human rights and fundamental freedoms, and return must be *not permitted* by those principles – not merely in tension with them (Pérez-Vera Report, §33, §118).[202] In this sense, Article 20 is not a general welfare or best-interests clause, but a very limited public-policy exception. In practice, almost every argument presented under Article 20 is better analysed, and will in fact be analysed by the court, under Article 13(1)(b); the provision retains independent significance only in a narrow band of cases where the objection is to the legal order awaiting the child rather than to a factual risk.

Article 20 is often seen as having little independent significance because its protective scope largely overlaps with Article 13(1)(b), which already permits refusal of return if there is a grave risk of harm or an intolerable situation.[203] Courts tend to address human rights concerns, such as discrimination, abuse, or denial of basic freedoms, under Article 13(1)(b), rather than relying on Article 20. The HCCH's own guidance reflects the same channelling: allegations of judicial bias or lack of effective access to justice in the State of habitual residence are treated in the Guide to Good Practice as Article 13(1)(b) material, to be assessed within the grave-risk framework rather than as free-standing human-rights objections.[204] For example, the Advocate General at the Dutch Supreme Court noted that Article 20 has little independent meaning alongside Article 13(1)(b), which already allows refusal where return would place the child at grave risk of harm or in an intolerable situation.

[202] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction,* §33, §118.
[203] See Merle H. Weiner, *Strengthening Article 20*, 38 U.S.F. L. Rev. 701 (2004) <https://law.uoregon.edu/sites/default/files/faculty/law_bios files/Merle_Weiner-StrengtheningArticle20.pdf>, who observes that national courts frequently treat Article 20 as having little or no independent significance on the assumption that human-rights-based concerns can be accommodated within Article 13(1)(b). Weiner critically challenges this approach, arguing that Article 20 was deliberately included as a distinct safeguard, capable of addressing violations of fundamental human rights—including those affecting the taking parent—that may not meet the "grave risk" threshold under Article 13(1)(b), and that interpreting Article 20 as redundant undermines its intended function and basic principles of treaty interpretation.
[204] HCCH, Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part VI – Article 13(1)(b) (2020), §69, treating assertions of judicial bias, inability to obtain representation or other obstacles to effective access to justice as matters capable of being examined within the Article 13(1)(b) framework, while cautioning against comparisons between the judicial systems of the two States.

[205]Article 20 therefore appeared to have independent significance only in the rare case where it is demonstrated that, in the State of origin, the child risks being denied the protection of human rights and fundamental freedoms as understood in the requested State, so that return cannot be permitted.

Article 20 might be invoked in exceptional domestic-violence cases. Although courts usually analyse domestic violence under Article 13(1)(b), Article 20 may also be considered where the respondent can demonstrate that return itself would expose the taking parent or the child to a concrete violation of fundamental rights that cannot adequately be addressed through the mechanisms of the State of habitual residence. Recent international discussions have encouraged States to make greater use of Article 20 in such exceptional circumstances, recognising that victims of domestic violence should not be forced to choose between their own safety and remaining with their children.[206]

Article 20 must be *genuinely examined where it is properly raised*, but it should remain analytically distinct from Article 13(1)(b). In practice, it will often be convenient to consider overlapping Article 13(1)(b) arguments first and then determine whether any distinct Article 20 issue remains. The ECtHR's procedural requirements under Article 8 ECHR apply to all of the Convention's exceptions: where a ground is arguably raised, the court must genuinely examine it and give a reasoned decision on the point.[207] At the same time, the analytical sequence matters. Because almost all Article 20 material overlaps with Article 13(1)(b), the court should first exhaust the Article 13(1)(b) analysis – including the availability of protective measures – and turn to Article 20 only for whatever residue genuinely concerns the legal order of the State of origin rather than factual risk. Given the exceptional wording of Article 20, the party relying on it must substantiate the alleged incompatibility concretely; general assertions or a comparison between legal systems are insufficient.

Article 20 objection is unlikely to succeed on broad claims about restrictions in the State of origin. It should be demonstrated that the child is *personally affected* – for example, that conversion to another faith has taken place, or that proceedings in the State of origin demonstrably deny due process. Absent such concrete evidence, Article 20 arguments will likely be rejected.

CASE NOTE 285 | NL | The Hague District Court | ECLI:NL:RBDHA:2020:96
8 January 2020

The mother argued that return to Iran would violate her child's human rights on three grounds: first, that the child's right to practise Christianity would not be respected; second, that she herself would not receive a fair trial in Iran if she initiated custody or divorce proceedings; and third, that the child's right to family life under Article 8 ECHR would be violated as a result. The court dismissed all three arguments. It held that there was no evidence that the child or family had converted to Christianity, nor that they practised that faith in Iran in a way that would expose them to risk. Likewise, the mother had not demonstrated that she could not divorce the father in Iran or that she would be denied access to court proceedings there. Without such proof, there was no basis to conclude that the return order would breach fundamental human rights.

General claims about corruption, bias, or discrimination in the State of origin do not suffice. Allegations of judicial bias, corruption, discrimination, or lack of a fair trial must be concrete, specific, and supported by evidence showing a real and individual risk. Mere assertions, stereotypes, or

[205] Opinion of Advocate General at the Supreme Court of the Netherlands, ECLI:NL:PHR:2007:BB3193, 28 September 2007, §15.
[206] Joint Letter to the HCCH from the Special Rapporteur on violence against women and girls, the Special Rapporteur on the sale, sexual exploitation and sexual abuse of children, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Info. Doc. No. 15 (October 2023), §2 <https://assets.hcch.net/docs/9e6532eb-3966-4d81-b7f4-e290b8c6cae7.pdf>.
[207] *X v. Latvia,* App no 27853/09 (ECtHR, 26 November 2013), §§106-107.

systemic accusations – without proof – are insufficient to trigger Article 20; between EU Member States they also collide with the presumption of mutual trust described above.

CASE NOTE 286 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2024:1981
23 September 2024

The father alleged that courts in Serbia are biased in favour of mothers, corrupt, and hostile to Croats, Dutch nationals, and Catholics, and that he would therefore not receive a fair trial. The court rejected the Article 20 defence because these claims were not substantiated, not made plausible, and not supported by evidence. As a result, the high threshold of Article 20 was not met.

Settlement, or the fact that a child may be better off remaining in the requested State, does not without more engage Article 20. Article 20 concerns cases in which return cannot be permitted because the child would be denied the protection of human rights and fundamental freedoms in the State of origin, measured against the fundamental principles of the requested State. Ordinary settlement and best-interests considerations cannot be transformed into an Article 20 objection simply by framing them under Article 8 ECHR or Article 3(1) CRC.

CASE NOTE 287 | NL | Supreme Court | ECLI:NL:HR:2007:BB3193
28 September 2007

The mother argued that, because the child had become deeply settled in the Netherlands, return to Hawaii was no longer in the child's best interests and should be refused, including under Article 20. The Supreme Court rejected the argument. It held that Article 20 concerns cases in which the child would, in the State of origin, be denied the protection of human rights and fundamental freedoms as understood in the requested State, so that return cannot be permitted. The mere fact that, because of settlement following the abduction, the child would be better off if return were refused was insufficient to engage Article 20. The Court likewise held that settlement alone did not make return contrary to Article 8 ECHR and rejected the reliance on Article 3(1) CRC.

A comparison of protection systems is not an Article 20 argument. A general claim that another State provides less specialised support, or applies different terminology or practice for domestic violence, does not meet the threshold. The provision does not allow the requested court to compare or rank protection systems between States – it is engaged only where fundamental rights would clearly be denied in practice. Allegations of intimate terror (coercive control or psychological abuse) can be relevant under this provision only if convincingly established and if return would place the child or taking parent in a situation amounting to a real violation of rights protected under instruments such as the ECHR, the CRC, or the Istanbul Convention.

CASE NOTE 288 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2025:1827
9 September 2025

The mother invoked Article 20, arguing that her and her child's rights would not be protected on return to Poland, as Poland was "not familiar with the phenomenon of intimate terror". She asserted that she received specialised assistance in the Netherlands but would not find comparable protection in Poland. The court dismissed the claim, noting that no evidence of actual violence or coercive control had been produced, and that Poland offers legal protection mechanisms for victims of domestic violence. It found no basis to conclude that return would breach the Netherlands' fundamental principles under the ECHR, the CRC, or the Istanbul Convention.

Article 20 may justify refusing return where return would expose the child to an imminent and irreversible legal process – such as adoption without parental consent – that fundamentally conflicts with the requested State's constitutional protection of family life. It applies only in exceptional situations where return would foreseeably place the child in a legal system allowing irreversible interference with family ties under standards that the requested State regards as incompatible with its most basic constitutional principles.[208]

CASE NOTE 289 | **IE** | **High Court** | Foyle Health Trust v E.C. | [2006] IEHC 448
7 September 2006

The High Court refused a return solely under Article 20 because return would expose the child to a real and immediate risk of adoption without parental consent under legal standards incompatible with Irish constitutional law. The child was born in Northern Ireland after the mother left Ireland to avoid child-protection proceedings. Following the birth, Northern Irish authorities placed the child in foster care and were actively pursuing adoption. When the mother later removed the child to Ireland, return proceedings were initiated. The Irish court accepted that, if returned, the child would likely become subject to an adoption process offering weaker constitutional protection of family life than Irish law, which requires exceptionally stringent safeguards before adoption without parental consent. The court held that returning the child in order to facilitate such a process would conflict with Ireland's fundamental constitutional principles protecting the family.

Article 20 cannot serve as a general public policy exception. It, however, has occasionally been applied where return would place the child within a foreign legal framework that the requested court considered incompatible with fundamental principles of its own legal order. Such cases illustrate the potential overlap between Article 20 and domestic public policy. The decisive question, however, remains whether the incompatibility identified by the court amounts to a concrete conflict with the requested State's fundamental principles concerning the protection of human rights and fundamental freedoms, rather than merely a difference between the family-law systems of the two States.

CASE NOTE 290 | **BG** | **Sofia City Court** | 20171100113176
21 December 2017

In a case concerning the return of a child to Denmark, the Bulgarian court refused return on the basis of Article 20, relying solely on the argument that Danish law recognised two legal mothers, a concept not known to Bulgarian law. The applicant, who was recognised in Denmark as a legal parent with parental responsibility, sought the child's return following the child's removal to Bulgaria. Although the court set out the general framework of the Convention and accepted that the child had habitual residence in Denmark, it did not assess at all whether there had been a wrongful removal or retention, whether custody rights had been exercised, or whether any of the exceptions under Article 13 were established. Instead, the court proceeded directly to Article 20 and grounded its refusal on the incompatibility between the Danish legal recognition of dual motherhood and the principles of Bulgarian family law. In particular, the court relied on constitutional and statutory provisions emphasising that, under Bulgarian law, a child can have only one mother and that parental rights are structured accordingly. It concluded that returning the child to a legal system recognising two mothers would be contrary to the fundamental principles of Bulgarian law relating to the protection of family and parenthood, and therefore incompatible with Article 20.

[208] See P. Beaumont & K. Trimmings, *"Article 20 of the 1980 Convention: Overlooked or Underused?"*, Journal of Comparative Law 9(1) (2014), pp. 77–78, discussing *Foyle Health and Social Services Trust v EC & Anor* [2006] IEHC 448.

EU implications

Between EU Member States, the application of Article 20 cannot be analysed solely through the 1980 Hague Convention. Return proceedings are also governed by Brussels IIb and by the broader principles of EU law, which shape both the practical consequences of a refusal and the circumstances in which Article 20 may be invoked. The interaction between these instruments makes the operation of Article 20 in intra-EU cases materially different from its application in relations with non-EU Contracting States and, therefore, requires separate consideration. Two points deserve particular attention.

1. **Within the EU, a refusal based on Article 20 falls outside the override mechanism – which makes the ground strategically significant despite its rarity.** The override procedure of Article 29 Brussels IIb is available only where return was refused solely on the basis of Article 13(1)(b) or 13(2) of the 1980 Convention. A refusal grounded on Article 20 therefore cannot be displaced by a subsequent certified decision of the courts of the child's habitual residence under that procedure. The consequences work both ways: for the respondent, Article 20 is one of the few grounds whose success is not provisional in the intra-EU setting; for the requested court, precisely this finality is a reason for particular restraint, since a mistaken Article 20 refusal cannot be corrected through the Regulation's own machinery but only on appeal within the requested State. The same asymmetry existed under Article 11(8) Brussels IIa, which likewise attached the override only to Article 13 refusals.

2. **Between EU Member States, Article 20 must also be applied in the light of the principle of mutual trust.** EU law requires Member States, save in exceptional circumstances, to proceed on the basis that other Member States comply with EU law and with the fundamental rights it protects.[209] In return proceedings, this reinforces the narrow character of Article 20: general criticism of another Member State's courts, social services or system of protection is insufficient. The assessment must remain concrete and case-specific, and differences in legal rules, institutional practice or the quality of judicial protection do not, without more, establish that return is impermissible under the fundamental principles of the requested State.[210]

[209] Opinion 2/13, *Accession of the European Union to the ECHR*, EU:C:2014:2454, §191, stating that mutual trust requires Member States, save in exceptional circumstances, to regard other Member States as complying with EU law and the fundamental rights recognised by EU law.
[210] The principle is stated in general terms in HCCH, *Guide to Good Practice, Part VI: Article 13(1)(b),* (2020) <https://assets.hcch.net/docs/225b44d3-5c6b-4a14-8f5b-57cb370c497f.pdf> §69: "the Convention being based on mutual trust between States, the evaluations in return proceedings should not compare the relative quality of judicial systems in both States".

Unit 5: Cross-Cutting Issues in Return Proceedings

The issues examined in this Unit do not belong exclusively to the applicant's or respondent's case, nor do they arise only under one particular Convention provision. They cut across the entire return proceeding and may affect the court's approach at several stages: the framing of the application and defences, the collection and assessment of evidence, the participation of the child, the use of protective measures, the management of parallel proceedings, and the reasoning and enforcement of the final decision.

They are therefore addressed together here rather than repeated under each individual ground. The purpose is to show how these broader procedural and substantive considerations interact with the Convention's specific tests without replacing them. Best interests, human rights, domestic violence, delay, child participation, protective measures and judicial discretion do not constitute free-standing alternatives to Articles 3, 12, 13 or 20; they shape how those provisions are argued, proved and applied in practice.

5.1. The best interests of the child in return proceedings

> *"It is clear that the Convention and the Regulation are based on the principle that, in the event of a child's wrongful removal or retention, his or her superior interests do indeed always require that return, except only in certain clearly-defined situations set out in Articles 13 and 20 of the Convention (read, in so far as Article 13(b) is concerned, in conjunction with Article 11(4) of the Regulation). That, it seems to me, is perfectly coherent, and even necessary. A child can have no interest in being dragged from one Member State to another by a parent in quest of the court which he or she supposes will be the most sympathetic to his or her cause."*
>
> *View of Advocate General Sharpston, Rinau, C-195/08 PPU* [211]

At the centre of the system lies a defining feature: the Convention is not primarily about deciding what is best for the individual child in the immediate case, but about ensuring that such decisions are taken by the appropriate forum.[212] Return proceedings therefore function as a gateway. They are designed to reverse the jurisdictional advantage sought through the abduction and to ensure that the merits are determined by the competent forum, not to resolve the custody dispute themselves. This structural orientation explains much of what follows in practice: the emphasis on speed, the summary nature of proceedings, and the strict calibration of defences. It also explains why arguments framed in terms of welfare, fairness, or hardship will fail if they are not translated into the specific legal thresholds required by the applicable instruments.

[211] View of Advocate General Sharpston delivered on 1 July 2008 (ECLI:EU:C:2008:377) in Judgment of 11 July 2008, *Rinau*, Case C-195/08 PPU, ECLI:EU:C:2008:406
[212] See also P. McEleavy, "The European Court of Human Rights and the Hague Child Abduction Convention: Prioritising Return or Reflection?", (2015) 62 *Netherlands International Law Review* 365 <https://link.springer.com/article/10.1007/s40802-015-0040-z>, especially at p 365–367.

5.1.A. Operating principles of the 1980 Convention

The States signatory to the present Convention,

Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,

Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,

Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions […]

Preamble, 1980 Convention

The 1980 Convention's design rests on a small number of operating premises that shape every aspect of return proceedings. They are not separate doctrines to be invoked individually but a connected logic running through the instrument as a whole. Practitioners encounter them indirectly in the calibration of defences, the reasoning of judgments, the limits of what arguments will succeed, but understanding them at the outset clarifies what the Convention is asking courts to do, and what it is asking them not to do.

The first and most fundamental of these premises is that the 1980 Convention is an *anti-self-help instrument*. Its summary return mechanism is designed to counter the use of unilateral action by parents seeking to resolve parental responsibility disputes outside the judicial process. The design assumes and enforces the principle that parental disputes must be submitted to the competent courts of the State of habitual residence. A parent who unilaterally removes or retains a child should not ordinarily obtain a procedural or jurisdictional advantage from the situation thereby created. This explains why post-removal developments cannot, outside the Convention's express exceptions, displace the return mechanism. Where Articles 12 or 13 make later developments relevant, however, the court must examine their actual effect on the child.

CASE NOTE 291 | **PT** | **Supreme Court** | 7603/20.5T8PRT-C.P1.S1
4 May 2021

A father wrongfully removed two daughters from Iceland to Portugal in July 2020, without the consent of the mother who co-held custody under Icelandic law. The Icelandic authorities had specifically warned him that he could not impede the mother's contact with the children and was required to share parenting. Three days after this warning, he abducted the children to Portugal. The Supreme Court articulated the doctrinal framework against which such conduct is to be assessed. It held that the 1980 Convention's simplified and urgent return procedure is one of the means chosen by the international community to counter *autotutela* – self-help – in disputes over parental responsibility. The Court explained that the Convention dissuades parents from attempting to create factual situations favourable to themselves by unilateral action, whether by displacing the jurisdiction of the competent courts to the State where they have taken the child, or by building ties between the child and the new environment that would make return prejudicial. The father, rather than submitting to the law of the State he had chosen for habitual residence, had opted for a mechanism of self-help, relying on the Portuguese justice system to favour him. The Court held that such conduct is precisely what the Convention is designed to prevent.

Closely linked to this premise is the Convention's *implicit objective of deterrence*.[213] The Pérez-Vera Report at §§16–18 explains that an effective way of deterring an abductor is to deprive the wrongful action of any practical or judicial consequences, which is achieved through restoration of the status quo.[214] Prompt return and deterrence thus operate in tandem: return is the remedy in the individual case, while the systemic message that unilateral cross-border action will be reversed serves the broader objective of preventing future abductions. For practitioners, this matters because arguments for strict application of the Convention's return mechanism are not confined to the interests of the individual child before the court. The Convention's coherence as an international instrument depends on its predictable operation, and courts that dilute the return remedy in individual cases reduce the deterrent effect on which the wider system relies.

Within the EU, these premises are reinforced by *mutual trust between Member States*. Mutual trust supports confidence in the courts and protection systems of the other Member State and underpins judicial cooperation, recognition, enforcement and the operation of protective measures under Brussels IIb. While it does not relieve the requested court of its duty to examine the Convention's refusal grounds, it still rests on shared autonomous concepts, such as habitual residence, rights of custody, wrongful removal, and on effective judicial cooperation through the channels established by the Regulation. Where these foundations appear strained, courts may register concerns even while continuing to apply the framework. The practical implications of mutual trust are most concretely felt in the assessment of protective measures (see Chapter 5.9) and in the enforcement of return orders across Member States (see Chapter 6.3).

Two further premises are too well-established to require sustained treatment here but operate throughout the handbook. Article 1 makes *prompt return* not merely a procedural aspiration but one of the Convention's two express objects, placing it on the same normative footing as the protection of custody and access rights. It gives the 1980 Convention its temporal character: Article 11 imposes a duty of expedition on Central Authorities and courts, and the six-week benchmark, although not an absolute deadline, sets the expectation against which delay is measured.[215] The *summary nature* of return proceedings flows from the same source: courts are not to conduct a full merits inquiry into custody but to make a focused determination on the narrow questions the Convention puts before them. These two features explain much of what practitioners experience in practice — limited evidentiary scope, accelerated timetables, and the strong calibration of the Article 13 defences. They are addressed substantively in Chapter 5.3 on time limits, delays, and the duty of expedition and in Chapter 5.4 on evidence and burden of proof.

National courts applying the 1980 Convention do not always open their analysis with an explicit articulation of the instrument's governing premises. In the majority of return proceedings, particularly those resolved at first instance under time pressure, courts move directly to the specific grounds raised by the parties — wrongfulness of the removal, the applicability of an Article 13 exception, or the sufficiency of protective measures — without pausing to state the Convention's underlying logic in doctrinal terms. The operating principles described above are present in the

[213] Ibid - see P McEleavy, 'The European Court of Human Rights and the Hague Child Abduction Convention: Prioritising Return or Reflection?' (2015) 62 Netherlands International Law Review 365, at 366 n 3 (open access, available at <https://link.springer.com/article/10.1007/s40802-015-0040-z>).
[214] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction,* §§16-18.
[215] The principle of prompt return is central to the 1980 Hague Convention, though delays have long been a source of criticism — particularly in the EU. Beaumont, Walker and Holliday note that appeals in some Member States have left cases pending for years (citing *Povse*) and welcomed the Commission's 2016 proposal to limit appeals to one and impose a six-week time limit at both first instance and appeal under the recast Brussels IIa Regulation. See P Beaumont, L Walker and J Holliday, *'Parental Responsibility and International Child Abduction in the proposed recast of Brussels IIa Regulation and the effect of Brexit on future child abduction proceedings'* (2016) 4 *International Family Law* 307 <https://www.abdn.ac.uk/media/site/law/documents/CPIL_Working_Paper_No_2016_6_revised.pdf>.

reasoning, but implicitly: they shape the calibration of the defences, the weight given to post-removal developments, and the scope of the evidentiary inquiry, without being named as such.

That said, elaboration on the Convention's foundational premises does appear, and when it does, it is worth attending to carefully. Appellate courts, in particular, sometimes use the statement of operating principles as a framing device – situating the specific appeal within the broader architecture of the Convention before examining the individual grounds of challenge. This is especially common where the appellant has raised a broad Article 13(1)(b) defence, invoked human rights instruments alongside the Convention, or sought to introduce welfare considerations that the Convention's design does not accommodate.

CASE NOTE 292 | **ES** | **Valencia Provincial Court** | ECLI:ES:APV:2026:13
23 January 2026

The court set out three operating principles with ECtHR case law references before addressing the appellant's arguments: *the paramount interest of the child*, which the court – citing Fusca v. Romania (ECtHR, 13 July 2010) – identified with the preservation of family ties with both parents, and which requires courts to shield children from the so-called "loyalty conflict" described in Kopf and Liberda v. Austria (ECtHR, 17 January 2012); *the principle of expedition*, developed in ECtHR case-law into what the court called a duty of exceptional diligence, underlining the obligation of States to resolve proceedings concerning children promptly and recognising that the passage of time risks producing a de facto resolution of the very custody question the Convention reserves to the courts of habitual residence; and the *prohibition on deciding the merits*, which prevents the return court from treating the restitution procedure as an occasion to adjudicate custody. The court then noted, consistently with Article 19 of the Convention, that its return order would leave the Swiss custody proceedings entirely intact.

5.1.B. The best interests of the child

> *'The legal standard 'the best interests of the child' is at first view of such vagueness that it seems to resemble more closely a sociological paradigm than a concrete juridical standard. How can one put flesh on its bare bones without delving into the assumptions concerning the ultimate interests of a child which are derived from the moral framework of a particular culture?'*
>
> *Perez-Vera Explanatory Report, §21*[216]

The 1980 Convention speaks of the "*interests" of children* only once, and only in its preamble. By contrast, the 1996 Convention repeatedly refers to the *best interests of the child* as an operative principle guiding jurisdiction, applicable law, and protective measures. This difference is not accidental. It reflects two distinct regulatory choices. The 1980 Convention addresses a specific harm—international child abduction—and protects children's interests indirectly, by restoring the status quo and preventing unilateral changes to a child's situation. The 1996 Convention, by contrast, is designed to regulate ongoing parental responsibility and child protection and therefore places the child's best interests at the centre of decision-making. Understanding this distinction is essential

[216] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction,* §21.

in return proceedings: while the child's interests justify the return mechanism, they do not function as a free-standing welfare test in abduction cases, unlike under the 1996 Convention.

The official HCCH outline of the 1980 Convention also describes the Convention's relationship with the UNCRC, citing Articles 9, 10, 11 and 35 while omitting Article 3, which enshrines the best interests of the child as a primary consideration in all actions concerning children.[217] The outline reads: *"…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 omission does not resolve how Article 3 UNCRC interacts with the return mechanism, but it highlights the central interpretative question: how can best interests remain a primary consideration without converting return proceedings into a full welfare inquiry?

That is a question addressed in the Pérez-Vera Report, §§20-23.[218] The drafters' concern was practical: the concept is inherently vague and, crucially, it had been routinely used by domestic courts to justify awarding custody to the abducting parent, thereby rewarding the wrongful removal. They also knew that, in international abduction cases, this approach had often produced the same result: custody being awarded to the parent who had wrongfully removed the child. Allowing each requested State to conduct its own welfare assessment would have made the Convention unworkable, with courts in different countries reaching different conclusions based on their own cultural assumptions. Therefore, in practice, courts should be cautious when "best interests" is invoked in abstract terms: the phrase may appear neutral, but it can easily conceal assumptions about proper upbringing, parental roles, stability, religion, autonomy, or moral environment. In return proceedings, those assumptions should not replace the Convention's structured inquiry into wrongfulness, return, and the limited grounds for refusal.[219]

CASE NOTE 293 | NL | Overijssel District Court | ECLI:NL:RBOVE:2025:6188
11 September 2025

In a 2024 Bulgarian appellate decision arising from a return request brought by a Dutch father, the court dismissed the application not by applying the 1980 Convention's framework, but by reasoning that the child's habitual residence was with the mother on the basis of a general assumption that an infant is exclusively cared for by its mother. The court did not engage with the wrongful removal as its starting point, as Article 3 requires. Instead, it substituted a sociological presumption about caregiving for a legal analysis, and in doing so effectively treated the post-removal situation as determinative. In later Dutch proceedings concerning parental responsibility and maintenance, the Overijssel District Court recorded the Bulgarian appellate decision. In the published summary of its judgment, it specifically noted that the Bulgarian Court of Appeal had not taken the allegedly wrongful removal under joint custody as its starting point, but had treated the child's habitual residence as being with the mother in Bulgaria on the basis of the general assumption that an infant is cared for exclusively by its mother. The Dutch court itself was not reviewing the Bulgarian return decision.

The CJEU has repeatedly invoked the best interests of the child in international child-abduction and related parental-responsibility cases, usually as a structural principle supporting the allocation of jurisdiction, proximity, child participation, recognition and enforcement, rather than by defining its

[217] HCCH, Outline: Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, <https://assets.hcch.net/docs/e6a6a977-40c5-47b2-a380-b4ec3a0041a8.pdf>.
[218] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction,* §§20-23.
[219] See further Wibo van Rossum, 'The Clash of Legal Cultures over the "Best Interests of the Child" Principle in Cases of International Parental Child Abduction' (2010) 6(2) *Utrecht Law Review* 33, <https://utrechtlawreview.org/articles/10.18352/ulr.123 > p 36–46, contrasting the dominant Dutch/modern liberal understanding of the child's best interests – stability, continuity, emotional attachment, shared parental responsibility and the development of autonomy – with Islamic legal-cultural understandings in which religious upbringing, moral protection, paternal guardianship (*wilaya*), daily care (*hadana*) and family authority may play a stronger role.

substantive content as an autonomous welfare standard for return proceedings.[220] This does not mean that children's interests disappear from return proceedings; they re-enter the analysis only in carefully limited ways. However, arguments framed solely in terms of what is "best" for the child, without anchoring them in the Convention's structure and exceptions, are unlikely to succeed. The 1980 Convention protects children not by asking courts to predict their ultimate life outcomes, but by preventing unilateral actions, restoring legal order, and reserving welfare decisions for the right forum.[221] In the Conclusions and recommendations (2023), the HCCH Special Commission reaffirmed that the best interests of the child are safeguarded by protecting children from wrongful removal or retention.[222] In cases of wrongful removal or retention, the return of the child to the State of habitual residence is, in principle, in the child's best interests.[223]

The ECtHR has developed a more substantive account of best interests in abduction proceedings than either the 1980 Convention or the CJEU. The Court treats best interests as the primary consideration in the fair balance it must strike between the competing rights of the child, the left-behind parent, and the abducting parent under Article 8 ECHR. It has consistently held that, in abduction cases, best interests are presumptively served by the prompt restoration of the status quo – that is, by the child's immediate return to their country of habitual residence – on the basis that the abducting parent should not benefit from their own wrongdoing. That presumption is, however, rebuttable. The Court requires national courts to conduct a genuine, *in concreto* examination of the circumstances of each case, taking into account the exceptions provided by the Convention, in particular Articles 12, 13 and 20. Crucially, the Court has consistently held that return cannot be ordered automatically or mechanically: domestic courts must give specific, sufficiently detailed reasons in light of those exceptions, and must satisfy themselves that adequate safeguards are available in the country of return. Insufficient or stereotyped reasoning – whether refusing or ordering return – is itself a violation of Article 8. In the ECtHR's framework, the best interests of the child operate within the structure of the Convention: they support the return mechanism, require genuine examination of the Convention's exceptions, and do not authorise a free-standing welfare assessment.[224]

The approaches of Contracting State courts to the interaction between the Convention's return mechanism and the child's best interests, however, vary to a great extent. Some jurisdictions maintain that the Article 13 exceptions must be interpreted strictly and that the child's best interests operate through the Convention's own scheme rather than as a free-standing override. Other

[220] The Court has referred to the concept across various procedural contexts: in relation to jurisdiction and proximity (Judgment of 23 December 2009, *Detiček v Sgueglia*, Case C-403/09 PPU, ECLI:EU:C:2009:810, §38; Judgment of 9 November 2010, *Purrucker v Vallés Pérez,* Case C-296/10, ECLI:EU:C:2010:665, §84; Judgment of 9 October 2014, *C v M*, Case C-376/14 PPU, ECLI:EU:C:2014:2268, §50); choice of forum (Judgment of 12 November 2014, *L v M*, Case C-656/13, ECLI:EU:C:2014:2364, §39, §§48–49); hearing of the child (Judgment of 22 December 2010, *Aguirre Zarraga v Pelz,* Case C-491/10 PPU, ECLI:EU:C:2010:828, §§63–64, §§66–68); recognition and enforcement (Judgment of 1 July 2010, *Povse v Alpago,* Case C-211/10 PPU, ECLI:EU:C:2010:400, §§80–83; Judgment of 19 November 2015, *P v Q,* Case C-455/15 PPU, ECLI:EU:C:2015:763, §§38–39, §53); and transfer of jurisdiction (Judgment of 16 June 2016, *Child and Family Agency v JD,* Case C-428/15, §§58–60). In each instance, however, best interests function as a structural principle justifying the design of the system rather than as a substantive standard whose content the Court defines.

[221] For a discussion of the tension between the 1980 Convention's return mechanism and the best interests standard from a children's rights perspective, see B Borisova, 'The Best Interests of the Child in Parental Abduction Cases: Rethinking the Hague Abduction Convention in Light of Children's Rights' (Advanced LLM thesis, Leiden University Faculty of Law, 2020/2021) <https://www.universiteitleiden.nl/binaries/content/assets/rechtsgeleerdheid/instituut-voor-privaatrecht/jeugdrecht/betina-borisova---the-best-interests-of-the-child-in-parental-abduction-cases.-rethinking-the-hague-abduction-convention-in-light-of-childrens-rights.pdf>.

[222] HCCH, *Conclusions & Recommendations* (2023).

[223] See also the Opinion of Advocate General Emiliou (ECLI:EU:C:2023:21) in Judgment of 16 February 2023, *T.C. and Others*, Case C-638/22 PPU, delivered on 12 January 2023, §29, observing that "in principle, it is in [children's] best interests to restore, as soon as possible, the 'status quo ante' and the continuity of the conditions in which the child lives and develops".

[224] See for example European Court of Human Rights Registry, 'Key Theme: Article 8 – International Child Abduction' (last updated 28 February 2026), available at the Council of Europe website. The document is prepared by the Registry and does not bind the Court <https://ks.echr.coe.int/documents/d/echr-ks/international_child_abduction >. The leading cases are *Neulinger and Shuruk v Switzerland*, App. no 41615/07, (ECtHR, 2010), and *X v Latvia*, App. no 27853/09, (ECtHR, 2013), with a recap of general principles in *Thompson v Russia*, APP. no 36048/17, (ECtHR, 2021), §§46–53.

jurisdictions integrate a more substantive best-interests assessment into the Article 13 analysis.[225] Practitioners working across jurisdictions should expect materially different outcomes on similar facts depending on where the return proceeding is brought, and should tailor their argumentation accordingly: in jurisdictions where best-interests assessment is more readily integrated into the Article 13 analysis, evidentiary focus on the concrete circumstances of the individual child carries greater weight than in jurisdictions where Article 13 is interpreted through a presumption of restriction.

CASE NOTE 294 | **PL** | **Supreme Court** | II CSKP 1697/22
13 October 2022

In a return case raising objections under Article 13, the Polish Supreme Court addressed the relationship between the child's best interests and the Convention's refusal grounds. The Court confirmed that while best interests – corresponding in Polish law to the concept of "child's welfare" – constitute an absolute interpretive obligation applicable to every decision, they do not provide an independent ground for refusing return. Their significance must be assessed within the structure of the Convention's express refusal grounds under Articles 12, 13, and 20. Article 24(2) of the EU Charter, which requires that best interests be a primary consideration in all activities concerning children, guides the interpretation of those grounds but does not expand them. A court that treats best interests as a freestanding basis for refusing return, independently of the Convention's enumerated grounds,

Courts often face a tension between the Convention's goal of prompt return and the child's individual best interests in being protected from harm.[226] However, while applying the 1980 Convention, they have consistently held that best interests have a specific and bounded meaning: they are served, as a general rule, by the prompt restoration of the child's pre-existing living conditions under the jurisdiction best placed to decide custody on the merits. When courts address best interests in return proceedings, the relevant inquiry is therefore twofold – whether the child should be returned to the State of habitual residence, and whether the conditions of return are safe, which may require undertakings or protective measures. What courts must not do is use best interests as a vehicle for comparing the relative merits of the two countries, or for allowing the situation created by the abduction to consolidate. Factors such as the child's integration in the requested State or the circumstances of the abducting parent do not transform best interests into an independent ground for refusal unless they meet the threshold of Article 13(1)(b). Best interests operate within the Convention's architecture, not as an override of it.

[225] See Portuguese Supreme Court of Justice (Supremo Tribunal de Justiça), First Section, 13 September 2022, Process 20/22.4T8VVC-A.E1.S1, Manuel Aguiar Pereira (Rapporteur), §II(4)(d)–(e), <https://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/4f8650181db797ed802588bc00508a6f?OpenDocument. The Portuguese Supreme Court has held that Article 13(1)(b) must be interpreted in the light of the primacy attributed to the child's best interests by Article 3 of the UNCRC and has expressly rejected the view that all grounds of opposition to return must be interpreted restrictively, endorsing the scholarly position that the decisive criterion must always be the best interests of the specific child in question.

[226] Scholars and practitioners remain divided. Some argue that the Convention's focus on speedy return often undermines children's welfare and the safety of abducting parents fleeing violence, urging a stronger role for the *best interests principle* as a guiding test in grave-risk cases. Others warn that importing a broad welfare analysis risks turning return proceedings into custody disputes, contrary to the Convention's design. More can be read at K. Trimmings, 'The Interplay between the 1980 Hague Convention on the Civil Aspects of International Child Abduction and Domestic Violence' Laws (2023) <https://www.mdpi.com/2075-471X/12/5/78>.

CASE NOTE 295 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2016:67
20 January 2016

In proceedings concerning the return of a child to Belgium, the court emphasized that the child's interests in 1980 Convention cases have two aspects: first, that the child be reunited with his or her parents as soon as possible, so that one parent does not obtain an unreasonable advantage through the passage of time; and second, that the child's development take place in a safe environment. The mother argued that return would harm the child's interests, particularly if he had to live with the father. The court rejected this, noting that the father had explicitly undertaken to accommodate the child upon return, to withdraw his criminal complaint against the mother, and to ensure professional support through Belgian child welfare services. These assurances were considered sufficient to safeguard the child's environment. Importantly, the court held that there was no evidence that return would be so contrary to the child's interests that it should be refused.

CASE NOTE 296 | FR | Supreme Court | ECLI:FR:CCASS:2020:C100795
5 November 2020

A French Court of Appeal had refused to return a child to Mexico, citing her integration in France, her mother's lack of family support in Mexico, and the father's alleged instability and past drug use. The Cour de cassation annulled this decision, holding that these factors were not sufficient to characterise grave risk or an intolerable situation. The Court stressed that while the child's best interests must be taken into account, they cannot justify broadening the scope of Article 13(1)(b).

CASE NOTE 297 | DE | Court of Karlsruhe
ECLI:DE:AGKARLS:2019:1114.2F1701.19.00
14 November 2019

The court reaffirmed that the "immediate return" obligation in Article 12(1) is rooted in the best interests of the child, understood as the need to preserve the child's pre-existing living conditions. The return order was justified on the basis that the child should continue life in their original linguistic and cultural environment, under the jurisdiction of the court best placed to decide custody. The court stressed that allowing a new situation created by the abduction to prevail would undermine the child's stability and encourage self-help, contrary to the Convention's purpose.

In non-treaty cases, where the 1980 Convention is applied by analogy, the child's best interests similarly do not open the door to a free-standing or full welfare assessment. They must be considered within the Convention's structure and refusal grounds. The starting point remains that an unlawful removal is generally contrary to the child's interests and that substantive questions of custody and residence should be decided in the State of habitual residence.

CASE NOTE 298 | NL | The Hague Court of Appeal
ECLI:NL:GHSGR:2012:BV5608
18 January 2012

The mother resisted the return of the children to Nigeria, arguing that because Nigeria was not a Contracting State, the Dutch court should apply a broader test and undertake a full balancing of the children's interests. The Court of Appeal rejected that argument. It held that the Convention's refusal grounds were intended to be applied by analogy also in non-treaty cases. The children's interests had to be taken into account, including in light of ECtHR case law, but they could not be assessed by disregarding the Convention framework. The Court emphasised that the Convention itself serves the child's interests, that children are generally not served by being unlawfully removed to another country, and that the merits of custody and residence should be determined in the State of habitual residence.

5.2. Human rights instruments in return proceedings

Parties in return proceedings often seek to strengthen their arguments by invoking human-rights or child-protection treaties beyond the 1980 Convention itself: Article 8 ECHR (respect for private and family life), the UN Convention on the Rights of the Child (in particular Articles 3, 11 and 12), the EU Charter of Fundamental Rights (Articles 7, 24 and 47), or the Istanbul Convention. These instruments are relied upon to argue that return would breach broader human-rights standards even where the strict requirements of the Convention's exceptions are not met – or, on the applicant's side, to compel the requested State to act effectively and expeditiously.

The first and most important principle is that external human-rights treaties cannot create grounds for refusing return beyond those expressly provided in the 1980 Convention; they rather govern how the existing exceptions are applied. Courts acknowledge that States are bound by these broader obligations in parallel with the 1980 Convention. The prevailing judicial approach, shared by the ECtHR, the CJEU and national supreme and constitutional courts, is that the instruments must be interpreted harmoniously: the Convention's system of prompt return is itself understood as serving the child's best interests, so applying it faithfully is not a breach of human-rights law but an implementation of it.

CASE NOTE 299 | CZ | Constitutional Court | II. ÚS 3345/20
8 April 2021

The Czech Constitutional Court has set out the full architecture. Article 8 ECHR must be read in light of the obligations flowing from the 1980 Convention and, where applicable, the Brussels II regime; the instruments pursue comparable aims and must be interpreted consistently. Within the EU, the Regulation has direct effect, takes precedence over conflicting Convention obligations and rests on mutual trust. Under the ECtHR's *Bosphorus* presumption, a State applying binding EU law is presumed to comply with the ECHR unless the protection of Convention rights is manifestly deficient – so compliance with the Regulation will normally be compatible with Article 8. At the same time, Article 8 shapes how the rules are applied: courts must not decide mechanically, must examine the individual family situation, must hear both parents, must reason with care, and must act with the utmost expedition, since delay can irreparably damage the parent-child relationship.

5.2.A. The significance of human rights instruments in litigating and deciding return cases

Human-rights analysis in child-abduction cases is usually presented through the lens of subsequent ECtHR review. That perspective is incomplete for litigation. Before any external review arises, the relevant human-rights instruments already perform concrete functions inside the return proceedings themselves: they guide interpretation, impose procedural discipline, shape the assessment of evidence, and fill gaps where the Convention does not provide a remedy. These functions operate very differently from the ex-post review that follows a concluded case.

The decisive distinction is that human-rights instruments operate *prospectively inside the proceedings, and only retrospectively after them*. The national judge bears primary responsibility for applying the relevant human-rights standards. The ECHR and the UNCRC bind the State, although their precise domestic effect depends on the legal system concerned; in intra-EU return proceedings, the Charter applies because the court is applying EU law. Every function described below – interpretation, procedural discipline, evidentiary method, gap-filling – is performed by the

return court itself, in time to shape the decision. After the decision, the character of the instruments changes completely. Review by the ECtHR is subsidiary and ex post: it begins only after exhaustion of domestic remedies, ordinarily takes years while return proceedings take weeks, has no suspensive effect, and in principle cannot reverse the return or the refusal. What the ECtHR offers is a finding of violation and just satisfaction, and what it reviews is the record the parties built below: whether the objections were raised, how the court reasoned, how long each stage took.

First function: the instruments supply the interpretative lens through which the exceptions are read, and the calibration of that lens is now clear. The 1980 Convention was drafted as a self-contained system whose presumption of prompt return itself embodies a conception of the child's interests.[227] *X v. Latvia* provides a solution: the instruments require a *genuine examination* of the exceptions actually raised, not a free-standing best-interests assessment.[228] The litigation significance is that a respondent gains nothing by asking the court to weigh the child's welfare at large, but benefits much more by framing each exception argument as one the court is *obliged* to examine expressly and answer with reasons.

Second function (in practice the most important): the instruments impose a procedural discipline on the deciding court that both parties can enforce during the proceedings. The operative standard a return judge now applies is procedural: hear both parties; where appropriate, ensure that the child's views are obtained in accordance with the applicable legal framework; examine every arguable exception effectively; give specific, case-based reasons; and decide with expedition.[229] Each element is actionable in real time. A respondent whose grave-risk evidence is overlooked can object that a refusal to engage with the evidence is itself a ground of appeal; an applicant facing delay can invoke the expedition obligation to press for directions and resist postponing the case further. Judges should therefore address each ground raised, explain the treatment of the evidence and record the procedural timetable clearly.

Third function: the instruments govern the method of assessing evidence, without altering who must prove what. The best-interests principle operates as a rule of procedure as much as a substantive standard, and the same is true of the gender-equality instruments: they require domestic-violence allegations to be examined seriously and without stereotype, but they do not establish the facts alleged, and they do not permit the requested court to rank the protective systems of the two States.[230] The case notes in Section 5.2.C show both edges: the court must engage with the account, and may still reject it on the evidence.

Fourth function: the instruments do independent, outcome-determinative work where the 1980 Convention does not reach. Where no return mechanism applies between the States concerned, Article 8 ECHR obliges the authorities of the State where the child is present to take effective and expeditious measures to protect family life and address the consequences of the removal.[231] Where the return rules are applied to non-Convention cases only by analogy under

[227] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction.*, §§23–25; HCCH, *Guide to Good Practice under the 1980 Child Abduction Convention, Part VI – Article 13(1)(b)* (2020), §§14–16, §§23–25.
[228] *X v. Latvia*, App. no. 27853/09, (ECtHR, 2013), §§101–108; see also *Maumousseau and Washington v. France*, App. no. 39388/05, (ECtHR, 2007), §§58–81, upholding a return order where the exceptions had been genuinely examined.
[229] J. Fawcett, M. Ní Shúilleabháin and S. Shah, *Human Rights and Private International Law* (OUP 2016), chapter on child abduction, analysing Article 8 as primarily a discipline on the decision-making process rather than a source of substantive outcomes.
[230] UN Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (section on art. 3, para. 1), CRC/C/GC/14, describing best interests as a substantive right, an interpretative principle and a rule of procedure; *Guide to Good Practice under the 1980 Child Abduction Convention, Part VI – Article 13(1)(b)* (2020), §69; see on the treatment of domestic-violence evidence, K. Trimmings and O. Momoh, "Intersection between Domestic Violence and International Parental Child Abduction: Protection of Abducting Mothers in Return Proceedings" (2021) 35 International Journal of Law, Policy and the Family.
[231] *Ignaccolo-Zenide v. Romania*, App no. 31679/96, (ECtHR, 2000), §§94–96, §§101–102; *Hromadka and Hromadkova v. Russia*, App. no. 22909/10, (ECtHR, 2014), §§153-154.

national law, Article 8 may be invoked directly and may soften the strictness of the analysis (see Chapter 5.2.B).

Within the EU, the Charter can affect the pending proceedings through the preliminary-reference mechanism. The child's opportunity to be heard under Article 24(1) of the Charter is an operative condition of the proceedings (including a condition for certification of decisions entailing return). [232] Critically, the procedural mechanism matches the timescale of return litigation: a national court can refer a question to the CJEU under the urgent preliminary-ruling procedure and, if the Court grants it, potentially receive an answer within a few months while the domestic case remains pending.[233] No equivalent exists for the ECHR: there is no reference procedure from a return court to the ECtHR in an ongoing case, and Protocol No. 16 advisory opinions may be requested only by designated highest courts.

5.2.B. Article 8 ECHR

Article 8 guarantees the right to respect for private and family life. Its operation in return proceedings has four features every litigator should understand: every return decision engages it; it binds the State in both directions; its force is overwhelmingly procedural; and it adds no refusal ground.

This relation has produced a consistent line of Article 8 ECHR positive obligations that bind Member States in return proceedings. These include the obligation to apply the 1980 Convention in an effective manner, to make adequate and effective efforts to enforce a left-behind parent's right to the return of the child, to interpret Convention provisions in accordance with international norms, and to take all necessary steps to facilitate the enforcement of return orders.[234]

Every judicial decision ordering or refusing the return of a child engages Article 8 ECHR. A return order constitutes an interference with the family life of the child and the parent affected; a refusal to return may engage the State's positive obligation to take effective measures to protect and restore the family relationship with the left-behind parent. The consequence is that both outcomes are reviewable: the respondent can challenge a return order before the ECtHR, and the applicant can attack a refusal or a failure to enforce.

Where a party raises arguable objections under Articles 12, 13 or 20, the court must examine them genuinely and give specific, case-based reasons. Article 8 does not require a full best-interests or custody assessment; it requires that the 1980 Convention be applied carefully. Automatic or stereotyped reasoning violates Article 8 and the object and purpose of the 1980 Convention alike,

[232] See Judgment of 22 December 2010, *Aguirre Zarraga*, C-491/10 PPU, EU:C:2010:828, §§59–68; Judgment of 16 February 2023, *Rzecznik Praw Dziecka e.a.*, C-638/22 PPU, EU:C:2023:103, §69.
[233] The urgent preliminary-ruling procedure (PPU) is reserved for cases such as these; Judgment of 16 February 2023, *Rzecznik Praw Dziecka*, C-638/22 PPU, EU:C:2023:103itself was decided within approximately three months of the reference. See Article 107 of the Rules of Procedure of the Court of Justice (2012), OJ L 265.
[234] On the catalogue of Article 8 ECHR positive obligations developed through ECtHR jurisprudence on the 1980 Convention, see P McEleavy, 'The European Court of Human Rights and the Hague Child Abduction Convention: Prioritising Return or Reflection?' (2015) 62 Netherlands International Law Review 365, at 373–374 (open access, available at <https://link.springer.com/article/10.1007/s40802-015-0040-z>), citing *Iosub Caras v Romania*, App. no. 7198/94 (ECtHR, 2006); *Iglesias Gil and AUI v Spain,* App. no/ 56673/00 (ECtHR, 2003); *Monory v Hungary and Romania*, App. no. 71099/01, (ECtHR, 2005); *Ignaccolo-Zenide v Romania,* App. no. 31679/96, (ECtHR, 2000).

since the system of prompt return is itself designed to serve the child's best interests.[235] The reasoning duty covers every decisive issue, not only the exceptions: custody rights, wrongfulness and the applicability of the Convention.

CASE NOTE 300 | ECtHR | Z. and Others v. Finland | App. No 42758/23
16 December 2025

The ECtHR restated the relationship between the two Conventions: the 1980 Convention supplies the primary substantive framework, Article 8 supervises its application; the requested court need not conduct a full welfare inquiry, but must engage seriously and specifically with arguable objections, failing which the decision-making process breaches Article 8. In particular, where a party raises arguable objections under Articles 12, 13, or 20 of the Hague Convention—especially an Article 13(1)(b) grave-risk defence—the domestic courts must seriously examine those objections and give specific, case-based reasons explaining their assessment. A failure to engage with such arguments, or the use of automatic or stereotyped reasoning, is incompatible with both Article 8 ECHR and the object and purpose of the 1980 Convention, whose system of prompt return is itself designed to serve the child's best interests. (Chamber judgment – referred to the Grand Chamber on 11 May 2026)

Article 8 does not ordinarily operate as an additional free-standing ground for refusing return outside the exceptions provided by the 1980 Convention. Article 8 can prevent return only where the return itself would endanger the child – situations the Convention already captures as grave risk or an intolerable situation. Facts insufficient for Article 13(1)(b) cannot succeed by being reframed as an Article 8 violation; arguments based solely on settlement, emotional difficulty or comparative welfare fail.

CASE NOTE 301 | NL | Supreme Court | ECLI:NL:HR:2007:BB3193
28 September 2007

The Dutch Supreme Court, referring to *Ignaccolo-Zenide v Romania*, held that Article 8 ECHR must, in a case of wrongful removal or retention within Article 3 of the 1980 Convention, be interpreted in the light of that Convention. Article 8 therefore requires, in principle, that the authorities of the requested State comply with the Convention's return mechanism. The fact that the child had meanwhile become settled in the State of refuge was insufficient to make return contrary to Article 8.

Article 8 may operate independently where the 1980 Convention does not apply or provides no return mechanism between the States concerned. Where no return mechanism is in force between the two States – non-accession, non-acceptance of accession, or removal predating entry into force – Article 8 may still oblige the authorities of the State where the child is present to act. A removal that disrupts pending custody proceedings or violates a court order may be "wrongful" in Article 8 terms, triggering a positive obligation to take reasonable steps to restore family life. Article 8 is thus a minimum safeguard beneath the treaty framework – a point of real practical value for applicants whose cases fall outside the Convention.

CASE NOTE 302 | ECtHR | Hromadka and Hromadkova v. Russia
App. No 22909/10
11 December 2014

The child was taken from the Czech Republic to Russia when the Convention did not yet apply between the two States. The Court held that Article 8 nevertheless required the Russian authorities to act: the mother had removed the child during pending custody proceedings and in breach of a court order, so the removal was wrongful in Article 8 terms (§§153-154).

[235] ECtHR, *X v. Latvia*, App. no. 27853/09, (ECtHR,2013), §§101–108; *Z and Others v. Finland*, App. no. 42758/23, (ECtHR, 2025).

CASE NOTE 303 | NL | The Hague District Court
ECLI:NL:RBDHA:2015:11488
6 October 2015

Where the return rules are applied only by analogy under national law to a non-Convention case, Article 8 may be invoked directly and may soften the analysis. In a case concerning removal from Liberia, the District Court of The Hague applied the return rules by analogy under the Dutch Implementation Act, but held that, because the ECHR prevails over national law, the assessment was less strict, with greater weight given to the child's interests.

A party does not have to expressly invoke Article 8 before the domestic courts to preserve a later complaint to the ECtHR. It is sufficient that the party raises the substance of the issue before the domestic courts through legal arguments that concern the protection of family life or the child's welfare. Arguments formulated under the 1980 Convention, particularly those relying on the return exceptions (such as the grave-risk defence under Article 13(1)(b)), may therefore be sufficient to place the family-life issue before the national courts.

CASE NOTE 304 | ECtHR | M.P. and Others v. Greece | App. No 2068/24
9 September 2024

The applicants did not rely explicitly on Article 8 ECHR during the domestic proceedings. Instead, before the national courts they argued that the children's return should be refused under Article 13(1)(b) of the Convention, claiming that the return would expose them to physical or psychological harm. When the case reached the ECtHR, the Government argued that the applicants had failed to exhaust domestic remedies because Article 8 had never been invoked. The Court rejected this objection, holding that by relying on the grave-risk defence the applicants had already raised, in substance, a complaint concerning their right to respect for family life before the domestic courts. (§§65-71).

The argument that the left-behind parent has no family life under Article 8 with the child fails where the parent holds parental authority and maintains regular contact. Courts generally reject such arguments where the parent holds parental authority and maintains regular contact with the child, since these circumstances normally suffice to establish both family life under Article 8 and the actual exercise of custody rights.

CASE NOTE 305 | NL | The Hague Court of Appeal
ECLI:NL:GHSGR:2012:BY0419
14 March 2012

Three children who had been living with both parents in Spain were taken by the mother to the Netherlands during a holiday visit and not returned as agreed. Both parents held parental authority. The father applied for the children's return under the 1980 Convention. The mother argued that the father had not actually exercised custody rights and that there was no "family life" between him and the children within the meaning of Article 8 ECHR. The court rejected this argument. It found that the father had regular contact with the children, seeing them every Sunday and occasionally during the week, and that he contributed to their maintenance. The court also held that the existence of parental authority combined with ongoing contact meant that family life within the meaning of Article 8 ECHR could not be denied. The defence under Article 13(1)(a) was therefore rejected, and the children were ordered to return to Spain.

5.2.C. Istanbul Convention

The Istanbul Convention binds most EU Member States, and the European Union has acceded within the limits of its competences.[236] In return proceedings, it matters mainly in the assessment of domestic-violence allegations under Article 13(1)(b). It requires a serious, non-stereotyped examination of such allegations and recognises psychological violence, including coercive conduct and threats, as a form of violence. It does not create a ground for refusing return, does not establish the facts alleged, and does not lower the grave-risk threshold – in particular where the State of habitual residence is itself a party.[237]

Domestic return courts should interpret the 1980 Convention in conjunction with the Istanbul Convention where domestic violence is alleged, treating its duties to prevent violence, protect victims and prosecute perpetrators as part of the interpretative framework.

CASE NOTE 306 | NL | The Hague District Court | ECLI:NL:RBDHA:2026:17375
27 May 2026

A mother left Portugal with her young child after an alleged incident of domestic violence, reported the father to the Portuguese authorities and stayed briefly in a protected shelter before travelling to the Netherlands. In the father's return proceedings, she relied on Article 20 of the 1980 Convention. The Hague District Court expressly held that Article 20 "must be viewed in conjunction with the Istanbul Convention," referring to its obligations to prevent violence against women and domestic violence, protect victims and prosecute perpetrators.

Domestic-violence allegations must be examined seriously, without stereotypes about how victims should behave or prove abuse, but gender-sensitive assessment is not automatic credibility. This is consistent with the treatment of violence allegations within the grave-risk analysis in the HCCH Guide to Good Practice. Reliance on CEDAW or the Istanbul Convention does not by itself establish the facts: the court must still assess whether the evidence proves a grave risk to the child, and a reasoned refusal to accept an account, after evidentiary assessment, is not a breach of gender-sensitive adjudication.

CASE NOTE 307 | CY | Second Instance Family Court | ECLI:CY:DOD:2021:4
19 March 2021

The mother relied on CEDAW and the Istanbul Convention, arguing that she was a young mother who had escaped a toxic domestic-violence environment and that the first-instance court's refusal to accept her account showed disregard for her allegations. The Cypriot appellate court accepted that protection of women from violence and the elimination of domestic violence are fundamental legal and social values. But it rejected the suggestion that these instruments required the court to accept the mother's version automatically. The court held, in effect, that overcoming stereotypes against women does not mean treating every unaccepted allegation as judicial disregard or as a breach of international conventions. The Article 13(1)(b) defence still required evidence capable of establishing grave risk to the child.

[236] Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul, 11 May 2011, CETS No. 210). The European Union acceded with effect from 1 October 2023, within the limits of its competences; all EU Member States are signatories and most are parties. Status table is available here: <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=210>.

[237] See further Caterina Benini, 'Child Abduction Caused by Domestic Violence: How Private International Law Makes the Best of Both the Child Abduction Convention/Brussels II-ter Regulation and the Istanbul Convention' (2025) 2 *Italian Review of International and Comparative Law* 167 <https://www.hague-mothers.org.uk/wp-content/uploads/2026/01/Benini-Child-Abduction-Caused-by-Domestic-Violence-IRICL-2025.pdf>, p 173–175, 186–187 and 195–196, arguing that the Istanbul Convention may inform a gender-sensitive interpretation of Article 13(1)(b), particularly where both relevant States are bound by it, but cannot displace the text, structure or child-focused requirements of the grave-risk exception; the respondent must still prove that return would expose the child to grave physical or psychological harm or an intolerable situation.

The fact that the State of habitual residence is itself bound by the Istanbul Convention does not lower the Article 13(1)(b) threshold, but neither does it dispense with the need to assess protection in the individual case. In that configuration, the requested court may assume that protection against domestic violence is available after return, and the Istanbul Convention creates no additional ground for refusal. The respondent's argument retains force only where it is shown concretely that the protective framework of the State of habitual residence has failed, or would fail, this family, for example, ignored protection orders or documented non-enforcement.

CASE NOTE 308 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2021:1738
15 September 2021

In proceedings concerning the return of two children to Belgium, the mother argued that a restrictive interpretation of Article 13(1)(b) was incompatible with the Istanbul Convention, given her allegations of domestic violence. The court rejected the argument, observing that Belgium was itself bound by the Istanbul Convention and was therefore under an obligation to protect women against domestic violence. It consequently found no conflict between the restrictive application of Article 13(1)(b) and the Istanbul Convention.

5.2.D. UNCRC and EU Charter

> *"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."*
>
> ***HCCH, Outline 1980 Child Abduction Convention*[238]**

In return proceedings, parties often invoke the UNCRC when addressing the child's separation from a parent, cross-border contact, protection from harm, and safeguards against exploitation. As the HCCH Outline of the 1980 Convention recognises, the Convention gives practical effect to several core UNCRC obligations by enabling courts to consider these child-rights concerns within the return framework itself. The UNCRC therefore operates not as a separate or free-standing ground for refusing return, but informs the interpretation and application of the Convention and the procedural rights of the child.

Three EU Charter provisions are particularly relevant in intra-EU child-abduction proceedings.

— **Article 7 protects respect for private and family life.** It protects the family relationships of the child and both parents and must be read together with Article 8 ECHR. Interference with those relationships must have a legal basis, pursue a legitimate objective and remain proportionate. In return proceedings, this requires courts to act promptly, examine the

[238] HCCH, *Outline: HCCH 1980 Child Abduction Convention*.

relevant arguments properly and provide reasons showing that the competing rights and interests have genuinely been considered.

— **Article 24 protects the rights of the child.** It establishes that the child's best interests must be a primary consideration in all actions relating to children. It also recognises the child's right to express views freely and requires those views to be considered according to the child's age and maturity. In addition, every child has the right to maintain a personal relationship and direct contact with both parents on a regular basis, unless this is contrary to the child's interests. Brussels IIb gives practical effect to these guarantees. Articles 21 and 26 require a child who is capable of forming their own views to be given a genuine and effective opportunity to express them in return proceedings. Those views must be given due weight in accordance with the child's age and maturity. This does not necessarily require the judge to interview the child personally. The method used is governed by national law, but it must enable the child to participate effectively rather than reduce the hearing to a formality.

— **Article 47 guarantees an effective remedy and a fair hearing.** It is relevant to both parents and, where appropriate, to the child. The parties must have a genuine opportunity to present their case and respond to material relied upon by the court. Decisions must be reasoned, and procedural arrangements must not make the exercise of rights under the Brussels IIb Regulation ineffective in practice.

Article 3(1) UNCRC and Article 24 of the Charter do not create an autonomous ground for refusing return. The UNCRC itself treats abduction as generally contrary to the child's best interests: Article 11 obliges States to combat wrongful removal and non-return and to join agreements to that end – an obligation discharged principally through the 1980 Convention. Return under the Convention is therefore not, in itself, contrary to the UNCRC. The best-interests principle informs the interpretation of the exceptions in Articles 12, 13 and 20; it does not open a welfare assessment comparable to custody proceedings.[239]

CASE NOTE 309 | PL | Supreme Court | II CSKP 457/23
19 October 2023

The Polish Supreme Court has consistently held that Article 13(1)(b), read in conformity with Article 3 UNCRC and Article 8 ECHR, covers only situations beyond what a child can reasonably be expected to endure: emotional distress, adaptation difficulties, better integration in the new environment, lower living standards or concerns about parenting quality fall outside the exception. The best interests of the child under Article 3 UNCRC or Article 24 of the Charter guide the interpretation of the refusal grounds but do not expand them.

CASE NOTE 310 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2023:2675
18 December 2023

In proceedings concerning return to Nigeria, the mother argued that return would separate the children from her, contrary to the UNCRC. The court found the separation not plausible and added the principle: Article 11 UNCRC obliges States – including Nigeria – to combat wrongful removal and retention; like the 1980 Convention, the UNCRC proceeds from the premise that abduction is generally contrary to the child's best interests, so return is not as such contrary to Article 3(1) UNCRC.

[239] See also Opinion of Advocate General Strikwerda at the Supreme Court of the Netherlands, 10 August 2007, ECLI:NL:PHR:2007:BB3193, §17, reasoning that Article 11 UNCRC and the 1980 Convention proceed from the same premise that international child abduction is generally contrary to the child's interests, so that return under the Convention is not, as such, incompatible with Article 3(1) UNCRC.

The UNCRC does not prevail over the 1980 Convention: they operate compatibly, not hierarchically. Although the UNCRC is more recent, chronological succession does not establish its precedence over the 1980 Convention. Article 11 of the UNCRC obliges States to combat unlawful removal and non-return and to conclude or accede to agreements for this purpose; the 1980 Convention is the principal instrument through which this obligation is discharged. Article 41 of the UNCRC expressly preserves the application of other instruments more conducive to the realisation of children's rights. A domestic court should not resolve apparent tension between the two instruments by treating the UNCRC as displacing the 1980 Convention; it should interpret the 1980 Convention's grounds for refusal of return in a manner that takes account of the child's best interests, while exercising caution so that the Convention does not become a dead letter.

CASE NOTE 311 | BE | Ghent Court of Appeal
ECLI:BE:HBGNT:2010:ARR.20101223.8
23 December 2010



A child of American and Belgian nationality was wrongfully removed from Florida to Belgium by the mother, in breach of a Florida court order prohibiting removal without the other parent's consent. At first instance, the Court in Ghent held the removal wrongful but refused return under Article 13(1)(b), reasoning that the UNCRC prevails over the 1980 Convention because it is the more recent instrument and that the child's best interests under Article 3 UNCRC displaced the strict application of the grounds for refusal. The Ghent Court of Appeal rejected this reasoning. It held that the 1980 Convention was the instrument through which Belgium had discharged its obligation under Article 11(2) UNCRC to accede to existing agreements combating child abduction, and that Article 41 UNCRC expressly preserves the application of other instruments conducive to the realisation of children's rights. The Court accordingly held that the UNCRC does not prevail over the 1980 Convention merely because it is more recent. The Court interpreted the 1980 Convention's grounds for refusal taking account of the child's best interests, but emphasised the need for caution in exercising the court's margin of appreciation so that the Convention would not become a dead letter. On the merits, the Court ordered return.

Article 12 UNCRC guarantees the child's participation, not the outcome. A child capable of forming views has the right to express them freely, with due weight according to age and maturity. In return proceedings, Article 12 operates as a participation right. Article 13(2) is a distinct refusal ground where the court finds that the child objects to return and has attained an age and degree of maturity at which it is appropriate to take account of those views (see Section 4.5.G). The court must give the child a real, age-appropriate opportunity to express views, take those views into account when assessing the exceptions, and show in its reasons how they were considered. What Article 12 does not permit is the presumption of an objection from emotional attachment, distress at separation or expert assessments of family bonds: refusal under Article 13(2) requires the child's own, clearly expressed objection, assessed in light of age and maturity.

CASE NOTE 312 | PL | Supreme Court | II CSKP 457/23
19 October 2023



The taking parent argued that the court had violated Article 12 UNCRC because the child allegedly did not wish to return, inferring the objection from expert evidence of strong ties to the mother and disturbed relations with the father. The Supreme Court held that Article 12 UNCRC requires a child capable of forming their own views to be given the opportunity to express them, but does not require the decision to conform to the child's wishes. On the facts, no objection to return had been expressly expressed by the child. Expert findings of a close bond with the mother and a disturbed relationship with the father did not themselves amount to an objection under Article 13(2); the Court also doubted, given the child's age and development, that the necessary degree of maturity had been reached.

A pending asylum procedure does not, by itself, require the return court to undertake a separate best-interests assessment under Article 3 CRC. The mere uncertainty created by unresolved asylum proceedings is insufficient. Unless the asylum procedure produces a concrete legal or factual consequence relevant to the return decision, its possible future outcome remains separate from the assessment under the 1980 Convention.[240]

CASE NOTE 313 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2023:2113
11 October 2023



The father sought the children's return to Turkey and argued that their pending asylum proceedings in the Netherlands left them in an uncertain position and that, under the UNCRC, it would therefore be contrary to their interests to remain there rather than return to their stable situation in Turkey. The Court of Appeal rejected the argument. It held that the asylum proceedings and the return proceedings were separate and that the uncertain future outcome of the asylum procedure did not justify a separate best-interests assessment in the return proceedings.

[240] See also Katarina Trimmings, Onyója Momoh and Konstantina Kalaitsoglou, 'The Interplay between the 1980 Hague Convention on the Civil Aspects of International Child Abduction and Domestic Violence' (2023) 12(5) Laws 78, section 4.1.3, discussing the interaction between Article 20, asylum proceedings and non-refoulement, including *G v G (International Child Abduction)* [2021] UKSC 9, and the divergent approaches taken in Canadian and United States case law; HCCH Permanent Bureau, *Discussion Paper on International Child Abduction Return Applications Where the Taking Parent Lodged a Parallel Asylum Claim*, Prel Doc No 16 of August 2023, <https://assets.hcch.net/docs/66b0ee04-cf93-4862-bf40-4eed6a7f32ef.pdf >especially §§15–21, §§26–40 and §§43–44, explaining the distinct purposes, procedures, evidential rules and participation structures of asylum and return proceedings, and the different national approaches as to whether a protection claim affects the making of a return order, its implementation, or both.

5.3. Time limits, delays, and the duty of expedition

> *'56. Time is a crucial factor in such cases. Generally speaking, the sooner the disruption triggered by the change in environment is brought to an end, the less traumatic that disruption will be for the child. Conversely, the more time the child has had to settle in their new surroundings, the more difficult it will be for them to return to their State of origin. The relationship between the child and the parent left behind is also time dependent. The intensity of that relationship recedes as the months spent with no contact pass by. In addition to those considerations, there is also the fact that the younger the child concerned, the greater the speed at which his or her intellectual and psychological structure develops, and the more the passage of time is liable to affect that child and to harm that relationship. '*
>
> *Opinion Of Advocate General Emiliou, T.C. and Others, C-638/22 PPU*[241]

From its inception, the 1980 Convention was designed as a *summary* remedy: a mechanism whose protective effect depends on speed rather than on a full merits inquiry. The Pérez-Vera Explanatory Report in §§104-105 describes the importance which the Convention attaches "to the expeditious settlement of applications" and presents Article 11 – including the six-week marker and the right to request a statement of reasons – as the procedural translation of that objective.[242] Yet the six-week figure has been contested from the outset: it is formulated as an indication rather than a hard deadline, it says nothing about appeals or enforcement, and it carries no sanction.

In the Delays in the Return Process under the 1980 Child Abduction Convention *(*§§31–42), the HCCH Permanent Bureau observes that delay can alter the substance of the case rather than merely postpone its resolution. As time passes, the child may become increasingly integrated in the requested State, contact with the left-behind parent may erode, and the assessment of habitual residence, custody rights, grave risk and settlement may become more difficult.[243] Prolonged proceedings may also require the child to be heard repeatedly and may make eventual enforcement more traumatic. These consequences support strict case management, priority listing, limited evidence, accelerated appeal and prompt enforcement.

Within the EU, the delay problem was one of the express reasons for recasting the Brussels IIa Regulation. The Commission's 2016 recast proposal identified the length of return and enforcement proceedings – aggravated by unlimited tiers of appeal, non-specialised courts, and slow enforcement – as one of the six main shortcomings of Brussels IIa, and proposed the remedies now found in Brussels IIb: the six-week deadline made explicit *per instance* (Article 24(2)–(3)), an invitation to Member States to concentrate jurisdiction (Recital 41), the possibility of provisional enforceability

[241] Opinion Of Advocate General Emiliou, delivered on 12 January 2023 (ECLI:EU:C:2023:21) in Judgment of 16 February 2023, *T.C. and Others*, C-638/22 PPU, ECLI:EU:C:2023:103.
[242] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction,* §§104-105.
[243] HCCH Permanent Bureau, *Delays in the Return Process under the 1980 Child Abduction Convention*, Preliminary Document No 12 of August 2023.

notwithstanding appeal (Article 27(6)), expedition and a statement-of-reasons mechanism at the enforcement stage (Article 28), and a time-boxed role for mediation (Article 25).[244]

Three overlapping layers impose binding obligations of speed:

1. The 1980 Hague Convention

- **Article 2**: Contracting States must use "the most expeditious procedures available" for Convention objectives.
- **Article 11(1)**: judicial and administrative authorities must "act expeditiously in proceedings for the return of children."
- **Article 11(2)**: if no decision has been reached within six weeks from commencement, the applicant or the Central Authority of the requested State (on its own initiative or at the request of the Central Authority of the requesting State) has the right to request a statement of the reasons for the delay. This is a formal procedural tool.

2. Brussels IIb Regulation

- **Article 24(1)**: the court must use "the most expeditious procedures available in national law."
- **Article 24(2)**: the court of first instance must give its decision no later than six weeks after seising, "except where exceptional circumstances make this impossible."
- **Article 24(3)**: the same six-week ceiling applies at each level of appeal. This per-instance deadline is a major practical change from Brussels IIa, under which some Member States read the six weeks as applying only to the first instance (or treat it as aspirational).
- **Article 25**: the court must invite the parties to consider mediation "as early as possible" – but only if this is not contrary to the best interests of the child, is appropriate, and does not unduly delay the proceedings.
- **Article 27(6)**: a return decision may be declared provisionally enforceable notwithstanding any appeal, where the child's best interests so require – a tool the applicant should expressly request in the prayer for relief.
- **Article 28(1)**: the enforcement authority must "act expeditiously" on the return order.
- **Article 28(2)**: if the order has not been enforced within six weeks of enforcement proceedings being initiated, the party seeking enforcement may request a statement of reasons for the delay from the enforcement authority.

[244] Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) (2016) COM(2016) 411 final 2016/0190 (CNS), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0411>.

— **Recital 42**: courts at every instance should decide within six weeks, subject to exceptional circumstances; it also clarifies when that period begins and encourages Member States to consider limiting appeals to one.

3. Article 8 ECHR: The ECtHR reads into Article 8 a positive obligation on States to take adequate and effective measures, *without delay*, to reunite parent and child in abduction situations. The adequacy of a measure is judged by the swiftness of its implementation, since the passage of time can have irremediable consequences for relations between the child and the non-resident parent.[245] Article 6 § 1 (reasonable time) can be violated in parallel, but Article 8 is the main provision because it captures non-enforcement as well as slow adjudication.

The court has an active duty to secure speed, not merely to react to the parties' conduct. The duty of expedition applies both to the decision on return and to the enforcement of a return order. The court must use the fastest procedures available under national law, decide pending applications without delay, and prevent procedural steps from postponing or defeating return. Even where the taking parent contributes to the delay, the court remains responsible for ensuring the swift and effective implementation of the State's obligations under the 1980 Convention and, in intra-EU cases, Brussels IIb.

CASE NOTE 314 | AT | Supreme Court
ECLI:AT:OGH0002:2013:0060OB00134.13V.0828.000
28 August 2013

The Court stressed that Article 11 of the 1980 Convention and Article 11(3) Brussels IIa required urgent handling of return proceedings, including enforcement. It criticised delay caused by unresolved applications and late decisions, noting that eleven months had passed between the first-instance decision and submission of the file to the Supreme Court. Importantly, it added that even if the abducting parent's conduct had delayed the proceedings, this did not alter the duty of the Austrian authorities, especially the courts, to ensure swift and effective implementation of Austria's international obligations.

Recognition and enforcement proceedings must also be conducted with expedition. Courts should avoid procedural steps that are not required by the applicable EU framework and that unnecessarily delay enforcement, since such delay may itself impair family life and engage Article 8 ECHR.

CASE NOTE 315 | ECtHR | Veres v. Spain | App. No 57906/18
8 November 2022

The Hungarian courts ordered the mother, by interim measure, to bring the child back to Hungary. The Spanish recognition and enforcement proceedings then lasted over two years, during which the first-instance court invited the mother and the public prosecutor to submit observations instead of confining itself to the grounds for non-recognition in Article 23 Brussels IIa. The ECtHR found a violation of Article 8: the delay was essentially attributable to the national courts and could not be explained by the complexity of the case.

Lawyers acting in return proceedings are expected to know the special procedural time limits applicable to those proceedings and cannot necessarily rely on an erroneous appeal notice from the court. The short timeframes prescribed for filing applications, appeals, and supporting

[245] *Ignaccolo-Zenide v. Romania*, App. no. 31679/96, (ECtHR, 2000), §102 – the foundational authority; restated in virtually every abduction judgment since, e.g. *Monory v. Romania and Hungary*, App. no. 71099/01 (ECtHR, 2005), §82; *Shaw v. Hungary*, App. no. 6457/09 (ECtHR, 2011), §71.

documentation are integral to the Convention's objective of expeditious proceedings. Errors or omissions, or reliance on inaccurate instructions from the court, do not excuse missed deadlines. Parties and their representatives must independently verify the applicable procedural rules and ensure that every procedural step is taken within the prescribed period.

CASE NOTE 316 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2019:1007.17UF156.19.00
9 October 2019

A party appealed a return order after the statutory deadline, relying on an incorrect instruction from the first-instance court, which had stated that the appeal period was one month instead of two weeks. The appellate court refused reinstatement, holding that a lawyer acting in Hague proceedings was expected to know the special two-week appeal period under the IntFamRVG and could not rely on the court's erroneous statement that the period was one month

A material change in the child's circumstances may exceptionally make enforcement of a final return order inappropriate, but the authorities cannot rely on integration, attachment or risk of separation that arose mainly because of their own failure to enforce the order promptly. The court should therefore examine not only whether circumstances have changed, but also why they changed and who was responsible for the passage of time.

CASE NOTE 317 | ECtHR | Sévère v Austria | App. No 53661/15
21 September 2017

The Austrian courts promptly ordered the children's return after rejecting the mother's allegations of sexual abuse. After one unsuccessful attempt to locate the mother and children, however, no effective enforcement action was taken. Nearly five and a half years later, enforcement was refused because the children had become integrated in Austria and separation from their mother might harm them. The ECtHR accepted that changed circumstances may exceptionally justify non-enforcement, but held that Austria could not rely on circumstances produced principally by its own prolonged inaction.

A child's refusal to return cannot justify non-enforcement where the authorities have allowed long periods to pass without action and have failed to prepare the child for return or preserve the relationship with the left-behind parent. During enforcement, the authorities should take practical measures to make the transfer psychologically manageable and maintain regular contact so that delay does not itself create or intensify the child's opposition.

CASE NOTE 318 | ECtHR | Makhmudova v Russia | App. No 61984/17
1 December 2020

Russian and Estonian courts ordered the children's return, but only four enforcement attempts were made over almost two years, with gaps of six months and then approximately a year and a half. The later attempts failed because the children refused to leave with their mother. The ECtHR held that their resistance could not justify non-enforcement: the authorities had taken no preparatory measures to make the transfer smooth and had failed to maintain regular contact with the mother while proceedings were pending.

5.4. Evidence and the burden of proof

This chapter addresses how facts are proved in return proceedings and on whom the burden of proof lies. The focus throughout is practical: what a party must place before the court, in what form, and who bears the risk of a fact remaining unproven.

Evidence in return proceedings is governed largely by national procedural law. The Convention itself lays down only few rules, and practice varies considerably between Member States. As the Guide to Good Practice on Article 13(1)(b) confirms, procedural and evidentiary matters – including the standard of proof and the admissibility and gathering of evidence – are left to the *lex fori*, the law of the requested State.[246]

What the Convention does supply is a short set of provisions that remove formal obstacles to the admission of material and facilitate proof of foreign law and foreign social background:

- **Article 30** – the application, and the documents appended to it or supplied by a Central Authority, are admissible in the courts of the Contracting States without further formality. Article 30 removes obstacles to *admission*; it does not fix the *weight* or reliability of the material, which remain for the court to assess under its own law.[247]

- **Article 23** – no legalisation or similar formality may be required in the context of the Convention.

- **Article 14** – in ascertaining whether removal or retention was wrongful, the court may take notice directly of the law of, and of judicial or administrative decisions in, the State of habitual residence, without recourse to the specific procedures for proof of foreign law or recognition of foreign decisions that would otherwise apply.

- **Article 8(f)** – the application may be accompanied by a certificate or an affidavit emanating from a Central Authority, other competent authority of the State of habitual residence, or a qualified person, concerning the relevant law of that State.

- **Article 13(3)** – in considering the Article 13 grounds the court "shall take into account the information relating to the social background of the child" provided by the Central Authority or other competent authority of the child's habitual residence. This provision is examined in detail in Part 3.

Beyond those provisions, recurring patterns emerge across jurisdictions. Return proceedings are decided primarily on documents and written party submissions. Oral evidence is taken restrictively – typically only where a decisive conflict of fact cannot be resolved on the file.

This streamlined framework means that return proceedings are conducted principally on the basis of documents and written statements. Oral testimony may be admitted, but only in limited circumstances where it is strictly necessary. Some jurisdictions have developed rules defining and restricting when oral evidence may be heard – for example, where there is conflicting documentary evidence that cannot be resolved without cross-examination. Where oral testimony is admitted, both

[246] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §50. The burden of proof, by contrast, is fixed by the Convention itself: see §51 and Part 4 below.
[247] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §54: Art. 30 "does not stipulate the evidential (probative) value which is to be placed on these documents, which is left to domestic law."

parties must be given the opportunity to be heard, and judicial control must ensure that it does not undermine the speed of the proceedings.[248]

Urgency is not a value superior to the rights of the defence. Equality of arms and the adversarial principle apply notwithstanding the expedited character of the procedure. Where the taking parent raises Article 13 grounds supported by factual allegations, the applicant parent must be given an equivalent opportunity to be heard, to contradict the evidence produced, and to submit further evidence on the contested facts. A return application cannot be refused on the basis of facts on which the applicant had no opportunity to be heard and to produce evidence; and, conversely, a defence cannot be rejected without the taking parent having had a genuine opportunity to substantiate it.[249] Where Article 13(1)(b) is raised with substantiated allegations, the court should consider using the cooperation mechanisms with the Central Authority of the State of habitual residence to obtain information on the child's social background and living conditions, under Article 13(3) of the Convention and through judicial cooperation channels, before deciding the application on one-sided evidence.

CASE NOTE 319 | PT | Supreme Court | 2689/22.0T8PRD.G1.S1
14 September 2023

A father residing in Switzerland applied through the Swiss Central Authority for the return of his young son, who had been taken to Portugal by the mother. In the Portuguese proceedings, the first-instance court heard the mother's declarations and accepted her evidence – including allegations that the father did not effectively exercise his visitation rights and that the child's particular vulnerability made separation from the mother contrary to his best interests – without giving the father an opportunity to be heard, to contradict her allegations, or to produce his own evidence on the contested facts. Return was refused, and the Court of Appeal confirmed. The Supreme Court reversed. It held that equality of arms and the adversarial principle apply in return proceedings despite the urgency of the procedure. The Court further observed that where Article 13(1)(b) is raised with substantiated allegations, the court should consider gathering social reports through the Central Authority of the State of habitual residence, citing with approval the ECtHR's criticism in *Phostira Efthymiou v Portugal* of Portuguese courts that had refused return without seeking such information.

Practitioners should not assume that judicial cooperation mechanisms will in every case supply the foreign procedural or evidentiary material needed by the court. Requests made through liaison judges, Central Authorities, or other cooperation channels may not always be answered promptly. To ensure procedural clarity, representatives should proactively provide the court with certified and translated documents confirming any pending proceedings or relevant foreign decisions, so that jurisdiction can be correctly determined and conflicting rulings avoided.

CASE NOTE 320 | NL | Overijssel District Court | ECLI:NL:RBOVE:2025:6188
11 September 2025

The Dutch court sought confirmation via the liaison judge network as to whether custody proceedings were pending in Bulgaria. The Dutch liaison judge was unable to reach a counterpart, and no information came back through the cooperation channel. The matter was clarified only when the mother's lawyer submitted a translated copy of the Bulgarian judgment, showing that proceedings were indeed pending. On that basis, the court applied Article 20(2) of the Brussels IIb Regulation (lis pendens) and declined jurisdiction, avoiding parallel decisions.

[248] The duty to act expeditiously "does not mean that the court should neglect the proper evaluation of the issues"; it requires the court to gather and examine only evidence "sufficiently relevant to the issues" and to do so "in a highly focused and expeditious manner": HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §22.
[249] The European Court of Human Rights treats a genuine, adversarial examination of arguable Article 13(1)(b) allegations as a requirement of Art. 8 ECHR: *X v Latvia*, App. no. 27853/09, (ECtHR, 2013), §§106–107. Also see Part 5 below.

5.4.A. Expert evidence on the merits

This section concerns expert evidence on factual, medical, psychological or other specialist issues relevant to the merits of the return application. Expert evidence on foreign law is discussed at Chapter 2.7.C.

The dividing line, visible across jurisdictions, although drawn with differing strictness, is this: expert evidence directed at a Convention defence may be admitted where genuinely necessary; expert evidence amounting to a *welfare or custody investigation* is not. The latter questions belong to the court of the State of habitual residence.

Neither the Convention nor Article 8 ECHR obliges the court to commission expert evidence whenever an Article 13 ground is raised. *X v Latvia* requires the court genuinely to take into account arguable allegations of grave risk and to give a reasoned ruling on them; it does not prescribe the evidentiary means by which that is done.[250] Expert evidence is structurally in tension with the promptness obligation under Articles 2 and 11.

CASE NOTE 321 | **PL** | **Supreme Court** | II CSKP 1697/22
13 October 2022

The Court held that neither the Convention's expedition requirement nor the ECtHR's duty of effective examination under Article 8 ECHR – as articulated in *X v. Latvia* – creates an obligation to commission expert evidence in every case where Article 13 grounds are raised. Expert evidence is structurally in tension with the Convention's promptness obligation under Articles 2 and 11, and with the requirement to apply the speediest possible procedural rules. Some national courts – including the Austrian and Swiss Supreme Courts – treat expert evidence as generally inadmissible in return proceedings on this basis. The Polish Supreme Court confirmed that expert evidence must be treated as subsidiary and its use limited to cases of genuine necessity: specifically, where findings already made by other evidentiary means disclose a family relationship disorder of sufficient nature and severity that specialist input is essential to assess whether a serious risk within Article 13(1)(b) exists. Even in such cases, the evidence should not go beyond what is strictly unavoidable. Commissioning expert evidence as a matter of routine, or as a substitute for the court's own assessment of the Article 13(1)(b) ground, risks reversing the essence of the proceedings – converting a summary return mechanism into a full investigation. Expert evidence should therefore be the exception, not the rule, and admitted only where the court has serious reason to believe that return would expose the child to grave harm or an intolerable situation.

Expert psychological or social evidence should not be commissioned routinely in return proceedings, but may be obtained where a focused specialist issue cannot adequately be resolved on the existing material. Its scope must remain confined to the issues relevant to the return decision and must not develop into a welfare or custody investigation. Whether expert evidence is necessary depends on the circumstances of the case and the procedural law of the requested State; where it is used, the court should manage it so as to avoid unnecessary delay.

[250] *X v Latvia*, App. No. 27853/09 (ECtHR, 2013), §§106–107. The Grand Chamber requires the domestic court genuinely to take into account arguable allegations of grave risk and to give a decision containing specific reasons; it does not prescribe the evidentiary means by which that examination is conducted. See also *Blaga v Romania*, App. No. 54443/10 (ECtHR, 2014), §§70–71.

CASE NOTE 322 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2016:0129.17UF238.15.00
29 January 2016

The respondent requested the appointment of an expert to examine whether the child's objection was freely formed. The court refused, stressing in para 23 that the return procedure is designed to be rapid and that ordering an expert opinion would breach the acceleration principle under Article 11(1) of the Convention. The judge therefore based the assessment solely on the direct hearing and existing reports, concluding that the objection was not of the necessary gravity.

CASE NOTE 323 | NL | The Hague District Court
ECLI:NL:RBDHA:2021:16125
7 October 2021

The mother relied on Article 13(1)(a), arguing that the father had consented to the relocation through a written agreement. The father denied the authenticity of his signature. The court appointed a handwriting expert to resolve the dispute, holding that the question was determinative of whether abduction had occurred at all. This limited, technical inquiry was permissible because it went directly to the existence of a defence.

Expert evidence in return proceedings is subsidiary and must not displace the court's decision-making function. Experts may assist in resolving specialised factual or psychological questions, but the court should not ask them to decide whether the conditions for refusing return under Article 13(1)(b) are met. That legal assessment, including whether the established facts amount to a grave risk and justify non-return, belongs exclusively to the court.

CASE NOTE 324 | PL | Supreme Court | II CSKP 684/23
17 November 2023

The applicant sought expert evidence that would effectively require the experts to determine whether Article 13(1)(b) justified refusing return. The Polish Supreme Court rejected that approach, referring to ECtHR, *Iosub Caras v Romania*, App No 7198/04, 21 July 2006; *R.S. v Poland*, App No 63777/09, 21 July 2015; and *G.N. v Poland*, App No 2171/14, 19 July 2016. It held that expert evidence in 1980 Convention proceedings is subsidiary and should not extend beyond what is unavoidably necessary; the court could not transfer to experts its own responsibility for deciding whether the requirements of Article 13(1)(b) had been established.

Directly relevant expert or social reports already available to the court should be meaningfully considered as part of the return assessment. The court is not bound by their conclusions, but an assessment may be inadequate where relevant professional evidence concerning the child or the implications of return is simply disregarded without explanation.

CASE NOTE 325 | ECtHR | Karrer v. Romania | App. No 16965/10
21 February 2012

The ECtHR found a violation of Article 8. One of the considerations was that domestic courts failed to engage with existing social and expert reports. The court did not analyse the child's current situation, did not address the report drafted by Romanian child protection services, and ignored an Austrian expert report that was directly relevant to the implications of return. Because the refusal-of-return decision did not meaningfully evaluate the available professional evidence, the Court held that the assessment lacked the necessary depth. (§46)

Courts may rely on child-focused professional reports even where they were commissioned or prepared without the participation of one parent, provided that parent has an adequate opportunity to challenge the report during the proceedings. Hague return proceedings do not necessarily require both parents to have participated in the report's preparation. What matters for adversarial fairness is that the requested court can examine the report's reliability and probative value and that the excluded parent can contest its contents and submit counter-evidence. A psychological, therapeutic or social-services report may therefore be relied upon where it is based principally on the professionals' direct observations of the child's condition, behaviour or treatment progress; and the excluded parent is subsequently given an effective opportunity to contest its findings before the court.

CASE NOTE 326 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2020:1627
5 August 2020

The father argued that the Sterk Huis report was one-sided because it was based on information supplied by the mother and he had not been consulted. The Court nevertheless used the report. It reasoned that it largely described the child's condition, behaviour and treatment on the basis of the professionals' own observations, and that the relevant facts were not disputed. Although hearing the father could have been important for diagnosis and treatment, his exclusion from the preparation of the report did not itself breach adversarial fairness. The father had been able to respond extensively to the report before both courts. The report was subsequently relied upon in finding that another rupture in the child's attachments would create an intolerable situation under Article 13(1)(b).

If the court decides that expert opinion is nevertheless necessary, HCCH good practice is that it should identify the *specific questions on which expertise is sought* and remind both the parties and the expert of the limited scope of return proceedings and the narrow focus of the grave risk exception, together with the need to limit strictly the questions put. The court should set a deadline for delivery of the opinion, fix in advance the date on which the hearing will continue, and ensure the expert is available on that date. Where both parties intend to adduce expert evidence, a single jointly-agreed or court-appointed expert is preferable to one expert per party. The court may also direct that the expert report orally, in person or by audio or audio-visual link, rather than in writing, to avoid delay. Some jurisdictions maintain a standing list of experts who are knowledgeable about the Convention, return proceedings and the specific nature of the grave risk exception, and who are available at short notice.[251]

[251] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §90 (expert evidence and case-management good practices).

5.4.B. Burden of proof

> *"… the presumption is in favour of the prompt return of the child to the 'left-behind' parent. That rule is supported by serious considerations of public order: the 'abductor' parent should not be permitted to benefit from his or her own wrong, should not be able to legalise a factual situation brought about by the wrongful removal of the child, and should not be permitted to choose a new forum for a dispute which has already been resolved in another country. Such presumption in favour of return is supposed to discourage this type of behaviour and to promote 'the general interest in ensuring respect for the rule of law'."*
>
> *Hromadka and Hromadkova V. Russia, App. no. 22909/10 (ECtHR, 2014), §152* [252]

Ordinary allocation of the burden of proof

This passage explains why the burden is structured as it is. The Convention establishes a presumption in favour of prompt return to the State of habitual residence, resting on public-order grounds: a parent who wrongfully removes or retains a child must not benefit from the unlawful act, create a new legal reality by unilateral action, or obtain a more favourable forum than the one that already had jurisdiction.

Against that framework, Article 13(1) expressly places the burden of establishing the exceptions in Article 13(1)(a) and (b) on the person opposing return, in most cases the taking parent. Without such proof, the presumption of return prevails.[253]

CASE NOTE 327 | **IE** | **High Court** | R. and I., Minors | [2022] IEHC 733
14 December 2022

The Court explained in §2.3 that *"The Convention requires an applicant to prove, on the balance of probabilities, that he has rights of custody, that he was exercising those rights and that the child was habitually resident in the relevant country at the time of removal or retention. If he succeeds in establishing these matters, the burden then shifts to the respondent who must establish a defence and persuade the Court to exercise its discretion not to return, as a result of that defence."*

CASE NOTE 328 | **NL** | **Supreme Court** | ECLI:NL:HR:2006:AZ1500
20 October 2006

The Supreme Court set out the standard, the pleading burden and the allocation of the burden of proof (*maatstaf, stelplicht en bewijslastverdeling*) across the Article 3 wrongfulness question and the Article 13 grounds. It confirmed that Article 13(1)(b) must be applied restrictively and that the requested court, which must refrain from any assessment of custody or access, may not treat the strict conditions of that provision as satisfied merely on the basis of its own view of the child's best interests in the State of habitual residence – the person opposing return must establish the ground.

[252] *Hromadka and Hromadkova v. Russia*, App. No. 22909/10, (ECtHR, 2014), §152.
[253] This allocation is fixed by the Convention itself, not by the *lex fori*: the exception must be "established" by "the person… which opposes its return" (Art. 13(1)). See Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction*, §114, and HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §49.

CASE NOTE 329 | **DE** | **Rostock Higher Regional Court** | 10 UF 62/23
9 June 2023



The mother resisted the return of the child from Germany to Belgium, relying inter alia on non-exercise of custody, grave risk under Article 13(1)(b), and the child's objections. The Court held that Convention exceptions are to be interpreted restrictively and that the respondent bears the burden of pleading and proof for establishing an exception. It added that the pleading burden is demanding: general or merely abstract allegations do not suffice. By contrast, the Court stated that Article 13(2) is the exception that must be examined *ex officio*. Applying those principles, it found that none of the asserted grounds for non-return had been established and upheld the return order.

The following table sets out the principal matters requiring proof in return proceedings and the ordinary allocation of the burden. It states the default position under the Convention; national procedural law governs the standard of proof and the mechanics of proof.

Table 18: Principal matters requiring proof in return proceedings under the 1980 Convention and the ordinary allocation of the burden of proof.

No.	Matter	What must be shown in practice	Burden
1	**Habitual residence immediately before removal or retention**	That the child was habitually resident in another Contracting State immediately before the alleged breach, assessed from the totality of the circumstances and the child's integration in a social and family environment.	Applicant
2	**Existence of rights of custody**	That rights of custody existed under the law of the State of habitual residence at the relevant time – by operation of law, judicial or administrative decision, or legally effective agreement – and included a right to participate in determining the child's place of residence.	Applicant
3	**Actual exercise of custody rights**	Preliminary evidence that the custody rights were actually exercised, or would have been but for the removal or retention.	Applicant makes the preliminary showing; the person opposing return bears the burden of establishing non-exercise (Pérez-Vera §73)
4	**Breach of custody rights**	That removing or retaining the child was incompatible with, and therefore breached, those custody rights.	Applicant
5	**Date of wrongful removal or retention**	The date the breach occurred and the date proceedings commenced. In retention cases, the point at which the continued stay first became incompatible with the applicant's custody rights.	Applicant; the person invoking Art. 12(2) must demonstrate settlement
6	**Consent or acquiescence**	That the applicant consented to the removal or retention beforehand, or subsequently acquiesced in it.	Person opposing return (Art. 13(1)(a); Pérez-Vera §114)
7	**Settlement under Article 12(2)**	That proceedings commenced more than one year after the wrongful removal or retention and that the child is now settled in the new environment.	Person opposing return bears the burden of establishing that the child is now settled; the relevant dates are determined from the proceedings and evidence (Pérez-Vera §109)

No.	Matter	What must be shown in practice	Burden
8	**Grave risk under Article 13(1)(b)**	That return would expose the child to a grave risk of physical or psychological harm or otherwise place the child in an intolerable situation.	Person opposing return (Art. 13(1)(b); Pérez-Vera §114)
9	**Child's objection under Article 13(2)**	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.	No express Convention allocation; the court makes the necessary findings under the procedural law of the requested State
10	**Article 20**	That return would not be permitted by the requested State's fundamental principles relating to the protection of human rights and fundamental freedoms.	Not expressly allocated; ordinarily invoked by the person opposing return, subject to forum law

Because return proceedings are heavily document-driven and expedited, the consequences of a party's failure to produce evidence within its control, or to engage at all, are governed by the procedural law of the requested State. Two points hold generally. First, the burden does not shift merely because a party fails to appear: even where the court gathers information *ex officio*, or where the applicant is not actively involved, the court must still be satisfied that the person opposing return has discharged the burden of establishing the ground relied upon.[254] Second, silence – whether of the applicant or of the foreign authorities – is not itself evidence that a fact is or is not made out; it is the absence of evidence, and the party bearing the burden takes the risk of that absence.

The standard of proof

The Convention fixes the *allocation* of the burden but not the *standard* of proof, which is a matter for the *lex fori*. In practice, the great majority of Contracting States and all EU Member States, apply the ordinary civil standard, the balance of probabilities (preponderance of the evidence), to the Article 13 grounds. The Guide to Good Practice records that only a few States require a higher standard, such as "clear and convincing evidence"; that heightened standard is a feature of certain non-European systems and is not required by the Convention.[255] The high threshold of Article 13(1)(b) therefore operates at the level of the *substance* of what must be shown – a grave risk, not merely a risk – and not by raising the standard of proof above the ordinary civil standard.

[254] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §51: even where the court gathers evidence *ex officio* or the applicant is passive, "the court must be satisfied that the burden of proof to establish the exception has been met by the party objecting to return."
[255] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §50: "many Contracting Parties apply a general civil standard of proof 'preponderance of evidence' or 'balance of probabilities'; a few States require the exception to be proved by a higher standard."

5.4.C. Evidence on the grave-risk ground (Article 13(1)(b))

Evidence under Article 13(1)(b) must remain directed to the specific grave risk alleged and to the circumstances the child would face upon return. The court assesses the material before it within the narrow scope of the exception and without turning the proceedings into a broader welfare inquiry.[256]

The two-stage assessment

The analysis proceeds in two steps; the Guide to Good Practice sets out the sequence at §§40–42.[257]

- **First**, the court asks whether the facts asserted are of such a nature, and of sufficient detail and substance, that they *could* constitute a grave risk. Broad or general assertions are very unlikely to be sufficient.

- **Second**, and only if that threshold is crossed, the court asks whether the ground is *established* on the evidence presented and the information gathered — including evidence as to the protective measures available in the State of habitual residence.

This matters for how a case is pleaded. Failure at the first stage is not a credibility finding. It means either that the assertion is too general or insubstantial to engage Article 13(1)(b), or that the facts alleged, even taken at their highest, would not be capable of constituting a grave risk. The two stages are an analytical framework and need not be conducted as separate hearings.

The filing of a criminal complaint, police report or application for a protection order is evidence that an allegation was made; it is not, without more, conclusive evidence that the alleged conduct occurred or created a grave risk. Its weight depends on the circumstances, including its detail, timing, consistency, contemporaneity, the opportunity afforded to the other party to respond, the outcome of any investigation or proceedings, and its relationship to the remainder of the evidence. A complaint may contribute to proof when considered cumulatively with other evidence, while a complaint standing alone may be insufficient. The Convention itself imposes no universal requirement for independent or "objective" corroboration.

CASE NOTE 330 | CZ | Constitutional Court | II. ÚS 3345/20
8 April 2021

In proceedings concerning the return of children from the Czech Republic to Italy, the mother relied on a criminal complaint filed against the father to support allegations of domestic violence. The court held that the existence of the complaint–filed in the context of an intensified parental conflict–did not, in the absence of further evidence, establish the truth of those allegations. As no objective proof of violence or ill-treatment was demonstrated, the claim could not support a finding of grave risk under Article 13(1)(b). (§45)

[256] See HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §§93–95 (limited role of Central Authorities regarding the grave-risk exception), and HCCH, *Special Commission on the practical operation of the 1980 and 1996 Hague Conventions (25-31 January 2012): Conclusions and Recommendations (Part II)* (2012), available at <https://assets.hcch.net/upload/wop/abduct2012concl_e.pdf>, reaffirming that evaluation of factual and legal issues is "in general, a matter for the court or other competent authority deciding upon the return application."
[257] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §§40-42.

CASE NOTE 331 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2024:0523.17UF71.24.00
23 May 2024

The Court restated that the taking parent bears the burden of pleading and proof for the conditions of Article 13(1)(b), which may be met where a child would be returned to a war or civil-war zone and a concrete danger exists there – requiring a "particularly serious, wholly concrete and present" risk. On the evidence, it held that an official travel warning does not by itself establish a grave risk within Article 13, and that a general need for heightened vigilance and precautions is neither a concrete danger nor sufficient proof of one. A document evidencing official concern is thus not, without more, proof that return would expose *this* child to grave risk.

The Guide states at §39 that all assertions of grave risk are evaluated on the same standard and the same step-by-step analysis.[258] At Part II of the Sixth Special Commission, several experts warned that treating domestic violence separately could lead to a different standard being applied to those cases.[259] Applying a distinct test, stricter or looser, to domestic violence allegations is itself inappropriate.

The distinction to hold onto is between the existence of violence and its effect on the child. As the Guide puts it at §58, evidence of the existence of a situation of domestic violence, in and of itself, is not sufficient to establish a grave risk to the child.[260] The analysis turns on the effect on the child upon return, assessed by reference to the nature, frequency and intensity of the violence and the circumstances in which it is likely to recur, and on whether adequate protective measures are available. Evidence directed only at proving that violence occurred, without addressing its consequences for the child on return, is incomplete.[261]

Role of information from the state of habitual residence – Art. 13(3)

The function of Article 13(3) within the substantive assessment of the grave-risk exception is discussed in Chapter 4.5.F. under "The Article 13(3) Information Obligation". The present section focuses on its evidentiary operation: what information may be obtained, how it may be used, and how it relates to the other evidence before the return court.

To compensate for the difficulty of proving grave risk, the third paragraph of Article 13 provides an important procedural tool. It obliges the court in the requested State to *"take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence."* According to the Explanatory Report (§117),

[258] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §39.
[259] HCCH, *Special Commission on the practical operation of the 1980 and 1996 Hague Conventions (25-31 January 2012): Conclusions and Recommendations (Part II)* (2012), available at <https://assets.hcch.net/upload/wop/abduct2012concl_e.pdf>.
[260] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §58.
[261] See HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §§57-59 (the specific focus is "the effect of domestic violence on the child upon his or her return"). HCCH, *Prel. Doc. No 9: Domestic and family violence and the Article 13 "grave risk" exception in the operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: a reflection paper* (2011), available at <https://www.hcch.net/upload/wop/abduct2011pd09e.pdf> and HCCH, *Info. Doc. No 15: Joint Letter to the HCCH from the Special Rapporteur on violence against women and girls, its causes and consequences, the Special Rapporteur on the sale, sexual exploitation and sexual abuse of children and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* (2023), available at <https://assets.hcch.net/docs/9e6532eb-3966-4d81-b7f4-e290b8c6cae7.pdf> both address the practical difficulty this creates for victims of domestic violence. Also, R. Schuz argues that the case law takes insufficient account of social science evidence correlating spousal violence with child abuse and demonstrating long-term damage to children exposed to violence between parents, and that the resulting reluctance to apply the exception in domestic violence cases leaves children inadequately protected: Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) pp. 282–83, 301-302.

this information may be crucial to determine whether the return would expose the child to an intolerable situation.[262] It may include:

- welfare or social service reports;
- prior judicial decisions or protective orders;
- evidence on the child's living environment and support systems;
- information on the protective measures actually available in the State of habitual residence.

Article 13(3) is a facilitating provision. The Guide notes at §§52-53 that the material it brings in must be available, directly relevant to the issue of grave risk, and obtainable under the domestic law of the State of habitual residence, and that it should be sought only where necessary and with due regard to the need for expeditious proceedings. Requests should therefore be framed narrowly and specifically.[263] A broad request for "all information concerning the family" is likely to produce delay without producing anything the court can use.

Although Article 13(3) allows the court to request information on the child's social background from the authorities in the State of habitual residence, this provision does not limit the scope of admissible evidence. Courts should not interpret it narrowly. All forms of evidence, whether from the requesting or requested State, must be assessed if they are relevant to the child's safety and welfare. This includes reports from psychologists, medical evidence, statements from social workers or educators, and documentation of domestic violence.

CASE NOTE 332 | BG | Sofia City Court | 20161100115734
18 December 2017

The respondent argued that only evidence from the child's habitual residence (Italy) should be considered under Article 13(3). The court rejected this claim, holding that Article 13(3) does not restrict the types of evidence that may be submitted. It emphasised its duty to protect the child from possible psychological or physical harm, stating it was required to consider all available evidence, regardless of origin, relevant to assessing the grave risk defence. The court referenced the 2012 HCCH Special Commission Recommendation No. 80, which affirms that courts must independently and fully assess all allegations of harm, including domestic violence, based on the totality of the evidence.

5.4.D. Burden and evidence on the adequacy of protective measures

A distinct question is who bears the burden as to the *adequacy of protective measures*. The 1980 Convention does not separately allocate a burden of proof concerning the availability or adequacy of such measures: the ultimate burden of establishing Article 13(1)(b) remains on the person opposing return. National approaches nevertheless differ as to who is expected to adduce evidence concerning available protection and the extent to which the court investigates that question of its own motion. Within the EU, Article 27(3) Brussels IIb expressly regulates this evidential question. On

[262] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction,* §117.
[263] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §§52-53.

the substantive requirements concerning protective measures and adequate arrangements, see Chapter 5.9.

Where a substantiated grave-risk allegation calls into question the conditions to which the child would return, the court must subject it to meaningful examination and give sufficiently specific reasons. Relevant and readily available information concerning the alleged risk, and the availability of tangible safeguards capable of addressing it, cannot simply be ignored.

CASE NOTE 333 | ECtHR | Y.S. and O.S. v Russia | App. No 17665/17
15 June 2021

The domestic courts had not examined the taking parent's grave-risk objection with sufficient depth in the light of Article 8: they neither drew adequately on available public-source information nor conducted any independent inquiry of their own. The Court held that the grave-risk allegation had not been genuinely examined: the domestic courts had failed to engage with readily ascertainable information concerning the conflict, the child's expressed fears, and the availability of adequate and effective measures capable of mitigating the alleged risk.

Under the 1980 Convention alone

Under the Convention alone, consideration of protective measures does not transfer any separate legal or evidential burden to the person seeking return. The court should assess, on all the available evidence, first the nature and level of the anticipated risk and then, where necessary, the sufficiency and effectiveness of any protective measures. The ultimate burden remains throughout on the person opposing return, to establish that, in the circumstances that would exist after return, the child would face a grave risk under Article 13(1)(b). If grave risk is not established, the defence fails without any need for protective measures to be proved or put in place. This differs from the intra-EU position under Article 27(3) Brussels IIb, which places a specific evidential responsibility on the party seeking return.

CASE NOTE 334 | UK | High Court of England and Wales
[2024] EWHC 64 (Fam)
17 January 2024

The father opposed the child's return to Lithuania under Article 13(1)(b). Applying the 1980 Convention without the Brussels II regime, the English High Court held that the mother bore no separate legal or evidential burden to prove the availability and effectiveness of protective measures. The court had to evaluate all the evidence–first determining the nature and level of the anticipated risk and then, if necessary, considering the sufficiency of any available protection. The ultimate question remained whether the father had proved that return would expose the child to a grave risk. As his evidence did not establish such a risk, the defence failed, and the court ordered return without requiring the mother to establish protective measures.

The intra-EU position: Article 27(3) Brussels IIb

Within the EU, the allocation is largely settled by statute rather than left to national case law. Article 27(3) of Brussels provides that a court cannot refuse to return a child under Article 13(1)(b) of the 1980 Convention *"if the party requesting the return of the child satisfies the court, or the court is*

otherwise satisfied, that adequate arrangements have been made to secure the protection of the child after his or her return." [264]

Two features of this wording matter.

- **The applicant is expressly identified.** This tightens the passive formulation of the predecessor provision, Article 11(4) Brussels IIa, which said only that return could not be refused "if it is established that adequate arrangements have been made." Under the recast, the party seeking return ordinarily must place the material before the court seised; it will not be assumed in his favour.

- **The burden is not exclusive.** The court may be "otherwise satisfied" from any material properly before it. Under Article 27(4) it may communicate directly, or through the Central Authorities, with the competent authorities of the Member State where the child was habitually resident immediately before the removal or retention. Silence from the applicant or the foreign authorities, however, is not itself evidence that adequate arrangements exist.[265]

For the respondent – typically the parent resisting return – this makes it harder to succeed on Article 13(1)(b). A return may be refused only if adequate measures are absent or inadequate. But this allocation must be kept distinct from the respondent's own burden of establishing the grave risk in the first place. The respondent must still establish the grave risk; only once the court is considering refusal *solely* on that ground does the party seeking return bear the specific evidential responsibility of demonstrating the protective arrangements relied upon. The respondent is not required to prove that every potentially available mechanism in the State of habitual residence would fail, or that the legal system of that State is generally incapable of providing protection.

Article 27(3) tells the court what it must be satisfied *of*. It does not specify what quality of evidence suffices, and the risk is that mutual trust supplies the satisfaction without inquiry. A decision reciting that protective measures exist in the Member State of habitual residence, without addressing whether they are accessible to this family in the relevant timeframe, discharges the letter of the provision while defeating its purpose. That risk is documented: research into outcomes following return found that all six sampled measures concerning violence or non-molestation were breached.[266] A measure that merely enables the victim to seek a remedy after the predicted harm has occurred does not necessarily secure protection within Article 27(3). Similarly, a voluntary commitment offered by the left-behind parent should not be treated as adequate without examining whether it will have legal effect in the State of return and whether there are sufficient grounds to expect compliance.

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[264] Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) (2019) OJ L 178, art. 27(3). Recital 45 gives examples of adequate arrangements – a protection order barring the applicant from approaching the child, a provisional measure allowing the child to remain with the primary-carer taking parent pending a custody decision, or the demonstration of available medical facilities – and Recital 46 confirms that the court "should primarily rely on the parties" and may, where necessary, request the assistance of Central Authorities or network judges.

[265] See M. Župan and M. Mrčela 'Implementation of Cross-Border Protective Measures in Return Proceedings: Problems of Evidence under National Procedural Law' in K Trimmings, A Dutta, C Honorati and M Župan (eds), *Domestic Violence and Parental Child Abduction: The Protection of Abducting Mothers in Return Proceedings* (Intersentia 2022), available at <https://epub.ub.uni-muenchen.de/94783/1/9781839702808_web.pdf>, pp 126–127, 136–137. They emphasise the importance of Central Authority and direct judicial cooperation where the relevant evidence is located abroad, and ordinary evidence-taking procedures would be too slow. At pp 112–113, they discuss Croatian proceedings in which the requested information concerning safeguards was not supplied by the German authorities, leaving the return court without the material needed for a proper assessment.

[266] M. Freeman, *Outcomes for Children Returned Following an Abduction* (Reunite, 2003). See also, on the recast's expectation of concrete, family-specific arrangements, Office of the EU, *Practice Guide for the application of the Brussels IIb Regulation*, (2023), §4.3.6.

CASE NOTE 335 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2016:1714
15 June 2016

The court accepted that return would expose the children to psychological danger. It then examined Article 11(4) Brussels IIa and found that no adequate measures had been secured. Although the guardian had contacted Belgian agencies, the mother and children were not registered for housing, and it was uncertain whether they would receive emergency shelter. Past assistance in Belgium had not been implemented. By contrast, in the Netherlands the children were finally experiencing stability in their grandmother's care, supported by therapy and schooling. The court held that uprooting them without confirmed protective measures would be unacceptable. It therefore concluded that Article 11(4) was not satisfied and refused return.

The recast reinforces this scrutiny. Recital 45 reinforces the need for a concrete assessment: the adequacy of an arrangement depends on the particular grave risk to which the child would be exposed without it, and the court should primarily rely on the parties, seeking assistance from Central Authorities or network judges where necessary and appropriate. The evidential question under Article 27(3) is therefore not whether protective mechanisms exist in the abstract, but whether, on sufficient evidence, they will in fact protect *this* child within the timeframe of the return.

5.5. Hearing the child

> *"[58] …Although strictly this only applies to cases within the EU (over half of the applications coming before the High Court), the principle is, in my view of universal application and consistent with our international obligations under Art 12 of the United Nations Convention on the Rights of the Child 1989. It applies, not only when a 'defence' under art 13 has been raised, but also in any case in which the court is being asked to apply Art 12 and direct the summary return of the child – in effect in every Hague Convention case. It erects a presumption that the child will be heard unless this appears inappropriate. Hearing the child is, as already stated, not to be confused with giving effect to his views.*
>
> *[59] It follows that children should be heard far more frequently in Hague Convention cases than has been the practice hitherto. The only question is how this should be done."*
>
> – Baroness Hale of Richmond, *In re D (Abduction: Rights of Custody) [2006] UKHL 51, [2007] 1 AC 619* [267]

This section deals with hearing the child as a *cross-cutting procedural issue* that runs through the whole of return proceedings. The distinct *substantive* defence based on the child's objections under Article 13(2) of the 1980 Convention is treated separately in Chapter 4.5.G; here the concern is not

[267] House of Lords, *In re D (A Child) (Abduction: Rights of Custody)* [2006] UKHL 51, [2007] 1 AC 619, §§58–59

whether a mature child's wishes defeat return, but the duty to give every child of sufficient age and maturity a genuine opportunity to be heard, and the methods by which that is done.

5.5.A. The right to be heard as a general principle

The child's participation is a cross-cutting procedural principle extending beyond the Article 13(2) objections defence. The child's views may be relevant to habitual residence, to the grave-risk exception under Article 13(1)(b), to whether the child is settled under Article 12(2), and to the exercise of the court's discretion once an exception is made out.[268] The duty to hear is therefore anterior to, and wider than, the objections defence.

The 1980 Convention itself does not contain a freestanding provision requiring every child to be heard in every return case. Article 13(2) expressly refers to the child's objections, but the wider procedural duty may arise from Article 12 UNCRC, Article 8 ECHR, Article 24(1) of the EU Charter, regional instruments and the procedural law of the requested State.

Hearing the child does not necessarily mean oral evidence in open court or a personal interview with the judge. Depending on national law and the circumstances, the child's views may be obtained by the judge, a trained welfare or social-work professional, a psychologist, a representative, or another appropriate body. More than one method may be used. Separate representation does not by itself establish that the child's views have been obtained accurately, while hearing the child does not by itself require that the child be joined as a party.[269]

The method should be settled at the earliest case-management stage. The purpose and scope of the interview must remain Convention-specific: the return court is not conducting a general welfare inquiry or deciding custody. The court should identify:

— the issue on which the child's views are relevant;

— who will speak to the child and whether that person has suitable child-interviewing and Convention experience;

— the language, interpreter and setting to be used;

— how the child's own words and reasons will be recorded and distinguished from the interviewer's assessment;

— how the resulting information will be placed before the court and dealt with fairly by the parties; and

[268] See Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing, 2013), ch 14: "Ascertaining the Child's Views", p 373, identifying four contexts in which the child's views are relevant beyond the art. 13(2) objections defence: habitual residence, grave risk, settlement under Art 12(2), and the exercise of discretion. See also, P. Beaumont and P. McEleavy, *The Hague Convention on International Child Abduction* (OUP, 1999) p 193.
[269] Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing, 2013), p 375. She identifies four principal methods: a report by a welfare or other professional, a judicial interview, testimony, and separate representation. More than one method may be used, and separate representation does not by itself make other methods unnecessary.

— whether a video link or another form of communication technology is needed to avoid delay or an unnecessary journey.

The HCCH Special Commission recognises that States use different methods to obtain and introduce the child's views. It identifies three practical safeguards: the person hearing the child - whether the judge, an independent expert or another person - should be trained both in child-friendly interviewing and in international child abduction; if that person speaks to one parent, they should also speak to the other; and the interviewer should not express an opinion on custody or access because the return application determines only return. These safeguards apply, as appropriate, where the child is heard for purposes other than Article 13(2), including interim contact.[270]

Before the interview, the child should receive accurate, age-appropriate information. The child should understand that the immediate issue is return to the State of habitual residence, not which parent should have custody; that a return order is not a final determination of residence or contact; that the child's views will be considered but are not necessarily decisive; and that responsibility for the decision remains with the court. This reduces the risk of placing responsibility for the outcome on the child and makes participation meaningful.[271]

Where a professional reports the child's views, the court should separate the child's account and reasons from the professional's interpretation. The report should not drift into a general welfare assessment or invite the professional to decide the return question. The judge should also remain alert to the risk that a report may filter, reframe or omit parts of the child's account. Professional involvement may protect the child and assist the court, but it does not displace the court's responsibility to evaluate the material critically.[272]

Information technology may facilitate participation where an in-person meeting would cause delay or require travel. The 2023 Special Commission noted that technology had improved access to and participation in return proceedings, encouraged its continued appropriate use, and identified the HCCH Guide to Good Practice on the Use of Video-Link under the 1970 Evidence Convention as a useful practical resource.[273]

For States bound by the ECHR, the court must address the question of hearing the child of its own motion. It is not necessary for the judge personally to interview the child in every case, or for every child to be heard irrespective of the circumstances. The court must, however, consider whether it is appropriate to ascertain the child's views, directly or otherwise. If it decides that this should not be done, it should exclude that possibility by giving reasons rather than remain silent.

[270] HCCH, *Conclusions and Recommendations of the Eighth Meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention* (10-17 October 2023), §§35-39, especially §37 and §39, available at <https://assets.hcch.net/docs/5b48f412-6979-4dc1-b4c1-782fe0d5cfa7.pdf>.
[271] See Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing, 2013), pp. 385-387. She explains that meaningful participation requires the child to receive accurate, developmentally appropriate information about the legal process, the role offered to the child, and the consequences of expressing views. In a return case, the child should understand the summary nature of the proceedings, and that return is not a final custody determination.
[272] See Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing, 2013), pp 384-385. Schuz notes that professionals accustomed to welfare reports may put their own interpretation on the child's account, omit the child's reasons, or move into a general best-interests assessment; clear instructions, relevant training and critical judicial evaluation reduce these risks.
[273] HCCH, *Conclusions and Recommendations of the Eighth Meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention* (10-17 October 2023), §§ 5-9. The Special Commission noted that information technology facilitated access to and participation in proceedings, encouraged its continued appropriate use, and referred States to the HCCH Guide to Good Practice on the Use of Video-Link under the 1970 Evidence Convention.

CASE NOTE 336 | **ECtHR** | **M.P. and Others v. Greece** | App. No 2068/24
9 September 2025

The applicants complained that the domestic courts had not taken into account the views of the children during return proceedings. The ECtHR clarified that, even where the child is ultimately not heard, the national authorities must consider whether hearing the child is advisable and address this issue in their reasoning. The Court emphasised that if the domestic court decides that hearing the child is not appropriate, it must exclude that possibility through a reasoned decision rather than remaining silent on the question. (§§100-101)

The obligation to hear the child is not confined to 1980 Convention return cases. It may also arise in non-Convention return proceedings under national law, where the requesting State is not a Contracting Party. This duty is grounded in the welfare principle, Article 12 UNCRC, and the guarantee of effective access to justice. Hearing the child independently ensures that their views are not filtered through the parents, allows the court to test their authenticity, and strengthens the legitimacy of the decision.

CASE NOTE 337 | **UK** | **England and Wales Court of Appeal** | S (A Child) [2014] EWCA Civ 1557
4 December 2014

The High Court ordered the child's return from England to Russia under its inherent jurisdiction, as Russia was not a Contracting State to the Hague Convention at the time. The Court of Appeal set aside that order because the child had not been given the opportunity to be heard. The judgment confirmed that even outside the Convention framework, the child's right to be heard remains an essential procedural safeguard (§§12–18, §22, §28).

Appointment of a special curator is not automatically required merely because the child is to be heard. A court may consider that it can ascertain the child's views directly, particularly where the child can be interviewed separately, interpretation is available, and the child has also communicated in writing. Conversely, appointment may be necessary where there is a conflict of interests, a concern that the child's position cannot otherwise be presented independently, or another circumstance recognised by national law.

CASE NOTE 338 | **NL** | **The Hague Court of Appeal**
ECLI:NL:GHSGR:2010:BN8159
22 September 2010

The father asked the Hague Court of Appeal to appoint a special curator so that the children could tell their story in a calm setting. The court declined. It heard the children separately with an interpreter and also had letters written by them. In the absence of special circumstances, it considered the family judge capable of ascertaining and assessing their views.

Giving the child an opportunity to express their views does not in itself require the child to be joined as a party. The need to ascertain the child's views and the need for separate party status are distinct questions.

CASE NOTE 339 | **UK** | **England and Wales Court of Appeal** | Re D (A Child) [2023] EWCA Civ 1047
14 September 2023

The child was joined as a party at the first hearing before any Cafcass officer had interviewed him. The Court of Appeal held that this was premature. It distinguished obtaining the child's views from joining the child as a party and stated that, unless there were strong reasons to the contrary, the child should first be seen by the Cafcass High Court Team before the court determined party status. (§87).

A hearing may exceptionally proceed in the absence of an appointed procedural representative where national law permits, the representative has been duly excused and does not object, and the court is satisfied that the child's participation and procedural protection will not be compromised. The child's willingness and ability to answer age-appropriate questions are relevant to that case-specific decision.

CASE NOTE 340 | DE | Higher Regional Court of Nuremberg | 7 UF 829/21
25 October 2021

The appellate court ordered the return of a three-year-old girl to the United States. During the proceedings, the child's guardian ad litem was ill and formally excused from attending the hearing. The court nevertheless proceeded to hear the child, noting that the guardian had raised no objection and that the child was responsive and able to answer the court's questions appropriately for her age. The court held that, under these specific circumstances, the absence of the guardian did not invalidate the hearing, as the child's right to be heard was respected and the procedure remained fair and proportionate.

5.5.B. The child's right to be heard under Brussels IIb Regulation

Articles 21 and 26 of Brussels IIb create the operative EU rule for return proceedings. Article 26 applies Article 21 to proceedings under the 1980 Convention. In accordance with national law and procedure, a child capable of forming their own views must be given a genuine and effective opportunity to express those views, either directly or through a representative or appropriate body. If the child uses the opportunity, the court must give the views due weight according to the child's age and maturity.[274]

Brussels IIb should not be described by repeating the former Article 11(2) Brussels IIa wording that a hearing may be withheld whenever it appears inappropriate because of age or maturity. The recast instead requires an individual assessment of whether the child is capable of forming their own views and sets no minimum age. A national age threshold cannot replace that assessment. The opportunity is not an obligation on the child to speak, and national law still determines who hears the child and by what method. Recital 39 also requires the arrangements to be assessed in the child's best interests and the circumstances of the individual case. If no opportunity is provided, the reason should be recorded.[275]

Hearing the child of appropriate age and maturity is the rule, not the exception. The court must determine both whether the child is old enough to express an opinion and whether the child is mature enough to do so, and only where maturity is demonstrably insufficient may the court decide not to hear the child. The procedural obligation applies regardless of whether the taking parent has invoked Article 13(2) of the 1980 Convention, and a failure to provide the opportunity to be heard is

[274] Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) (2019) OJ L 178, art 21, 26. Article 26 applies Article 21 expressly to return proceedings under the 1980 Convention. Article 21 distinguishes the opportunity to express views from the later duty to give any views expressed due weight according to age and maturity.
[275] Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) (2019) OJ L 178, rec. 39; European Commission, Practice Guide for the Application of the Brussels IIb Regulation (2022) pp 187-194, available at <https://aldricus.giustizia.it/wp-content/uploads/2022/09/Practice-Guide-for-the-application-of-the-Brussels-IIb-Regulation_EU_EN.pdf>. The Guide stresses an individual assessment of capability that cannot be replaced by national age limits.

a procedural defect that may ground an appeal or challenge under Article 24(1) of the EU Charter of Fundamental Rights and Article 12 of the UN Convention on the Rights of the Child.

CASE NOTE 341 | **SI** | **Maribor High Court** | ECLI:SI:VSMB:2019:I.CP.377.2019
21 May 2019



In return proceedings concerning a ten-year-old child, the first-instance court decided on return without hearing the child. The Higher Court reversed. It held that Article 11(2) of Brussels IIa (now Article 21(2) Brussels IIb) requires the court to ensure the child is given the opportunity to express his or her views, unless inappropriate due to age or maturity. Hearing the child of appropriate age and maturity is the rule, not the exception. For a child of ten, the age threshold was clearly met; the first-instance court was therefore required to determine whether the child was also mature enough to express a meaningful opinion, and only upon finding insufficient maturity could it decline to hear the child. The case was remanded for the first-instance court to make that determination and, if satisfied of maturity, to hear the child before deciding on return.

A separate participation question arises after a non-return decision based on Article 13(1)(b), Article 13(2), or both. If the court of the Member State of origin subsequently determines the substance of custody and makes a decision entailing return under Article 29(6), the child must be given an opportunity appropriate to that different proceeding. A hearing in the requested State about summary return does not automatically substitute for hearing the child in the origin-State proceedings about the substance of custody.[276]

For a privileged Article 29(6) decision, Article 47(3)(b) makes compliance with Article 21 a condition for issuing the certificate. This is not a certification condition for every ordinary Hague return order. If a certificate was wrongly granted, Article 48(2) permits the court of origin, on application or of its own motion, to withdraw it. An application for withdrawal may support suspension of enforcement under Article 56(2)(d). The practical consequence is that any defect in the child's participation should be raised immediately before the court of origin and pursued through the remedies available there.[277]

A failure to comply with the child's participation rights before a certified return decision must be challenged in the Member State of origin, not before the court of enforcement. The enforcement court may not review whether the court of origin correctly complied with the child's right to express their views when issuing the certificate. Under Brussels IIb, compliance with Article 21 is an express condition for certification under Article 47(3)(b), while Article 48 provides the mechanism for withdrawal of a certificate wrongly granted.

[276] Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) (2019) OJ L 178, art 29(6), 47(3)(b); European Commission, Practice Guide for the Application of the Brussels IIb Regulation (2022) pp 134-136, 140-142, available at <https://aldricus.giustizia.it/wp-content/uploads/2022/09/Practice-Guide-for-the-application-of-the-Brussels-IIb-Regulation_EU_EN.pdf>.
[277] Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) (2019) OJ L 178, art 48(2), 56(2)(d). Article 48 supplies an express origin-State procedure for withdrawing a certificate that was wrongly granted; an application for withdrawal can support suspension of enforcement.

CASE NOTE 342 | **CJEU** | C-491/10 PPU
22 December 2010

The Spanish court awarded sole custody to the father and certified its judgment under Article 42 Brussels IIa without having heard the daughter, who was in Germany. The German court at first instance refused recognition and enforcement on that ground; on appeal, the Higher Regional Court referred to the CJEU the question whether the enforcement court could do so notwithstanding the Article 42 certificate.The CJEU held that the requested court cannot oppose enforcement of a certified judgment on the basis that the court of origin may have infringed the requirement to give the child an opportunity to be heard: review of that question belongs exclusively to the courts of the Member State of origin.

5.6. Contact with the Child During Return Proceedings

A left-behind parent (or other access-rights holder) will often want to preserve some contact with the child *while the return application is pending*. Even under the Convention's promptness requirement, and the six-week targets that apply between EU Member States, return proceedings can run for months once first instance and appeal are counted - long enough for a child's relationship with the left-behind parent to fade. The legal basis for interim contact differs across **two layers**: the 1980 Convention standing alone, and – between EU Member States (other than Denmark) – the Brussels IIb Regulation.

Article 21 governs a *separate* access procedure that a parent may launch through Central Authorities independently of any return claim; it is not a mechanism operating within a pending return case. See also Chapter 3.1.D. for standalone international access applications under Article 21 of the 1980 Convention.

5.6.A. Under the 1980 Convention alone

The Convention contains no express interim-contact provision, and does not itself confer power on the return court to regulate contact pending the return decision. The Convention is deliberately narrow: return proceedings are not proceedings on the substance of parental responsibility. Article 19 makes this explicit – a return decision is not a determination on the merits of any custody question. Nothing in the Convention itself empowers the requested court to design, vary, or enforce a contact regime pending return.

Any interim contact the requested court grants therefore rests on its own domestic law, not on the Convention. In practice, courts hearing Convention returns routinely have – and use – domestic interim powers to keep the applicant and child in contact while the case is decided, precisely to prevent the relationship-damage that delay causes. The measures are short-term, do not pre-empt the merits, and are expressly not intended to fetter the home State's jurisdiction.

CASE NOTE 343 | UK | High Court of England and Wales | AX v CY [2020] EWHC 1599 (Fam)
10 June 2020

The mother's whereabouts in the UK had been concealed, and she was located and served only shortly before the hearing. At a hearing on 16 March 2020, the court made an order for indirect contact twice a week by video link while the return application proceeded to final determination; return to Spain was subsequently ordered. The interim video-contact order flowed from the court's ordinary powers, not from the Convention.

Where parallel contact proceedings are already pending in the child's habitual residence, the requested court should consider whether its own procedural law requires or permits it to stay, decline or otherwise coordinate any competing contact request. The 1980 Convention itself contains no *lis pendens* rule governing such proceedings. National procedural rules may nevertheless require deference to proceedings already pending elsewhere, and because the merits belong to the courts of habitual residence, the requested court should not run a competing *substantive* contact case.

CASE NOTE 344 | NL | The Hague District Court
ECLI:NL:RBSGR:2007:BB3806
18 September 2007

The father sought a contact arrangement to take effect if return to Norway were ordered. Although the Dutch court technically had jurisdiction over that request under Article 11(1)(c) of the Dutch Implementation Act, the mother had already petitioned the Norwegian courts for separation and for rulings on contact (interim and substantive). Recognising Norway as better placed, the Dutch court suspended its own contact proceedings under the *lis pendens* rule (Article 12 of the Dutch Code of Civil Procedure) and used judicial cooperation instead: it asked the Liaison Judge for International Child Protection to inform the Norwegian court and request expedited handling.

5.6.B. Interim Contact under the Brussels IIb Regulation

Between EU Member States bound by the Regulation, the requested court has, in addition to any powers available under domestic law, an express EU-law basis to consider contact during return proceedings.

Article 27(2) expressly empowers the court to consider interim contact. The best interests of the child play a central role in provisional measures aimed at ensuring contact between the child and the person seeking the return of the child (Article 27(2)). The purpose is explicitly to guard against estrangement over the life of the proceedings: urgent provisional measures under Article 15 Brussels IIb, ensuring contact between the applicant and the child, are encouraged if they are in the child's best interests (Article 27(2)), particularly to avoid detrimental estrangement. For the applicant's use of Article 27(2) Brussels IIb to seek contact with the child during return proceedings, see Chapter 3.5.

The power endures only until the court with jurisdiction as to the substance intervenes and must not derail the return timetable – the same constraint the Regulation places on the parallel grave-risk protective-measure power: where the court orders return it may take provisional, including protective, measures under Article 15, provided that examining and taking such measures would not unduly delay the return proceedings.

5.7. Parallel Proceedings and Custody Decisions

When a child is wrongfully removed or retained across a border, several sets of proceedings may begin at once. A parent may apply for return in the State where the child is located, while one or both parents pursue custody, residence, contact or divorce proceedings elsewhere. Urgent protective measures may also be sought in either State. If these proceedings are not kept within their proper functions, they may produce contradictory orders or repeated movement of the child between States - what Advocate General Bobek described, in another context, as "judicial" or "procedural ping-pong".[278]

Three distinctions organise this chapter. First, a return decision under the 1980 Convention is not a custody decision. Secondly, Article 16 restricts custody adjudication only in the State to which the child was removed or in which the child is retained (the State of refuge); it does not prevent the competent authorities in the State of origin from deciding parental responsibility. Thirdly, a custody decision cannot determine the return application merely because it exists, although its reasons or practical legal effect may be relevant through a particular provision of the Convention.[279] Within the EU, Brussels IIb adds separate provisions on jurisdiction, urgent measures and lis pendens. Those provisions are addressed together at the end of the chapter.

For the basic jurisdictional distinction between return proceedings and proceedings on parental responsibility, including retained jurisdiction under Article 9 Brussels IIb and its limitation to intra-EU abductions, Handbook part 1, Chapter 6.2.A, "Jurisdiction in International Child Abduction Cases: Return vs. Parental Responsibility."

5.7.A. Return proceedings and parental responsibility proceedings - Article 19

A decision concerning return under the 1980 Convention does not determine custody, residence or contact. Article 19 of the 1980 Convention confines the decision to whether the child must be returned. Whether or not the taking parent contests the application, custody, residence and contact must still be decided or agreed in the appropriate parental-responsibility forum. That will commonly be the State in which the child was habitually resident immediately before the wrongful removal or retention, for as long as its authorities retain jurisdiction under the applicable instrument.[280]

[278] "Table tennis (or, under a trade name, Ping-Pong) is a popular sport, the origins of which seem to stretch back to 19th or early 20th century England. 'The object [of the game] is to hit the ball so that it goes over the net and bounces on the opponent's half of the table in such a way that the opponent cannot reach it or return it correctly.' There exists, unfortunately, another variety of the game, which is generally less enjoyable. In Czech judicial slang, but perhaps not just there, 'judicial' or 'procedural ping-pong' refers to the undesirable situation in which a case is repeatedly shuttled back and forth between courts within a judicial structure, or, in the context of administrative justice, between the courts and administrative authorities." Opinion of Advocate General Michal Bobek delivered on 30 April 2019, *Alekszij Torubarov v Bevándorlási és Menekültügyi Hivatal*, C-556/17, EU:C:2019:339, §§1-2.

[279] Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) 427-428, treats Articles 16, 17 and 19 as safeguards maintaining the Convention's deliberate separation of return from the merits of custody. The jurisdictional consequences, however, arise from the applicable jurisdictional instrument rather than from those provisions themselves.

[280] Article 19 of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction limits the effect of the return decision; it does not identify the authority with parental-responsibility jurisdiction. Under Article 7 of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children and, within the EU, Article 9 of Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast), jurisdiction usually remains in the State of the child's immediately prior habitual residence until the relevant statutory conditions are met.

CASE NOTE 345 | **PL** | **District Court in Suwałki** | I.Ca 119/17
24 April 2017

The court stressed that a decision under the 1980 Convention resolves neither parental authority nor the child's place of residence. Those matters belonged to the competent guardianship court in separate proceedings. The return court's own task was confined to determining whether the removal was wrongful and whether an exception to return had been established.

A return court must not decide the application as though it were a custody case. Return does not necessarily mean that the child will be placed in the day-to-day care of the applicant. The court must not speculate about the eventual custody outcome or replace the Convention inquiry with a general welfare comparison. Conflating return with custody may not only misapply the Convention, but also fail to comply with Article 8 ECHR.

CASE NOTE 346 | **ECtHR** | **K.J. v. Poland** | App. No 30813/14
1 March 2016

The Polish courts refused return on the basis of speculative assumptions about the custody arrangements that would follow, including the assumption that return necessarily meant placing the child in the father's care and separating the child from the mother. The ECtHR held that the domestic court had gone beyond the matters properly assessed under Article 13(1)(b): return and custody could not be conflated. By extending the Convention inquiry beyond its proper limits, the domestic courts failed to secure the father's rights under Article 8 ECHR.

The 1980 Convention does not require a court to initiate return proceedings on behalf of an inactive parent. If it identifies a possible wrongful removal under Article 3, it may direct the left-behind parent to the return mechanism and make clear that the parent must act promptly. The parent must nevertheless take the steps needed to seek return. Notice may activate Article 16, as explained below, but if no application is lodged within a reasonable time, Article 16 ceases to prohibit a custody decision. The court must still establish independently that it has jurisdiction over parental responsibility; the expiry of the Article 16 prohibition does not confer jurisdiction.

CASE NOTE 347 | **ECtHR** | **P.N. v. Czech Republic** | App. No 44684/14
8 June 2023

A first-instance court expressly characterised the mother's move as unlawful and reminded the father of the one-year period in Article 12. He did not apply for return. The domestic courts were later entitled to determine the mother's applications - first for permission for the child to study abroad and then for a change of residence - on a best-interests basis. The ECtHR held that the courts were not required to cure or substitute for the father's failure to initiate proceedings under the 1980 Convention and found no violation of Article 8.

The 1980 and 1996 Conventions contain no general lis pendens mechanism between return proceedings in the State of refuge and parental-responsibility proceedings in the State of origin. The proceedings may continue in parallel because they have different functions. If an overlapping custody or contact claim is brought before the return court, any stay or coordination must rest on the 1996 Convention, national procedural law or another applicable instrument. The HCCH *Practical Handbook on the Operation of the 1996 Hague Child Protection Convention* (§13.12)

recommends communication and cooperation where parallel proceedings create practical difficulty; it does not give either Convention proceeding automatic temporal priority over the other.[281]

CASE NOTE 348 | NL | The Hague District Court
ECLI:NL:RBSGR:2007:BB3806
18 September 2007

The father opposed the children's return to Norway and, in the alternative, asked the Dutch court to establish contact for three periods of fourteen days each year. The mother had already applied to the Norwegian court for legal separation and for contact arrangements, both provisionally and in the main proceedings. Although the Dutch court considered that it had jurisdiction under the Dutch legislation implementing the 1980 Convention, it stayed only the contact claim under Article 12 of the Dutch Code of Civil Procedure. It asked the Liaison Judge for International Child Protection to contact the Norwegian court and seek expedited handling, while separately ordering the children's return. The decision was given before the 1996 Convention entered into force between the Netherlands and Norway.

5.7.B. Custody proceedings and decisions in the state of refuge - Articles 16 and 17

Article 16 is triggered when the authorities in the State of refuge receive notice of an alleged wrongful removal or retention within Article 3; a return application need not yet be pending. From that point, the judicial or administrative authorities may not decide the merits of rights of custody. The provision protects the return mechanism against a merits decision obtained in the new forum and prevents the taking parent from converting a factual situation into a local custody title.

Notice will commonly arise from the return application itself, direct communication by the person seeking return, or an official communication from a Central Authority. The Pérez-Vera Explanatory Report (§121) identifies the first and third routes expressly. Article 16 does not prescribe a formal notice procedure or require a final prior determination of wrongfulness. The information must nevertheless be sufficiently concrete to identify the child, the removal or retention, and the claimed breach of custody rights; an unsupported reference to possible abduction should not indefinitely paralyse custody proceedings.[282]

The Article 16 prohibition ends only in two situations: where it has been determined that the child is not to be returned under the 1980 Convention, or where no application under the 1980 Convention is lodged within a reasonable time after receipt of the notice.

An order for return does not release the State of refuge to determine custody, because Article 16 permits a custody decision only following a determination of non-return or the failure to lodge an application within a reasonable time. Nor is the "reasonable time" in Article 16 the one-year period

[281] HCCH, *Practical Handbook on the Operation of the 1996 Hague Child Protection Convention* (HCCH 2014) §13.12. Article 13 of the 1996 Convention coordinates concurrent jurisdiction under Articles 5-10 of that Convention. It does not regulate the relationship between parental-responsibility jurisdiction under the 1996 Convention and a return application under the 1980 Convention.
[282] The English text of Article 16 refers to notice "of a wrongful removal or retention", not expressly to an allegation. Courts differ on the degree of substantiation required. A final finding of wrongfulness would defeat the provision's preventive function, but a bare assertion should not immobilise merits proceedings indefinitely. Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction,* §121; Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) pp 427-428.

in Article 12. The two periods perform different functions, and the Explanatory Report expressly recognises that Article 16 may cease to operate before the Article 12 period expires.[283]

Article 16 prohibits a decision on the custody merits; it neither creates jurisdiction nor prevents a court from ruling on its own jurisdiction. Jurisdiction must come from the 1996 Convention, Brussels IIb or the applicable domestic law. A court that lacks jurisdiction should not use Article 16 merely to keep the claim pending. If it has jurisdiction, national procedural law determines how the prohibition is implemented, commonly by a stay. Article 16 itself prescribes the result - no merits decision - rather than a particular domestic procedural order.[284]

Urgent protection is a different question. Article 16 does not itself confer power to make protective measures, but it does not prevent measures that do not determine the custody merits. Where the 1996 Convention applies, and the State of origin retains jurisdiction under Article 7, the State of refuge may take necessary urgent measures under Article 11; Article 7(3) excludes reliance on the provisional-measures power in Article 12. Any protective order must remain within that limited function.[285]

Custody or divorce proceedings commenced in the State of refuge may be evidence that an allegedly temporary journey was intended as a permanent relocation. Their existence does not establish wrongfulness by itself, and the taking parent's subjective intention is not a separate element of Article 3. Their timing and manner may nevertheless help prove the agreed purpose or duration of the journey, the scope of alleged consent, or the point at which a lawful visit became a wrongful retention. The inference is stronger where the filing is accompanied by concealment, a false address for service, immediate school enrolment, employment or other concrete settlement steps. The Pérez-Vera Explanatory Report (§§14-15) identifies the risk that a taking parent will seek a decision in the new forum that legalises the situation just created, but it does not turn every local filing into proof of wrongful intent.

CASE NOTE 349 | RO | Bucharest Tribunal | Decision from 3.3.2017
3 March 2017

The mother travelled with her daughter from Italy to Romania, presenting the journey as a holiday. Evidence showed that she had filed for divorce in Romania before leaving, provided an incorrect address for the father and enrolled the child in school shortly after arrival. The Bucharest Tribunal treated those steps as evidence of a premeditated plan to remain and obtain a Romanian determination of parental responsibility. It found the removal wrongful under Article 3 and ordered the child's return to Italy.

A custody or protective decision made in the State of refuge does not displace the return analysis merely because it exists. Article 17 of the 1980 Convention provides that the sole fact that a custody decision has been given in, or is entitled to recognition in, the requested State is not a ground for refusing return. The court must still apply Articles 3, 12, 13 and 20 independently. It may

[283] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction*, §121, observes that the ambiguity of "reasonable time" may allow a custody decision before the one-year period in Article 12 expires. Such a decision may then coexist with the continuing duty to return and must be addressed through Article 17. The Article 12 and Article 16 periods should therefore not be equated.
[284] Article 16 of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction prohibits a decision on the custody merits; it does not prescribe a formal stay. The procedural form - a stay, adjournment or another order - is determined by national law. Nor does the end of the Article 16 prohibition itself create jurisdiction. This distinction is central to the Bulgarian Supreme Court of Cassation, Order No 394 of 17 September 2019.
[285] HCCH, *Practical Handbook on the Operation of the 1996 Hague Child Protection Convention* (HCCH 2014) §§13.3-13.7. If the States are not both bound by the 1996 Convention, another applicable instrument or domestic private international law must supply the power.

take account of the reasons underlying the custody decision only insofar as they bear on the application of the 1980 Convention. As the Pérez-Vera Report (§§122-123) explains, Article 17 does not reopen the welfare merits or create an additional exception to return.[286]

If the decision was made after Article 16 was engaged, it may have been given contrary to the Convention's prohibition. The 1980 Convention does not, however, annul the decision or determine its validity under domestic law. For the return application, the decision does not retrospectively make the original removal or retention lawful, and its operative custody outcome is not an autonomous ground for refusing return. Its reasons, evidence and, where legally relevant, its practical effect may be considered only through an identified Convention provision; Article 17 is not itself a refusal ground.

CASE NOTE 350 | **RO** | **Bucharest Tribunal** | Case No. 1197/2015
11 September 2015



The mother relied on a Romanian custody judgment establishing the children's domicile with her. The return court rejected the argument that this judgment controlled the outcome, emphasising that it had been issued after the return application was filed. The return question had to be determined under the 1980 Convention before any custody determination in the State of refuge could be relied upon; the later domestic judgment could not displace that inquiry.

CASE NOTE 351 | **NL** | **The Hague Court of Appeal**
ECLI:NL:GHDHA:2020:710
25 March 2020



The child was living in the Netherlands under several provisional protective measures: provisional supervision, placement in foster care and later a temporary suspension of parental authority. The left-behind parents argued that those measures could not block return. The Court of Appeal confirmed that Article 17 prevented refusal merely because the decisions existed: they did not extinguish the parents' custody rights under Article 3 or legalise the retention. The court did, however, consider the evidence and concerns underlying the measures when assessing Article 13(1)(b) and the child's objection. It ultimately refused return because the underlying circumstances established the relevant exceptions, not because the protective orders themselves dictated non-return.

5.7.C. Custody proceedings and decisions in the state of origin

Article 16 does not prevent the competent authorities in the State of origin from commencing or continuing proceedings on custody, residence or contact. Its text binds only the authorities of the State to which the child was removed or in which the child is retained. Return proceedings in the State of refuge and parental-responsibility proceedings in the State of origin may therefore continue

[286] Article 17 of the 1980 Hague Convention covers both a decision made in the State of refuge and a foreign decision entitled to recognition there. It removes the decision's *sole existence* as a ground for non-return; it does not require the court to disregard the operative terms where their legal effect is relevant through Article 3 or an exception. Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction,* §§122-123; Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) pp 27-28.

in parallel, provided that the origin-State authority has jurisdiction under the applicable instrument.[287]

CASE NOTE 352 | NL | Amsterdam Court of Appeal
ECLI:NL:GHAMS:2026:2279
18 August 2026

The mother travelled with the children from the Netherlands to the United States for an authorised holiday and, after the agreed return date, remained abroad and later moved with them to Canada. The father initiated Hague return proceedings, which ultimately resulted in a Canadian court ordering the children's return to the Netherlands. In parallel, proceedings concerning parental responsibility were pending before the Dutch courts. The Amsterdam Court of Appeal held that the children's habitual residence had remained in the Netherlands and that the Dutch courts therefore had jurisdiction over the parental-responsibility claims under Brussels IIb. The Hague proceedings in Canada and the Dutch parental-responsibility proceedings thus operated alongside one another, each addressing a different legal question.

The two tracks remain legally distinct. The court in the State of refuge decides return in a summary procedure under the 1980 Convention. The court in the State of origin decides parental responsibility on the merits. It may order that the child live in, or be brought to, a particular State as a measure of protection, but that is not a return order under the 1980 Convention. Its recognition and enforcement depend on the 1996 Convention, Brussels IIb or other applicable law.

The HCCH *Practical Handbook on the Operation of the 1996 Hague Child Protection Convention*, (§§13.3-13.12) explains that **the 1996 Convention supplements the return mechanism by retaining jurisdiction in the State of the child's immediately prior habitual residence until the conditions in Article 7 are met**.[288] A refusal of return does not by itself transfer jurisdiction. Where the simultaneous proceedings create practical difficulties, the courts should communicate and cooperate rather than assume that one decision automatically determines the other.

CASE NOTE 353 | NL | The Hague District Court
ECLI:NL:RBDHA:2015:12981
11 November 2015

The parents shared parental authority over their daughter, who was habitually resident in the Netherlands. The mother left the Netherlands with the child for Turkey and then moved onward to Syria. The father initiated return proceedings in Turkey, but those proceedings were unlikely to achieve an effective return because the child was no longer present there and Syria was not a Contracting State to the 1980 Convention. He therefore also asked the Dutch court to award him sole parental authority. The Dutch court held that it retained jurisdiction under Article 7 of the 1996 Convention and that Article 16 did not prevent it from deciding parental responsibility: the Netherlands was the State of origin, not the State in which the child was then retained. Having concluded that joint parental authority was no longer in the child's best interests, it awarded sole parental authority to the father.

A custody decision made in the State of origin after the removal or retention does not retrospectively alter whether the conduct was wrongful under Article 3. Wrongfulness is assessed at the time of the removal or retention by reference to the custody rights then existing and exercised. A later decision may nevertheless affect the current analysis if its reasons or legal effect are relevant through an identified Convention route - for example, by clarifying custody rights under

[287] Article 16 of the 1980 Convention never binds the origin-State authority, but that does not mean that the State of origin retains jurisdiction indefinitely. Retention depends on the applicable jurisdictional basis, particularly Article 7 of the 1996 Hague Convention or Article 9 of Council Regulation (EU) 2019/1111.
[288] HCCH, *Practical Handbook on the Operation of the 1996 Hague Child Protection Convention* (HCCH 2014) §§13.3-13.12.

Articles 3 and 14, supplying facts relevant to an Article 13 exception under Article 17, or, in one national approach, amounting prospectively to consent or acquiescence for Article 13(1)(a). The provisional or final label is not decisive.[289]

CASE NOTE 354 | SE | Supreme Court | Ö 939-12
27 April 2012

The children were initially wrongfully retained by their mother in Sweden, having been habitually resident in the Czech Republic. While return proceedings were pending in Sweden, the mother applied to the Czech District Court for a decision on their residence. That court issued a provisional decision allowing the children to remain with her in Sweden while the residence proceedings continued; no final custody decision had yet been issued when the Swedish Supreme Court decided the return application. The Supreme Court treated the Czech provisional decision as equivalent to consent under Article 13(1)(a) and refused return. It did not treat the order as retrospectively legalising the retention or transferring jurisdiction.

The decision above, however, represents a particular national construction, not a generally accepted proposition that judicial authorisation is the same as the applicant's consent. Other courts may analyse the order through Article 17, ask whether it changed the prospective content or exercise of custody rights, or consider its practical consequences under another Convention exception. The answer depends on the wording, effectiveness and procedural context of the decision and on the powers of the authority that issued it.

A later decision of the competent court of origin authorising the child to live in the State of refuge may be relevant under Article 13(1)(b) where return would expose the child to an immediate cycle of return and lawful re-removal. The decision itself is not a ground for non-return. The court must determine whether its legal and practical consequences mean that the child would be returned only to be lawfully moved abroad again, and whether that repeated movement would create a grave risk of harm or otherwise place the child in an intolerable situation. Article 17 permits consideration of the reasons for the origin-State decision; it does not lower the Article 13(1)(b) threshold. National courts, however, diverge on circular-return cases: as a good practice, the court must verify that immediate re-removal is legally and practically possible and that the resulting instability reaches the grave-risk or intolerability threshold.

CASE NOTE 355 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2022:0104.17UF267.21.00
4 January 2022

The mother moved from Poland to Germany with the child without the father's consent, and the father applied for return. During the return proceedings, the District Court of Opole, seised of custody proceedings in Poland, provisionally fixed the child's residence with the mother. The Polish court knew that she lived in Germany but did not require her return. The German court held that returning the child to Poland only for the mother to be entitled to take the child lawfully back to Germany would create destabilising "ping-pong" movement. It found that the resulting instability and procedural uncertainty would place the child in an intolerable situation and refused return under Article 13(1)(b).

[289] Article 3 of the 1980 Convention fixes wrongfulness at the time of removal or retention. Article 17 permits the reasons for a later decision to be considered in applying the Convention, but is not itself an exception. The later order's effect must therefore be linked to a particular question under Articles 3, 12, 13 or 20.

CASE NOTE 356 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2015:0318.17UF44.15.0A
18 March 2015



During proceedings for return from Germany to Italy, the Italian court provisionally fixed the child's primary residence with the mother in Germany. The German court did not treat that order as automatically determining the return application. It considered the reasons and practical legal effect of the Italian decision under Article 17 and found that the mother could lawfully take the child back to Germany immediately after a return to Italy. Because the resulting circular movement would place the child in an intolerable situation, the court refused return under Article 13(1)(b).

CASE NOTE 357 | PL | Supreme Court | II CSKP 270/24
4 July 2024



A child habitually resident in Brazil was wrongfully retained in Poland by her father. While the return proceedings were pending, a Brazilian court issued a final custody judgment establishing the father's home in Poland as the child's primary residence and limiting the mother to holiday contact. The Polish Supreme Court annulled the return order and remitted the case. It required the Court of Appeal to address the practical consequence that, if the child were returned to Brazil outside the holiday period, the Brazilian judgment would immediately entitle the father to take the child back to Poland. The return order had become potentially self-defeating, and the court was required to confront that consequence before deciding.

A later decision of the competent court of origin authorising the child to live in the State of refuge may change the legal basis of the child's continued residence from the date of that decision. It does not, however, retrospectively legalise an originally wrongful removal or retention or automatically determine the return application. Its effect must still be assessed through the relevant provisions of the 1980 Convention, in particular Articles 13 and 17.

CASE NOTE 358 | BG | Sofia City Court | 20181100116227
4 December 2018



The mother travelled to Bulgaria with the child for a short stay and then refused to return to Italy. The father applied for return under the 1980 Convention. During the period following the retention, the Italian court granted the parents joint parental responsibility but fixed the child's primary residence with the mother in Bulgaria. The Bulgarian court relied decisively on that judgment and held that, because the competent Italian court had accepted residence in Bulgaria, the child's continued stay could no longer be treated as contrary to the Italian parental-responsibility arrangement. The decision is best understood as addressing the prospective effect of the later Italian order, not as retrospectively making the original retention lawful.

A recent no-relocation, residence or return direction from the State of origin may carry substantial evidential weight, but it does not replace the Convention analysis. Depending on its terms and legal basis, the decision may help establish habitual residence, the existence and exercise of custody rights, the right to determine residence, or the absence of consent. Its reasoning may also address allegations relied upon under Article 13. The return court must nevertheless decide each Convention issue independently and must examine materially new evidence or current risk.[290]

[290] Article 14 of the 1980 Hague Convention permits the return court to take direct notice of the law and judicial or administrative decisions of the State of the child's habitual residence without ordinary proof or recognition formalities. This facilitates their evidential use but does not make them binding on the court's application of Articles 3 and 13.

CASE NOTE 359 | NL | The Hague District Court | ECLI:NL:RBDHA:2021:14705
29 December 2021

Before the mother removed the children to the Netherlands, the English Family Court had prohibited her from travelling with them and required their continued residence in the United Kingdom. Despite those orders, she left the country. The Dutch court carried out the Article 3 and Article 13 analysis independently but treated the English orders as powerful evidence that the children's habitual residence remained in the United Kingdom, that the parents exercised joint custody and that the removal breached express restrictions. The English court had also recently examined and rejected the safety allegations later relied upon under Article 13. The Dutch court rejected the defences and ordered the children's return.

5.7.D. Brussels IIb framework for parallel proceedings

Brussels IIb does not merge return and parental-responsibility proceedings. It adds a jurisdictional and procedural framework to the 1980 Convention for cases within its territorial and temporal scope. The questions remain separate: the 1980 Convention governs return; Brussels IIb determines parental-responsibility jurisdiction, coordinates overlapping merits proceedings and regulates urgent measures and specified post-non-return proceedings.[291]

Return proceedings and parental-responsibility proceedings do not create lis pendens under Article 20 Brussels IIb. Article 20(2) applies only where parental-responsibility proceedings in different Member States concern the same child and involve the same cause of action. It does not require identity of parties, and it does not apply where the jurisdiction of one court rests solely on Article 15. The court second seised stays only the overlapping parental-responsibility claim and, once the jurisdiction of the first court is established, declines jurisdiction in its favour. The return proceedings continue.

CASE NOTE 360 | CJEU | Case C-376/14 PPU
9 October 2014

Custody proceedings were pending before the French courts when the father applied in Ireland for the child's return under the 1980 Convention. The CJEU held that return proceedings do not concern the substance of parental responsibility and have neither the same object nor the same cause of action as custody proceedings. Article 19 of the 1980 Convention likewise confirms that a return decision is not a determination of the custody merits. There could therefore be no lis pendens between the French custody proceedings and the Irish return proceedings.

The lis pendens mechanism gives procedural priority to the court first seised but does not validate that court's legal analysis. It prevents parallel merits decisions but does not guarantee that the court first seised has correctly characterised the removal or applied the autonomous concepts of habitual residence and wrongfulness. [292]

[291] See the Brussels IIb Regulation, especially Articles 9, 15, 18, 20 and 22-29; also Boriana Musseva, *Practice Guide for the Application of the Brussels IIb Regulation* (European Commission 2023); Maria Caterina Baruffi, 'The Interaction of the 1980 Child Abduction Convention with the Brussels II-ter Regulation' (2023) 12 *Laws* 76.

[292] Council Regulation (EU) 2019/1111 governs parental responsibility but not maintenance. Any lis pendens or recognition consequence for maintenance must be traced to Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations or another applicable basis. The example below should, therefore, not be read as attributing the outcome of both claims to Article 20 of Council Regulation (EU) 2019/1111.

CASE NOTE 361 | **NL** | **Overijssel District Court** | ECLI:NL:RBOVE:2025:6188
11 September 2025

The Dutch court declined jurisdiction over the child's principal residence under Article 20(2) Brussels IIb and over maintenance under Article 12 of the Maintenance Regulation because the Bulgarian proceedings had been commenced first. In an observation not necessary to the jurisdictional outcome, it noted that the Bulgarian appellate court, in connected return proceedings, had not taken the alleged wrongful removal as its starting point. Instead, that court had determined habitual residence by reference to a general assumption about the care of an infant - an approach difficult to reconcile with the autonomous standard.

A court in the State of refuge must determine jurisdiction independently of Article 16. In an intra-EU wrongful removal or retention, Article 9 Brussels IIb normally preserves jurisdiction in the Member State of the child's immediately prior habitual residence until its conditions are met. If another Member State court has jurisdiction on the substance, Article 18 requires the court seised to declare of its own motion that it has no jurisdiction. Article 16 does not prevent that ruling and cannot be used to keep an otherwise incompetent custody case pending. Only if the court has jurisdiction can Article 16 operate as a temporary prohibition on deciding the merits.

CASE NOTE 362 | **BG** | **Supreme Court** | Case No 2567/2019
17 September 2019

After taking the child from Spain, the father brought proceedings in Bulgaria concerning parental responsibility, contact and maintenance. The mother contested the jurisdiction of the Bulgarian courts and applied for the child's return. The lower courts did not determine her jurisdictional objection but stayed the proceedings under Article 16. The Supreme Court held that this was the wrong sequence. The court first had to examine, of its own motion, whether it had jurisdiction under Brussels IIa. Article 16 prevented a decision on the custody merits, but did not prevent a ruling on jurisdiction. If jurisdiction was absent, the Bulgarian court had to terminate the proceedings under national procedural law; only if it was competent could the proceedings be suspended because Article 16 temporarily prevented determination of the merits. Neither the pending return proceedings nor a possible refusal of return would, by itself, confer jurisdiction. The Supreme Court set aside the stay and remitted the case for the first-instance court to determine jurisdiction. The decision applied Articles 10 and 17 Brussels IIa, whose current equivalents are Articles 9 and 18 Brussels IIb.

Article 15 Brussels IIb permits urgent provisional, including protective, measures in the Member State where the child is present, but it cannot be used as disguised jurisdiction over the custody merits. The measure must respond to urgency, remain provisional and cease when the court with jurisdiction takes the measures it considers appropriate. Article 27(5) specifically permits suitable Article 15 measures accompanying a return order where needed to protect the child from a grave risk, provided that their examination does not unduly delay return.

CASE NOTE 363 | **CJEU** | C-403/09 PPU
23 December 2009

The mother removed her daughter from Italy, where the family was habitually resident, to Slovenia. An Italian court had provisionally awarded custody to the father. The mother then sought a Slovenian provisional measure awarding custody to her, relying on the child's settling and integration in Slovenia after the removal. The CJEU held that Article 20 Brussels IIa, the predecessor of Article 15 Brussels IIb, could not be used to contradict the order of the court having jurisdiction and consolidate the factual situation created by the wrongful removal. Any genuine change in the child's circumstances had to be placed before the court with jurisdiction on the merits through the Regulation's cooperation mechanisms.

CASE NOTE 364 | AT | Supreme Court
ECLI:AT:OGH0002:2013:0040OB00070.13T.0618.000
18 June 2013

The mother had obtained a provisional order granting her sole custody in Austria after bringing the child there from France. Once the alleged wrongful removal was raised, the Supreme Court held that the Austrian court first had to determine whether it had jurisdiction on the merits under Brussels IIa. If Austria lacked such jurisdiction, Article 20 Brussels IIa permitted urgent provisional or protective measures required by the child's presence, but could not be used to award provisional custody to the taking parent and thereby prolong or legitimise the situation created by the wrongful removal. After return to France was ordered, the Court set aside the provisional custody order. The corresponding current provision is Article 15 Brussels IIb.

Whether an origin-State custody order is interim or final does not by itself determine jurisdiction. Jurisdiction changes only when the conditions in Brussels IIb are met, or a valid jurisdictional mechanism is used. In particular, a provisional order does not automatically satisfy the conditions for a shift under Article 9 or transfer the case to the State of refuge.[293]

CASE NOTE 365 | CJEU | C-211/10 PPU
1 July 2010

The CJEU held that a provisional measure made by the court of origin was not a "judgment on custody that does not entail the return of the child" for the jurisdiction-shifting condition then contained in Article 10(b)(iv) Brussels IIa. Treating it as such could deter the origin court from adopting an interim measure in the child's interests. Jurisdiction therefore remained with that court. The judgment does not establish that only a final custody judgment can ever change jurisdiction; the applicable statutory conditions control.

Article 9 Brussels IIb applies only to abductions between Member States. It does not preserve Member-State jurisdiction indefinitely where a child is removed from a Member State to a third State and becomes habitually resident there. Jurisdiction must then be determined under an applicable international convention, particularly the 1996 Convention, or under residual national law.

CASE NOTE 366 | CJEU | C-603/20 PPU
24 March 2021

After the mother removed the child from the United Kingdom to India, the child became habitually resident in India. The father later applied to the English courts for return and contact. The CJEU held that Article 10 Brussels IIa, the predecessor of Article 9 Brussels IIb, governed only intra-EU abductions and did not preserve Member-State jurisdiction indefinitely after the child acquired habitual residence in a third State. Jurisdiction had to be determined under any applicable international convention or national law.

Retained jurisdiction is strong but not absolute: transfer remains possible in the exceptional circumstances specified by Articles 12 and 13 Brussels IIb. Wrongful removal is not a categorical bar, but post-removal presence or integration cannot by itself make the State of refuge better placed. A pending and undecided return application must be considered so that transfer does not pre-empt the return mechanism.[294]

[293] Judgment of 1 July 2010, *Doris Povse v Mauro Alpago*, C-211/10 PPU, EU:C:2010:400, concerned the specific condition in Article 10(b)(iv) of Council Regulation (EC) No 2201/2003. It does not establish a general proposition that an interim order is irrelevant or that only a final judgment can shift jurisdiction. Under current law, Article 9 of Council Regulation (EU) 2019/1111 specifies when retained jurisdiction ends, and Articles 12-13 govern transfer.
[294] Judgment of 13 July 2023, *TT (Wrongful removal of a child)*, C-87/22, EU:C:2023:571, interpreted Article 15 of Council Regulation (EC) No 2201/2003. Under Council Regulation (EU) 2019/1111, the court having jurisdiction transfers under Article 12, while Article 13 permits a court without jurisdiction to request transfer. See Boriana Musseva, *Practice Guide for the Application of the Brussels IIb Regulation* (European

CASE NOTE 367 | **CJEU** | C-87/22
13 July 2023

After the mother wrongfully removed the children from Austria to Slovakia, where they attended school and spoke the language, she asked the Austrian court, which retained jurisdiction, to request that a Slovak court assume jurisdiction over custody. The CJEU held that the transfer power under Article 15 Brussels IIa could exceptionally be used in favour of the Member State to which the children had been removed. The Austrian court nevertheless had to apply every statutory condition, be satisfied that transfer would not negatively affect the children's emotional, family and social relationships or material circumstances, and take account of the pending, undecided return application. Under Brussels IIb, transfer by the court having jurisdiction is governed by Article 12, while Article 13 addresses a request from a court without jurisdiction.

A refusal of return does not by itself transfer jurisdiction to the State of refuge. Where non-return is based solely on Article 13(1)(b), Article 13(2), or both, Article 29 Brussels IIb regulates the subsequent proceedings in the Member State of the child's immediately prior habitual residence where that State retains jurisdiction over parental responsibility. A later decision entailing return is a parental-responsibility decision, not a second decision under the 1980 Convention.

CASE NOTE 368 | **SI** | **Supreme Court** | ECLI:SI:VSRS:2021:II.IPS.25.2021
21 April 2021

After the mother moved the child from Slovenia to Croatia without the father's consent, the father initiated return proceedings in Croatia, which were ultimately unsuccessful. At the same time, custody proceedings continued in Slovenia as the State of the child's habitual residence. The Slovenian Supreme Court treated the proceedings as distinct. The Croatian court had decided return under the 1980 Convention in a summary procedure, whereas the Slovenian court retained jurisdiction under Brussels IIa to determine parental responsibility on the merits and could consider an order requiring the child's return as a measure of protection. The refusal of return in Croatia did not prevent the Slovenian proceedings from continuing. (For current cases, the procedure and limits of a decision following specified grounds of non-return must be stated under Article 29 Brussels IIb.)

Commission 2023), discussion of Articles 12-13; Dieter Martiny, 'New Efforts in Judicial Cooperation in European Child Abduction Cases' (2021) *Polski Proces Cywilny,* pp 501-522.

5.8. Domestic violence in return proceedings - key principles

Domestic violence raises some of the most difficult issues in return proceedings because it may affect both the child directly and the circumstances in which the child would be returned. The legal question remains whether the facts relied upon satisfy Article 13(1)(b), assessed within the narrow framework of the grave-risk exception and with proper attention to the availability and effectiveness of protection. For the substantive scope and application of Article 13(1)(b), see Chapter 4.5.F; for the evidentiary framework, including substantiation, the two-stage assessment and information relevant to grave risk, see Chapter 5.4.C.

The Convention does not recognise a separate category of "protective abduction." A removal or retention may be prompted by a genuine attempt to protect the child or the taking parent from domestic violence, and the circumstances leading to the removal may be extremely serious. They do not, however, alter the Convention's definition of wrongfulness: where custody rights are breached within Article 3, the removal or retention remains wrongful irrespective of the motive for it. The Convention addresses the protective dimension at the next stage, through the exceptions to return, in particular Article 13(1)(b). As the HCCH Secretary General emphasised at the Second Forum on Domestic Violence, the Convention does not distinguish between different types or motives of abduction; its task is to determine whether, in the circumstances of the individual case, an exception to return applies, including where domestic violence is alleged.[295] The domestic violence context is therefore relevant to the exception, not to whether the Convention applies in the first place.

Domestic violence directed at the taking parent can itself create a grave risk for the child. The starting point for any assessment under Article 13(1)(b) is the recognition that a child is also a victim of domestic violence when such violence is exercised against one of the parents – typically the mother.[296] This has significant practical consequences: courts should not require the child to have been a direct, physical target of violence before engaging the exception. The Guide to Good Practice on Article 13(1)(b) confirms in §§57-58 that an intolerable situation can arise where the child is harmed by exposure to domestic violence in the form of abuse directed at a parent, and that a grave risk may exist where domestic violence would significantly impair the ability of the taking parent to care for the child upon return. [297]

All forms of abuse are relevant. Article 13(1)(b) is not limited to physical violence. All forms of abuse – physical, emotional, psychological, and coercive control – are relevant to the assessment of domestic violence and intolerable situations under the exception. The Guide to Good Practice confirms that the nature, intensity and frequency of the violence are relevant factors, and that psychological abuse and controlling behaviour fall within the scope of the assessment.[298] However, it is important to note that not all forms of violence lend themselves equally to an analysis of frequency and intensity: where the violence alleged includes sexual abuse, its very occurrence may

[295] See Dr Christophe Bernasconi, Secretary General of the HCCH, opening address, Second Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention, Fortaleza, Brazil, 28 October 2025, available at <https://assets.hcch.net/docs/e70eea3d-8025-418b-b92a-0e18c6ae2110.pdf>.
[296] ibid.
[297] For example, the Brazilian Protocol for Judicial Decisions from a Gender Perspective, approved by the International Hague Network of Judges (IHNJ) following the First Regional Meeting in Rio de Janeiro (May 2024), expressly codifies this principle, clarifying that the child does not need to be a direct victim of domestic violence to establish a grave risk justifying non-return. Discussed in *Report on the Second Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention*, Prel. Doc. No 8B of January 2026 (HCCH, restricted access; on file with the author); HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §§57-58.
[298] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020).

suffice to engage the exception without requiring further examination of how often or how severely it occurred.[299]

Coercive control is a form of violence. Coercive control – involving tactics such as surveillance, economic deprivation, isolation and psychological manipulation – constitutes domestic violence for the purposes of Article 13(1)(b) and can cause grave harm to children independently of any direct physical abuse. Recent articles cited at the Second Forum demonstrate that coercive control causes hypervigilance and psychological damage in children, and critically, that it frequently persists after separation – meaning it may be ongoing at the time of and after any return.[300] This persistence is particularly significant: post-separation risk for victims does not diminish and may escalate, with research showing that separation is the period of greatest danger for victims of intimate partner violence.[301] UK case law confirms the same approach: in *J v K* (2025), the courts held that the developing understanding of controlling and coercive behaviour must inform the judicial approach when determining the Article 13(1)(b) exception, and the court examined specifically how financial dependence upon return could lead to subsequent financial abuse.[302]

Allegations must be substantiated. Simply alleging domestic violence is not sufficient. Allegations must be substantiated, and the judge must be sufficiently convinced that domestic violence has indeed occurred and that no protective measure upon return would be sufficiently effective to protect the parent – and by extension the child – from continuing harm.[303] The Guide to Good Practice in §§40-42 sets out a structured approach: the court must first determine whether, if the allegations are true, a grave risk would exist; it must then consider whether available protective measures would adequately address that risk.[304]

Broad and general assertions of violence, unsupported by evidence, are unlikely to meet the threshold. Practitioners should therefore move early to gather concrete evidence: police and medical records, protection orders, social service reports, and any documentation evidencing a pattern of behaviour. At the same time, a child's attachment to the abducting parent or primary caregiver does not, of itself, constitute a grave risk of harm.[305] Attachment is a relevant circumstance but in isolation cannot substitute for evidence of risk on return.

Domestic violence allegations must be substantiated, but the inquiry is not confined to whether particular incidents occurred. Where a grave risk is established, courts will typically consider whether protective measures can sufficiently mitigate that risk so as to allow a return. The

[299] Boni de Moraes Soares, *Report on the Second Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention*, Prel. Doc. No 8B of January 2026 (HCCH, restricted access; on file with the author), Session 9, §152.
[300] *Report on the Second Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention*, Prel. Doc. No 8B of January 2026 (HCCH, restricted access; on file with the author), Session 1, §17, citing Jeffrey L. Edleson and Evan Stark (forthcoming), *Protecting Children from Coercive Control: A Case for Denying Return under the 1980 Convention*, Cardozo Law Review; and Leslie M. Tutty, H. Lorraine Radtke and Kendra L. Nixon, "He Tells People That I Am Going to Kill My Children": Post-Separation Coercive Control in Men Who Perpetrate IPV, 30 *Violence Against Women* 2853 (2024).
[301] Dr Braden Clark, *Report on the Second Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention*, Prel. Doc. No 8B of January 2026 (HCCH, restricted access; on file with the author), Session 3, §72, citing research from the Australian New South Wales Government (2020 and 2022 reports), finding coercive control present in 99% of intimate partner homicides and reporting that 77% of Australian women killed by their partners had recently separated or were in the process of separating.
[302] Dr Adrienne Barnett, *Report on the Second Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention*, Prel. Doc. No 8B of January 2026 (HCCH, restricted access; on file with the author), Session 1, §11, referring to *J v K* [2025] (England and Wales).
[303] Dr Christophe Bernasconi, Secretary General of the HCCH, opening address, Second Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention, Fortaleza, Brazil, 28 October 2025, https://assets.hcch.net/docs/e70eea3d-8025-418b-b92a-0e18c6ae2110.pdf
[304] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §§40–42.
[305] Justice Baratang Constance Mocumie, *Report on the Second Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention*, Prel. Doc. No 8B of January 2026 (HCCH, restricted access; on file with the author), Session 1, §18–19, referring to *N M v Central Authority for the Republic of South Africa and Another* (2024) and *K.Z-S* (2024). This was confirmed in *K.Z-S* (2024), which held that a primary caregiver's personal struggles and anxieties, absent proven direct harm to the child, do not meet the Article 13(1)(b) threshold.

Guide to Good Practice identifies a range of possible measures, both specific (such as non-molestation orders and occupation orders) and general (such as access to legal aid, housing support and domestic violence services in the State of habitual residence).[306] However, practitioners and courts must approach protective measures with rigour. "Undertakings" – promises made by the left-behind parent – are not defined in the Convention, are a creature of common law jurisdictions only, and carry a well-documented record of breach: research by the charity Reunite found that non-molestation undertakings were broken in 100% of representative sample cases.[307] More broadly, data collected by GlobalARRK and FiLiA Hague Mothers in 2024 indicates that 71.4% of mothers who returned following a return order faced further abuse despite protective measures being in place.[308] The Guide itself cautions that undertakings should be used carefully and that, unless they can be enforced in the State of habitual residence, they should not be relied upon in cases involving domestic violence.[309] Courts should never condition return on protective measures alone where it has been established that there is a future risk of severe violence.[310]

A recurring difficulty in domestic-violence-based return cases is the tendency to reframe alleged abuse as ordinary parental conflict. This is not merely a drafting issue; it may determine the outcome of the case. In some decisions, courts have treated evidence of quarrels, shouting, fear, distress after communication, or economic vulnerability as insufficient to establish an abusive relationship or a child-specific Article 13(b) risk. That approach should be treated with caution. Domestic abuse is not limited to direct physical violence against the child. It may also affect the child through intimidation, coercive control, exposure to fear, the psychological impact on the caregiving parent, or the realistic consequences of return for the child's care environment. For litigation purposes, domestic abuse must be pleaded and evidenced as a concrete Article 13(b) risk, not merely as background relationship conflict. The respondent should identify the pattern of conduct, the effect on the child or caregiving parent, the evidence supporting the allegation, and the reasons why protective measures in the State of habitual residence would not sufficiently address the risk.

CASE NOTE 369 | **HU** | **Supreme Court** | Pfv.II.21.357/2020/11
23 February 2021

The respondent relied on Article 13(b), arguing that return would expose the child to grave physical or psychological harm or otherwise place the child in an intolerable situation. She alleged an abusive relationship, financial and housing vulnerability on return, possible criminal consequences, and the risk of separation from the young child. The lower courts found that the respondent had not proved the alleged abusive relationship. They stated that "regular quarrels and shouting between the parties" did not establish abuse, and that the respondent's "upset and crying after the telephone conversations" could not be treated as abuse in the circumstances. They also noted that no direct abuse of the child had been alleged and that, according to the photographs submitted, "the family surrounded the child with love" and the proposed accommodation was suitable for the child's reception and care. The Kúria upheld the return order.

[306] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §§43–48; see also K. Trimmings and O. Momoh, 'Intersection between Domestic Violence and International Parental Child Abduction: Protection of Abducting Mothers in Return Proceedings' (2021) 35 *International Journal of Law, Policy and the Family* 1, p. 11.
[307] M. Freeman, *The Outcomes for Children Returned Following an Abduction* (Reunite Research Unit, 2003), pp. 31 and 33, as cited in Trimmings and Momoh, p. 12.
[308] Roz Osborne and Ruth Dineen, *Report on the Second Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention*, Prel. Doc. No 8B of January 2026 (HCCH, restricted access; on file with the author), Session 7, §120.
[309] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §48; Lord Justice Andrew Moylan, *Report on the Second Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention*, Prel. Doc. No 8B of January 2026 (HCCH, restricted access; on file with the author), Session 9, §155.
[310] Trimmings and Momoh, 'Intersection between Domestic Violence and International Parental Child Abduction: Protection of Abducting Mothers in Return Proceedings' (2021) 35 *International Journal of Law, Policy and the Family* 1, p. 13; see also *Report on the Second Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention*, Prel. Doc. No 8B of January 2026 (HCCH, restricted access; on file with the author), Session 7, para. 122.

From recent case law, several principles emerge regarding domestic violence allegations in return proceedings:[311]

- **Lack of corroboration is not decisive.** Victims of domestic abuse may lack contemporaneous or independent evidence because of fear, shame, or being trapped in cycles of violence. Courts must therefore be cautious before dismissing allegations merely due to an absence of past complaint.

- **Partial corroboration can reinforce credibility.** Evidence of sudden life changes (e.g. abrupt resignation from employment) or admissions by the alleged perpetrator may provide support for otherwise uncorroborated claims.

- **Summary character of return proceedings limits fact-finding.** The court is not required to determine the truth of allegations. Instead, it asks: (1) whether, if true, they would establish a grave risk under Article 13(1)(b); and (2) whether protective measures can reduce that risk sufficiently.

- **Indirect risks to the child are relevant.** Even if the child is not a direct target of violence, exposure to serious abuse of the other parent may constitute psychological harm or create an intolerable situation.

- **Protective measures are central.** Courts must consider whether undertakings or other safeguards can adequately address risks. Undertakings not to use violence, not to approach the residence, and to respect schooling arrangements can be effective, particularly when enforceable in the requesting State.

- **Presumption of protection in the requesting State.** Unless the contrary is proved, courts assume that the administrative, judicial, and social service authorities of the requesting State are equally able to protect the child and parent. Generalised doubts or speculation are insufficient; only concrete evidence of inadequacy can rebut this presumption.

- **Financial measures are scrutinised carefully.** Requests for financial support as protective measures will only be ordered if shown to be necessary and proportionate. The court will take into account the parties' financial circumstances and the availability of other housing or support.

- **Overall structure of assessment.** Courts treat domestic violence allegations with seriousness, recognise the potential for indirect harm to children, but ultimately focus on whether effective protective measures exist. Where adequate safeguards can neutralise the risk, the grave risk defence will not succeed, and return must be ordered.

The interpretation of Article 13(1)(b) is not uniform across jurisdictions. A number of courts have adopted a **restrictive approach**, holding that the provision can only apply where the child is the direct victim of violence. In such cases, allegations of aggression or abuse directed against the other parent are treated as irrelevant, even if the child was present or exposed to the conflict.

[311] England and Wales High Court, *Re Y (A Child)* (Abduction: Romania: Art. 13(b)) [2023] EWHC 1676 (Fam).

CASE NOTE 370 | **RO** | **Bucharest Tribunal** | Decision of 3.3.2017
3 March 2017



The mother alleged that the father's aggressive behaviour made it unsafe for her and the child to return to Italy. The court accepted that the parents' relationship was tense and that verbal aggression had occurred, but noted that this was directed against the mother and not against the child. On that basis, it found Article 13(1)(b) inapplicable and ordered the child's return.

By contrast, the HCCH Guide in §§57–59 expressly recognises that exposure to domestic violence against a parent can itself create a grave risk for the child. Grave risk may arise where the child is harmed by exposure to violence directed at the taking parent, or where harm to that parent significantly impairs their ability to care for the child upon return. This divergence highlights the importance of framing arguments carefully. Practitioners must be ready to counter the restrictive line of reasoning by invoking the HCCH Guide and relevant case law, and to demonstrate concretely how violence against a parent places the child at serious risk.

5.9. Protective measures and adequate arrangements on return - the Brussels IIb framework

The 1980 Convention is usually read as creating a simple duty: to return the child promptly to the State of habitual residence. Yet, the mechanism cannot operate effectively if the court ignores the conditions to which the child will return, and this duty cannot be separated from a parallel obligation: the return must be *safe*.[312] Article 7(h) expressly refers to administrative arrangements necessary and appropriate to secure the child's safe return, and subsequent practice gives protective measures an important role where Article 13(1)(b) is engaged.

Protective measures arise in return proceedings under the 1980 Convention generally, but the Convention does not itself establish a comprehensive legal framework governing their adoption, legal effect or cross-border circulation. This section therefore focuses on the more structured regime applicable within the EU, where Brussels IIb expressly regulates adequate arrangements in the State of return and protective measures adopted by the return court, while also providing rules for their cross-border effect. References to the 1980 and 1996 Conventions remain relevant where they explain the underlying principles or supplement that EU framework.

Although the 1980 Convention does not expressly regulate protective measures, they play an important role in practice in the application of Article 13(1)(b). Courts frequently consider whether identified risks can be addressed through undertakings, mirror orders or other safeguards, and may make return conditional on such arrangements. In this way, protective measures operate as an implicit element of the Convention's functioning, even though they are not formally set out in its text.[313]

The 1996 Convention performs a related function between its Contracting States, especially through Article 11, which permits necessary measures of protection in cases of urgency while the authorities with jurisdiction on the substance take over the case.[314]

"Protective measures" are understood broadly and are not limited to formal court orders or undertakings. As reflected in the HCCH Guide to Good Practice (§43), they encompass a wide range of existing services, assistance and support, including access to legal aid, financial and housing support, healthcare, shelters, and responses by police and the criminal justice system, particularly in situations involving domestic violence.[315] This broad understanding is also confirmed in national

[312] See EAPIL, *Position Paper in response to the Hague Conference on Private International Law's invitation to participate as an Observer in the Eighth Meeting of the Special Commission on the Practical Operation of the 1980 Convention and the 1996 Convention* (10 October 2023), available at <https://eapil.org/wp-content/uploads/2023/10/EAPILPosition-Paper-in-view-of-the-8th-SC-on-the-1980-and-1996-Hague-Conventions.pdf >, emphasising that the Convention operates on the basis that securing a safe return is itself a treaty obligation. The closest textual basis is Article 7(h), which requires Central Authorities to "provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child". This has been interpreted in the conclusions of the Special Commissions (1997 and 2001) as including an obligation to alert child protection bodies so that appropriate protective action can be taken upon return until the competent court assumes jurisdiction.

[313] See HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement*, §117, noting that common law courts have long relied on undertakings and mirror or safe harbour orders to secure the child's protection upon return, and drawing a parallel with Article 11(4) of Brussels IIa (now Article 27(3) Brussels IIb), which requires that return not be refused where adequate arrangements have been made, thereby encouraging cooperation between States to ensure a safe return. Further see *Re T (Abduction: Protective Measures: Agreement to Return)*, [2023] EWCA Civ 1415, §46, noting that in cases under the 1980 Convention where Article 13(1)(b) is raised, courts "invariably" need to consider protective measures (<https://caselaw.nationalarchives.gov.uk/ewca/civ/2023/1415#:~:text=46.-,Copy%20link%20to%20this%20paragraph,as%20an%20issue%2C%20the%20court%20invariably%20needs%20to%20consider%20%E2%80%98protective%20measures%E2%80%99.,-It%20has%20been>).

[314] For the interaction between the 1980 Convention and the 1996 Convention in cases involving protective measures, see Dr Maria Lilian Bendahan, "Contribution to the Safe Return of the Child in Cases of Wrongful Removal", The Judges' Newsletter on International Child Protection, Special Focus: Urgent Measures of Protection, HCCH, Vol. XXIV (2019), available at <https://assets.hcch.net/docs/e179756b-a4f3-4300-88d6-bcb81d7f9064.pdf>.

[315] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §43.

materials, such as the Judiciary of England and Wales, Protective Measures Fact Sheet (International Hague Network Judges for England and Wales), which emphasises that protective measures may include general child protection mechanisms and institutional safeguards available in the State of habitual residence.[316] Thus, protective and related measures must be classified according to their legal basis and function, not according to the practical label attached to them.

Within the EU, Brussels IIb makes this reasoning more explicit and gives it a clearer structure. Article 27(3) concerns adequate arrangements made in the Member State to which the child will return. Article 27(5), read with Article 15, concerns provisional, including protective, measures taken by the return court itself when ordering return. The Regulation also gives the latter measures a defined route to recognition and enforcement in other Member States.

The broad practical understanding of protective measures must be as well distinguished from the narrower legal architecture of the Brussels IIb Regulation. Not every service, assurance, undertaking or logistical arrangement is a decision capable of recognition or enforcement in another Member State. The classification matters because it determines who may adopt or provide the measure, what the return court must verify, whether the measure has cross-border effect and what follows if it is not implemented.

Within Brussels IIb, three legally distinct mechanisms must be separated. They are complementary and not mutually exclusive and may be used separately or together.

Table 19: Types and functions of protective and practical arrangements in return proceedings under Brussels IIb

Type	Legal basis / status	Nature and function
Adequate arrangements in the State of return	Article 27(3) and Recital 45 Brussels IIb	These arrangements already exist or will be put in place in the State to which the child will return. Article 27(3) does not empower the return court to create protection abroad. Where the court considers refusing return solely under Article 13(1)(b), it must not refuse if the party seeking return provides sufficient evidence, or the court is otherwise satisfied, that adequate arrangements have been made to secure the child's protection after return.
Protective provisional measures adopted by the return court	Article 27(5), in conjunction with Article 15, and Recital 46 Brussels IIb	These are Article 15 measures used for the specific purpose identified in Article 27(5): protecting the child from the grave risk referred to in Article 13(1)(b) when return is ordered. They are temporary, directed at that risk and capable of circulating under Brussels IIb when its conditions are met.
Practical or "soft-landing" arrangements	Annex IV, point 8, and HCCH Guide, §49	These facilitate the physical and practical implementation of return. They are not intended, as such, to address a grave risk of harm, and their inclusion in the return decision does not convert them into Article 27(5) measures or give them the same cross-border enforceability. [317]

Classification depends on function, not label. Temporary accommodation may be a soft-landing arrangement where it merely provides somewhere to stay on arrival. It may instead form part of an

[316] Judiciary of England and Wales, International Hague Network Judges for England and Wales, Protective Measures Fact Sheet (2025), available at <https://www.judiciary.uk/wp-content/uploads/2025/11/Factsheet-Protective-Measures-in-England-and-Wales.pdf>.
[317] See also *Best Practice Guide: Protection of Abducting Mothers in Return Proceedings: Intersection between Domestic Violence and Parental Child Abduction*, prepared under the auspices of the POAM Project, available at <https://research.abdn.ac.uk/wp-content/uploads/sites/15/2020/11/POAM-Best-Practice-Guide.pdf >, §3.2, where further distinction is made between protective measures and facilitative ("soft-landing") measures in return proceedings.

adequate arrangement under Article 27(3), or a protective measure under Article 27(5), where homelessness, separation from the primary caregiver or exposure to the alleged perpetrator forms part of the identified grave risk. If an arrangement is relied upon to neutralise that risk, it must be assessed as protection—not treated as mere return logistics.

Cross-border effect must be analysed separately from the type and substantive adequacy of the measure. A measure may be appropriate in substance but useless if it has no legal effect where it must operate. Conversely, automatic recognition does not establish that the measure will be implemented, monitored or accessible in practice. The return court must therefore ask both whether the measure will be legally effective in the State of return and whether it will in fact neutralise the identified risk for this child.

The cross-border effect of an arrangement depends on two things: which of the three types it belongs to, and whether the case is internal to the EU. The type determines whether the arrangement is capable of travelling at all - Article 27(3) arrangements must already be effective in the State of return, Article 27(5) measures are designed to circulate, and soft-landing arrangements do not acquire cross-border effect on their own. Whether the case is intra-EU then determines where that effect comes from: inside the EU it is supplied by the Regulation, while outside it the court must locate a route and confirm that it will operate before the child travels.

Article 27(5) measures must be distinguished from standalone Article 15 measures. Article 15 permits urgent provisional, including protective, measures concerning a child present in the requested Member State, even though another Member State has jurisdiction as to the substance. During return proceedings, this may support measures such as passport surrender or a travel prohibition intended to prevent concealment or onward removal. Article 27(5), by contrast, applies only where return is ordered and the measure is taken to protect the child from the Article 13(1)(b) grave risk after return. Unless a standalone Article 15 measure also falls within Article 27(5), or is adopted by a court having jurisdiction as to the substance, it does not receive the same cross-border treatment under Brussels IIb.[318]

Measures adopted during the proceedings may preserve the effectiveness of the return process without determining parental responsibility. Depending on national law and the applicable instrument, they may include a travel prohibition, surrender of passports, restrictions on new identity documents and notification of border authorities. Their object is to prevent the proceedings or any return order from being frustrated, not to determine where the child should live in the long term.

[318] See European Commission, *Practice Guide for the Application of the Brussels IIb Regulation* (2022), available at <https://op.europa.eu/en/publication-detail/-/publication/ff34bda5-ea90-11ed-a05c-01aa75ed71a1/language-en>, pp. 44–47 and 121–122.

CASE NOTE 371 | **LT** | **Court of Appeal** | e2-816-407/2022
26 July 2022

In Lithuanian proceedings concerning return to the United Kingdom, the left-behind parent sought interim measures after learning that the taking parent planned to travel with the children to Spain while appeal proceedings were pending. The taking parent failed to respond to requests for clarification, became unreachable and disregarded the applicant's lack of consent to international travel. The Court of Appeal found a real risk of further unlawful removal which would undermine enforcement and expose the children to renewed instability. It prohibited removal of the children from Lithuania without a court order or the applicant's consent, except for their return to the United Kingdom; ordered surrender of their passports and identity documents; prohibited the issue of new documents; and directed notification of the migration and border authorities. The court imposed the measures to secure execution of the return decision, not to regulate parental responsibility. Because the case concerned return to the United Kingdom, it illustrates the function of national anti-flight measures rather than Article 27(5) Brussels IIb.

Within the SIS framework, Article 32 of Regulation (EU) 2018/1862 permits a preventive alert for a child at risk of parental abduction following a decision of a competent authority.[319] A court imposing a travel prohibition should therefore verify, in accordance with national procedures, whether the competent authority must enter or update an SIS alert and should also ensure that the alert can be withdrawn promptly when the measure expires, or the child is returned. A judicial prohibition that is not communicated to the authority capable of stopping travel may have little practical effect.[320]

The three Brussels IIb mechanisms and arrangements may operate cumulatively, while the practical implementation layer operates alongside them. A court may rely on an existing arrangement in the State of return under Article 27(3), add a temporary Article 27(5) measure, prevent onward removal while the proceedings remain pending under Article 15 and specify the mechanics of the journey. Each component must retain its correct legal classification because the components do not have the same cross-border effect.

5.9.A. Adequate arrangements in the state of return- Article 27(3) Brussels IIb Regulation

Article 27(3) is an evidential and evaluative rule, not a power enabling the return court to create protection abroad. Where a court considers refusing to return a child solely on the basis of Article 13(1)(b), it must not refuse if the party seeking return satisfies the court by providing sufficient evidence, or the court is otherwise satisfied, that adequate arrangements have been made to secure the protection of the child after return. The statutory trigger is that the court is considering refusal on that ground; a formal prior finding of grave risk is not required.[321]

[319] Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (2018) *OJ L 312,* art 32.
[320] Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (2018) *OJ L 312,* art 32(1)(c) and (2). The alert is entered following a decision of a competent authority, including a judicial authority, of the issuing Member State; the administrative route from a family-court order to SIS is governed by national procedures.
[321] See also European Commission, *Practice Guide for the Application of the Brussels IIb Regulation* (2022), available at <https://op.europa.eu/en/publication-detail/-/publication/ff34bda5-ea90-11ed-a05c-01aa75ed71a1/language-en>, pp. 120–121.

The return court's role is to verify that the arrangements are concrete, accessible and capable of operating for this child at the necessary time. It is not enough simply to trust that the authorities of the State of return could intervene if difficulties later arise. The arrangement must address the risk under consideration directly, be available or capable of being put in place by the time it is needed, remain effective for a sufficient transitional period and offer a realistic response to breach. For the burden of proof, see Chapter 5.4.D.

As these arrangements under Article 27(3) *concern the state of return*, the cross-border effect question does not arise in the same way as it does for Article 27(5). Article 27(3) supplies no circulation mechanism. The return court relies on protection that is already operative, or will become operative, within the State of return. The question is therefore whether that protection genuinely exists and is accessible and effective there, not whether Article 27(3) converts it into a foreign decision. If the arrangement itself is a decision from another State, its recognition must rest on the instrument or domestic law applicable to that decision.

Table 20: Elements of "adequacy" under Article 27(3)

Element	Requirement
Place	The arrangement must operate in the State to which the child will return. Its adequacy is assessed in light of the legal, practical and institutional framework available there.
Link to the risk	It must address the specific harm or intolerable situation under consideration. General or abstract assurances are insufficient.
Practical availability	It must be accessible to the child and, where relevant, the accompanying parent from the time of return. An unconfirmed future application or theoretical remedy may not suffice.
Legal effectiveness	Any necessary order, recognition, registration or domestic procedure must be identified. If the arrangement depends on compliance, the court must consider the consequences of breach.
Duration	It must remain effective for long enough to bridge the period until the court with jurisdiction as to the substance can act.
Evidence	The respondent bears the burden of establishing Article 13(1)(b). The applicant may provide evidence of adequate arrangements, but Article 27(3) also permits the court to be otherwise satisfied from the evidence and information properly before it.

The return court should actively investigate the practical operation of proposed protection, not simply name a foreign institution or remedy. The inquiry may require the court to determine whether a measure is legally available despite an existing custody order, whether a suitable placement or service has accepted the family, whether places and funding are available and how contact with the alleged source of risk will be controlled. Article 27(4) permits direct communication with the competent authorities of the Member State of the child's pre-abduction habitual residence or communication with the assistance of Central Authorities.

CASE NOTE 372 | AT | Supreme Court
ECLI:AT:OGH0002:2013:0060OB00134.13V.0828.000
28 August 2013

In proceedings concerning return from Austria to France, the Austrian Supreme Court held that the courts could not refuse return under Article 13(1)(b), read with Article 11(4) Brussels IIa, without adequately investigating whether protection in France could secure the children's return. The lower courts had considered placement in a French child-protection facility but had not established whether placement was legally possible despite a French order fixing residence with the father, what type of facility would receive the children, whether the mother could stay with them, whether places were actually available or how the father's contact would be regulated. The Court also rejected an expert proposal for months of supervised contact in Austria before return: that arrangement would not secure return but would delay it and further acclimatise the children to the requested State.

Protective measures must facilitate safe and prompt return, not create a lengthy reintegration programme in the requested State. Supervised contact or therapeutic work before return may sometimes be justified on another legal basis, but it is not an adequate arrangement for return if its real effect is to postpone the Convention decision for months and consolidate the child's life in the State of refuge.

Protection may be inadequate where access to the treatment, housing or money on which the child's safety depends is left to the uncontrolled discretion of the person from whom protection is required.

CASE NOTE 373 | NL | The Hague District Court
ECLI:NL:RBDHA:2014:3537
11 February 2014

In a case concerning return to Morocco, the father accepted that the mother could not obtain the support and therapeutic treatment needed by the children without financial assistance. Continuation of the treatment therefore depended on his willingness to fund it. The Court held that this financial dependence undermined the proposed protection: the mother had no independent means to secure the children's treatment, and the father had given no reliable basis on which compliance could be assumed. This factor reinforced the conclusion that return would place the children in an intolerable situation, and return was refused under Article 13(1)(b).

A return order must not depend on an unsecured discretionary act by a third party who is not bound by the proceedings. A court cannot itself compel a foreign prosecutor, investigating judge or other non-party to withdraw a warrant or terminate proceedings. If that act is necessary for safe return, it must be obtained or supported by sufficiently reliable evidence before the condition is treated as fulfilled.

CASE NOTE 374 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2023:990
25 May 2023

The first-instance court had conditioned return to Belgium on steps by the Dutch and Belgian prosecuting authorities affecting the mother's ability to travel and remain at liberty. On appeal, the Court of Appeal removed those conditions. They were directed to public authorities that were not parties to the return proceedings and could not be bound by the family court, and the father had no power to secure the required acts. The Court of Appeal set aside the conditions and emphasised that a return order must be clear and workable; it cannot bind public prosecutors or investigating authorities who are not parties to the case.

The court should assess not only the content and availability of the arrangements, but also the realistic prospect that they will be complied with by the parties. The effectiveness of safeguards for a child's safe return under Article 27(3) depends not only on the adequacy of the measures themselves but also on the realistic prospect that they will be complied with in practice. Even well-designed arrangements cannot secure the child's stability if they depend on parental cooperation that is unlikely to be forthcoming.

CASE NOTE 375 | CZ | Constitutional Court | II. ÚS 3345/20
8 April 2021

The return of the children to Italy was made subject to safeguards requiring the father to provide financial support to secure housing and living expenses, to refrain from pursuing criminal proceedings against the mother, and to respect the continuation of the children's care by the mother after return. The Constitutional Court upheld these safeguards as appropriate and balanced, noting that they ensured that the children could return without being separated from their primary carer and with adequate living conditions. It further explicitly emphasised that the effectiveness of such safeguards ultimately depended on the willingness of the parents to cooperate and act in the children's best interests.
(§52)

The mere existence of child-protection legislation or services in the State of return may not necessarily establish adequate arrangements for the family concerned. Arrangements must be concrete, accessible, and secured for the specific family. Courts require evidence that the proposed safeguards are in place or can be implemented immediately in practice, such as confirmed housing, enforceable protective measures, or guaranteed access to social support. Abstract or general references to available institutions, programmes or facilities are insufficient where access remains uncertain or dependent on future steps.

CASE NOTE 376 | AT | Supreme Court
ECLI:AT:OGH0002:2017:0060OB00103.17S.0707.000
7 July 2017

The mother alleged that return to France would expose the child to risk because the father, who held a sole-custody order there, had significant psychological difficulties. The Court explained that return under the 1980 Convention is return to the State, not necessarily delivery to the applicant parent. That distinction did not solve the case because the existing French custody order meant that concrete protection had to be secured in France if the child was not to pass immediately into the father's care. A general reference to the availability of French child-protection mechanisms was insufficient.

CASE NOTE 377 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2016:1714
15 June 2016

The court concluded that return to Belgium would expose the children to psychological danger and then examined whether adequate measures existed. Belgian agencies had been contacted, but the mother and children were not registered for housing, no emergency accommodation had been confirmed and earlier assistance had not been implemented. In the Netherlands, by contrast, the children had for the first time achieved stability. The court held that a possible future assistance programme in Belgium did not constitute a secured arrangement and would not compensate for the disruption of that stability. Return was refused.

Consultation with the authorities of the State of habitual residence is an important means of obtaining information, but it is not a substitute for the court's own assessment and is not invariably mandatory. Article 27(4) states that the return court may communicate with the competent foreign authorities. The decisive requirement is a sufficiently informed and reasoned assessment. A national court may conclude on the evidence before it that no adequate arrangement has been made; in another case, failure to seek readily obtainable information may leave the assessment incomplete.[322]

CASE NOTE 378 | FR | Supreme Court | ECLI:FR:CCASS:2021:C100753
14 October 2021

The return of three children to Portugal was refused after the lower court found violence by the father and no established arrangements capable of protecting the children. The father argued that the court could not reach that conclusion without first consulting the Portuguese Central Authority. The Cour de cassation rejected the argument: the applicable provisions did not require consultation in every case, and the court was entitled to decide on the evidence before it that no adequate protection had been secured.

Some risks cannot be neutralised because the harm arises from the return itself - in such cases, the requirement of "adequate arrangements" may be considered not met, and refusal of return may remain justified. The court must distinguish ordinary disruption, which is inherent in many returns, from a grave risk created, for example, by unavoidable separation of a closely bonded sibling group or destruction of a newly stabilised therapeutic situation. The existence of good services in the State of return does not answer a risk that those services cannot remove.

CASE NOTE 379 | NL | The Hague District Court | ECLI:NL:RBDHA:2022:747
1 February 2022

The elder child's return to Spain was refused because of her mature objection under Article 13(2). The court then considered whether the younger child could return with protective measures. It concluded that the intolerable situation would arise from separating him from his sister and from the other children in the mother's household, all of whom would remain in the Netherlands. Because the harm was inherent in the sibling separation, no measure in Spain could eliminate it. The younger child's return was therefore refused under Article 13(1)(b).

CASE NOTE 380 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2018:296
14 February 2018

Four children had experienced instability, conflict and violence and had only recently achieved stability in the Netherlands through therapy, schooling and family support. Returning only part of the sibling group would have caused separation and renewed disruption of their living environment. The court accepted that facilities and assistance existed in the State of habitual residence but found that they could not compensate for the harm produced by return and separation themselves. It therefore held that no adequate arrangements could neutralise the grave risk and refused return.

[322] See also Mirela Župan and Marin Mrčela, 'Implementation of Cross-Border Protective Measures in Return Proceedings: Problems of Evidence under National Procedural Law' in Katarina Trimmings, Anatol Dutta, Costanza Honorati and Mirela Župan (eds), *Domestic Violence and Parental Child Abduction: The Protection of Abducting Mothers in Return Proceedings* (Intersentia 2022) pp. 107–139, especially pp. 112–113, 126–127 and 136–137, available at <https://epub.ub.uni-muenchen.de/94783/1/9781839702808_web.pdf>.

Article 27(3) does not provide a free-standing basis for arrangements where no Article 13(1)(b) risk capable of grounding refusal is established. The mechanism of "adequate arrangements" applies only where a grave risk under Article 13(1)(b) has been identified. It is tied to a contemplated refusal under Article 13(1)(b). Arrangements may still be made under another provision or national law to facilitate return, but they are not Article 27(3) arrangements neutralising grave risk.

CASE NOTE 381 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2023:1400
25 July 2023

In a case concerning return to France, the mother sought conditions addressing possible criminal prosecution, housing and financial support. The Court of Appeal held that these requests could not operate as adequate arrangements under Article 27(3) because no grave risk within Article 13(1)(b) had been established. The court distinguished risk-neutralising safeguards from practical safe-return arrangements and refused to use Article 27(3) as a general power to restructure the parties' position after return.

General confidence in another State's institutions may not replace a workable protection plan for the individual child. Mutual trust supports cooperation and recognition; it does not prove that a placement, service or order will be available to this child immediately after return. Concrete evidence may show that competent authorities exist but that no authority has accepted responsibility, no placement is available, or the required service cannot be activated in time.

CASE NOTE 382 | UK | High Court of England and Wales | G v D
[2020] EWHC 1476 (Fam)
8 June 2020

The children were safe and settled in foster care in England, while neither parent could care for them if they returned to Belgium. The Belgian authorities repeatedly indicated that return would not serve the children's interests and did not identify a concrete placement or protection plan beyond the possibility that ad hoc arrangements might be made if necessary. The English court did not question the general competence of the Belgian authorities. It held that the absence of any clear and operational plan would move the children from safety and stability into manifest uncertainty and would place them in an intolerable situation under Article 13(1)(b).

5.9.B. Protective measures adopted by the return court - Article 27(5) + Article 15 Brussels IIb Regulation

Nature and functions

Article 27(5) permits the return court to take a temporary measure directed to the Article 13(1)(b) risk when return is ordered. It allows the court, where appropriate, to take provisional, including protective, measures in accordance with Article 15 in order to protect the child from the grave risk referred to in Article 13(1)(b), provided that examining and taking the measures will not unduly delay the return proceedings. The measure does not serve a general regulatory function. It is designed to make return possible by addressing the identified risk during the transitional period.

The Article 15 conditions remain relevant. The situation must be urgent, the child must be present in the requested Member State and the measure must be available under the law of that State. The

measure must be provisional and no broader than the return court's temporary function permits. Under Article 15(3), it ceases to apply as soon as the court of the Member State having jurisdiction as to the substance has taken the measures it considers appropriate.

Typical Article 27(5) measures may determine that the child should continue to reside with the primary caregiver immediately after return, regulate how contact with the other parent is to take place, or exclude an alleged perpetrator from the home. A housing-related order may also qualify where it is, in substance, a temporary child-protection measure. A requirement to pay money must be classified carefully: if it is in substance maintenance, it falls outside Brussels IIb and does not circulate under that Regulation merely because it appears in the same return order.[323]

Cross-border effect

> *170. […] the efficacy of measures taken in those circumstances – which are, by definition, urgently necessary – would be potentially easy to avoid, […], if their enforceability were to evaporate as soon as the child was taken across a national border.*
>
> *Opinion Of Advocate General Eleanor Sharpston in Case C-256/09, Purrucker* [324]

Cross-border effect must be analysed separately from the type and substantive adequacy of the measure. The HCCH Guide (§44 and §§46–48) emphasises attention to availability, adequacy and effectiveness.[325] The 2023 Special Commission Conclusions and Recommendations (§§27–34), likewise emphasise necessity, enforceability, mirror orders, judicial communication and caution with undertakings, particularly in domestic-violence cases.[326] Compliance before return, a mirror order or a safe-harbour order may reduce those difficulties, but only if the foreign court has jurisdiction and the resulting order will in fact operate.[327] Experience, however, demonstrates that sometimes the protective measures depend on voluntary compliance by the perpetrator, are unenforceable across borders, and rely on inter-authority cooperation that rarely functions with the immediacy required to secure safety. They are often non-binding, unmonitored, or delayed, and their activation typically requires the protective parent to re-enter the abuser's jurisdiction and initiate fresh proceedings, exposing both parent and child to renewed danger. [328]

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[323] See European Commission, *Practice Guide for the Application of the Brussels IIb Regulation* (2022) pp 121–122, available at <https://op.europa.eu/en/publication-detail/-/publication/ff34bda5-ea90-11ed-a05c-01aa75ed71a1/language-en>.
[324] Opinion of Advocate General Eleanor Sharpston, delivered on 20 May 2010 ECLI:EU:C:2010:296.
[325] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §§44, 46-48.
[326] HCCH, *Conclusions and Recommendations of the Eighth Meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention* (10-17 October 2023), §§27-34, available at <https://assets.hcch.net/docs/5b48f412-6979-4dc1-b4c1-782fe0d5cfa7.pdf>.
[327] See also Rhona Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) pp. 291–298, 302–303. Schuz analyses the principal categories of undertakings, the problem of non-enforceability, compliance before return, mirror and safe-harbour orders, and the limits of judicial liaison.
[328] See HCCH, *Second Forum on Domestic Violence and the 1980 Convention – with a Focus on the Operation of Article 13(1)(b)* (Fortaleza Report, 2025), §72–76. The Forum concluded that "protective measures are too often non-binding, unmonitored, and dependent on inter-authority cooperation that does not function in real time." It warned that courts should exercise "heightened scrutiny" and refrain from ordering return when safety depends on future or uncertain administrative steps. The report emphasises that effective protection requires demonstrably enforceable and immediately operational safeguards, verifiable by evidence prior to return. The Forum's discussions revealed widespread judicial concern that assurances—such as undertakings of non-violence, housing promises, or temporary contact supervision—frequently collapse once the return is executed, leaving the protective parent without timely recourse. See K. Trimmings, C. Momoh & M. Kalaitsoglou, *The Interplay between the 1980 Convention and Domestic Violence* (2023) *Laws* 12(3) 78, pp. 13–15. The authors argue that reliance on protective measures has "reversed the logical sequence" of Hague analysis: courts too often treat potential undertakings as grounds to *avoid* a finding of grave risk rather than to assess how an established risk might be managed. Drawing on empirical data, they show that protective

The central innovation of Article 27(5) is that a qualifying protective measure can accompany the child across the internal EU border. Article 2(1)(b) treats a measure adopted under Article 27(5), in conjunction with Article 15, as a "decision" for the purposes of Chapter IV. It is recognised under Article 30 and, if enforceable in the Member State of origin, is enforceable in another Member State without a declaration of enforceability under Article 34. The party relying on it should obtain the Annex IV certificate under Article 36(1)(c). For enforcement, Article 35 requires an authentic copy of the decision and the certificate, and where the measure was ordered without the respondent being summoned, proof of service. Recognition or enforcement remains subject to the applicable grounds for refusal in Articles 39 and 41.

The measure remains temporary until a court of a Member State having jurisdiction as to the substance takes the measures it considers appropriate. If return is refused, the measure does not operate across the border under Article 27(5), because there is no return order for it to accompany.

Returns to third states fall outside Article 27(5) and require a separate jurisdiction and recognition analysis. Article 27(5) does not provide a circulation route outside the EU. Where both States are Contracting Parties to the 1996 Convention, a protective measure taken on a jurisdictional basis supplied by that Convention—often Article 11 in a case of urgency—is recognised by operation of law under Article 23. If coercive enforcement is required, Articles 26 and 28 require a declaration of enforceability or registration under the procedure of the requested State and enforcement there under its law. The distinction between recognition and enforcement is explained in the HCCH Practical Handbook on the 1996 Convention, §§6.2–6.12 and §§10.1–10.28.[329]

Where the State of return is not bound by the 1996 Convention, the court must investigate the law of that State. Recognition may require exequatur, a mirror order or new proceedings. An undertaking given to the return court may have no independent legal effect abroad. If safe return depends on the measure, the court should be satisfied that the necessary legal steps can be, and where appropriate have been, completed before the child travels.

A return order may be made conditional on the adoption and effective recognition (or enforceability) of protective measures in the State of return. Where the court relies on such measures to neutralise a grave risk under Article 13(1)(b), it must be satisfied not only that the measures are appropriate in substance, but also that they will be legally effective and practically enforceable in the State of habitual residence. If this is uncertain, the court may require that the necessary steps (e.g. recognition, mirror orders, or equivalent procedures) are completed before the return takes place and may stay the return order pending compliance.

undertakings are "regularly breached" and "largely unenforceable" in cross-border contexts, especially where mirror orders are unavailable or delayed. The article calls for a higher evidentiary threshold: once grave risk is found, a return should not be ordered unless safeguards are concrete, binding, enforceable across jurisdictions, and capable of immediate implementation.

[329] HCCH, *Practical Handbook on the Operation of the 1996 Hague Child Protection Convention* (HCCH 2014) §§6.2–6.12, especially Example 6(g), and §§10.1-10.28, available at <https://assets.hcch.net/docs/eca03d40-29c6-4cc4-ae52-edad337b6b86.pdf>.

CASE NOTE 383 | **UK** | **High Court of England and Wales** | S v Q
[2025] EWHC 2381 (Fam)
18 September 2025

The court examined a case involving the return of children from the United Kingdom to Mauritius. It accepted that the risks identified, including exposure to domestic abuse, potential separation from the primary caregiver, and unilateral actions by the father, could in principle be mitigated through a set of protective measures. These included non-prosecution undertakings, non-contact provisions, financial support, housing arrangements, and restrictions on removing the children from the mother's care. However, the court identified a critical issue: there was no clear evidence that such measures would be recognised or enforceable in Mauritius, which is not a party to the 1996 Convention. Given that the effectiveness of the return depended on these safeguards, the court required confirmation that the measures could be made legally effective in the State of return. Following evidence that recognition could be achieved through an exequatur process, the court ordered the return within a fixed timeframe, but *made it conditional* upon the father securing enforceable orders or undertakings in Mauritius reflecting the protective measures. The return order was stayed until this was achieved, and the father was required to take the necessary steps (at his expense) to ensure their recognition, with the mother cooperating as needed.

When non-EU countries are involved, a return court may seek to protect the child by imposing temporary obligations on a party when ordering return, but their effectiveness abroad must be examined separately. Such directions resemble measures under Article 27(5), but they do not circulate under Brussels IIb. The court must therefore identify another basis on which they will be recognised or made effective in the State of return.

CASE NOTE 384 | **BG** | **Sofia Court of Appeal** | 20251000500041
18 March 2025

The court ordered the child's return to the United Kingdom and simultaneously required the applicant to pay the rent and utilities for accommodation chosen by the child's primary carer and to provide the necessary financial support for the child for six months after return. It also ordered him, insofar as this depended on his will, not to initiate or maintain criminal proceedings against the taking parent in connection with the removal or retention. The obligations were expressly made without prejudice to subsequent decisions of the United Kingdom courts concerning parental responsibility or maintenance.

5.9.C. Practical or "soft-landing" arrangements

Practical or soft-landing arrangements facilitate the physical and practical implementation of return but do not, as such, neutralise a grave risk. As the HCCH Guide to good practice explains in §49, their function differs from that of protective measures.[330] Annex IV of the Brussels IIb Regulation makes the same distinction: point 8 records practical arrangements for return, while point 9 separately records provisional, including protective, measures adopted under Article 27(5). Soft-landing arrangements may be included in the return decision and recorded in Annex IV, but their inclusion does not convert them into Article 27(5) protective measures.

Courts must not confuse return logistics with risk-neutralising safeguards. Organising tickets, an escort or a handover may make return possible and less disruptive, but it does not answer an allegation that the child will be exposed to violence, separated from the primary caregiver or

[330] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §§49.

deprived of necessary treatment. For the formulation of practical arrangements in the return order and examples concerning their implementation, see Chapter 6.1.D.

The content of the alleged risk determines whether an apparently practical arrangement must instead be assessed as protection. Accommodation, funds or a handover plan may remain logistical in one case but become risk-neutralising where destitution, abrupt separation or exposure to an alleged perpetrator forms part of the Article 13(1)(b) case.

CASE NOTE 385 | UK | High Court of England and Wales | G v L
[2025] EWHC 3340 (Fam)
19 December 2025

The court expressly separated the arrangements for the child's journey from the measures relied upon to protect the child from the identified Article 13(1)(b) risk. The alleged risk concerned ill-treatment by the mother's partner in Italy and the mother's ability to protect the child after return. The court therefore examined protection directed to contact with the partner, including the partner leaving the family home or the child staying temporarily with the maternal grandmother, undertakings by the mother and an assessment by Italian social services. It also examined whether the undertakings were likely to be obeyed and what remedies would exist in the event of breach.

Soft-landing arrangements receive no special recognition or enforcement status under Brussels IIb. Recording them at point 8 of Annex IV does not give them the cross-border effect reserved for Article 27(5) measures recorded at point 9. They may have a cross-border practical dimension—for example, reception or handover after arrival—but any binding effect must arise from another identified legal basis.

5.9.D. Law governing the content of the measures

When the return court considers adopting a protective measure under Article 27(5) of Brussels IIb Regulation or evaluating whether the arrangements available in the State of habitual residence are adequate under Article 27(3), it needs to know which body of law governs the content of those measures. Brussels IIb answers the jurisdictional question but not this specific applicable-law question. The gap is filled by the 1996 Convention, which supplies the applicable-law framework for measures of child protection across the EU family law system, as set out in Recital 92 of the Brussels IIb Regulation.

The main governing rule is Article 15(1) of the 1996 Convention: the authority taking a measure of protection under Article 27(5) of the Brussels IIb Regulation applies its own law.[331] In the context of return proceedings, this means the return court applies the law of the requested State, not the law of the State of habitual residence.

This rule governs only the measures the return court itself adopts. It does not govern the Article 27(3) adequate arrangements on which the court may rely. Those arrangements are measures in the State

[331] Article 15 also provides for narrow exceptions where the protection of the child requires application of another State's law, or where habitual residence changes after the measure is adopted, but these rarely arise in return proceedings.

of habitual residence, and their legal effect depends on the law or other legal basis applicable there; therefore, the return court's task is to assess whether the protection available there is adequate.

The practical consequence is that what the return court can order depends entirely on the tools available under its own domestic law.[332] Because the return court applies its own law to the content of a measure it takes under Article 27(5), the same grave-risk allegation, litigated in two different forums, can attract different protection – not because the courts disagree on the risk, but because their domestic toolkits differ.

Table 21: Protective-measure toolkits compared – common law and civil law forums

Safeguard / technique	**Common law forum** (e.g. England & Wales, Ireland)	**Civil law forum** (e.g. Germany, Croatia, Italy, Spain)
Undertakings to the court[333]	Recognised, contempt-backed promises. An English court can accept them and treat them (or a parallel order) as an Article 11 (1996 Convention) measure, so they circulate. Illustrated by *RB v DB*, *In re A* and *AX v CY*.	Largely unknown as a legal concept; a bare promise to the court is generally neither recognised nor enforceable. Protection must be built from statutory orders instead.
Mirror / safe-harbour orders[334]	Available (though slow): the requesting State issues an order mirroring the safeguards. Developed mainly in United States practice; a court may make return await the mirror order.	Uncommon: judges generally do not consider themselves authorised to make an order that simply reproduces another court's measure. Often no domestic footing for the request.
Non-molestation / exclusion orders[335]	Available as court orders or as accepted undertakings; qualify as protective measures capable of circulating.	Available as statutory civil – and frequently criminal – protection orders under domestic law; these are the forum's primary tool.
Financial / housing conditions[336]	Can be attached (e.g. rent, living costs, tickets).	Can be attached where domestic child-protection law allows. If in substance is maintenance, it falls outside Brussels IIb.

[332] For a detailed analysis of the applicable-law rule for protective measures under the 1996 Convention, see M. Župan, S. Ledić and M. Drventić, 'Provisional Measures and Child Abduction Proceedings' (2019) 35(1) *Pravni vjesnik* 9, at pp14–15, drawing on Lagarde's Explanatory Report on the 1996 Convention at §§85–86, available at <https://hrcak.srce.hr/file/320659>.
[333] See K. Trimmings and O. Momoh, "Intersection between Domestic Violence and International Parental Child Abduction: Protection of Abducting Mothers in Return Proceedings" (2021) 35(1) *International Journal of Law, Policy and the Family*, section V. Illustrated by England and Wales High Court, *RB v DB* [2015] EWHC 1817 (Fam); England and Wales High Court, *In re A (A Child) (Hague Abduction; Art 13(b): Protective Measures)* [2019] EWHC 649 (Fam); England and Wales High Court, *AX v CY* [2020] EWHC 1599 (Fam).
[334] K. Trimmings and O. Momoh, "Intersection between Domestic Violence and International Parental Child Abduction: Protection of Abducting Mothers in Return Proceedings" (2021) 35(1) *International Journal of Law, Policy and the Family*, section V, see also Beaumont and McEleavy, *The Hague Convention on International Child Abduction* (OUP, 1999) p 157.
[335] On the civil-law position, POAM Project, *Best Practice Guide: Protection of Abducting Mothers in Return Proceedings* (University of Aberdeen), available at <https://research.abdn.ac.uk/wp-content/uploads/sites/15/2020/11/POAM-Best-Practice-Guide.pdf>.
[336] See Trimmings and Momoh, "Intersection between Domestic Violence and International Parental Child Abduction: Protection of Abducting Mothers in Return Proceedings" (2021) 35(1) *International Journal of Law, Policy and the Family*, section V.

5.9.E. Timing and method of assessment

When should protective measures be raised?

The HCCH Guide to Good Practice (§45) encourages that potential protective measures be raised at an early stage of the proceedings, so that the parties have an adequate opportunity to present evidence on their necessity and enforceability without causing delay.[337]

This suggestion must, however, be understood in a practical sense. In return proceedings, the timing of risk allegations is not always predictable, and two scenarios may arise, depending on the procedural approach in the requested State.

— First, the abducting parent may raise an objection under Article 13(1)(b) at a relatively late stage of the proceedings. In such cases, the nature of the alleged risk only becomes clear during the proceedings, and it is not realistic to expect the left-behind parent to propose specific protective measures in advance. Rather, such measures must be identified and substantiated as early as reasonably possible once the objection is raised and its factual basis becomes known.

— Second, the abducting parent may not formally invoke Article 13(1)(b), but may nevertheless refer to domestic violence or other risks affecting the child. Courts will often treat such assertions as engaging the grave risk exception, even if they are not explicitly framed as a legal defence. The need to address protective measures is therefore triggered by the substance of the allegations, not by their formal classification.

In both scenarios, the requirement of "early" consideration does not mean that measures must be proposed in advance of any risk being identified. It means that, once relevant allegations arise, they should be addressed without delay, in a way that allows the court to assess their adequacy without undermining the Convention's emphasis on expedition.

When should the court assess protective measures?

The HCCH Guide recognises two permissible procedural approaches. Courts commonly assess the availability and effectiveness of protective measures alongside the allegations of grave risk. Alternatively, they may first establish the existence and nature of the risk and then determine whether it can be addressed by adequate and effective measures.[338] This flexible approach reflects the need for expedition in return proceedings. In some cases, where adequate and effective safeguards are clearly available in the State of habitual residence, courts may order return without engaging in a detailed assessment of the alleged risk. In others, courts first identify the risk and then examine whether it can be mitigated through concrete and reliable measures.

Despite this procedural flexibility, the functions of the two assessments remain distinct. The identification of a grave risk concerns the existence and nature of the harm to the child, whereas protective measures address whether that risk can be sufficiently mitigated to allow a safe return.

[337] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §45.
[338] This sequence seems to be the prevailing view. The 2024 HCCH Forum noted that the assessment of protective measures "must follow, not replace, the determination of risk," cautioning against premature reliance on assurances to negate the finding of harm. Similarly, Trimmings, Momoh and Kalaitsoglou emphasise that courts should not treat undertakings or mirror orders as evidence that no grave risk exists, but as possible – and often inadequate – post-risk considerations.

Even where both elements are considered in parallel, it remains important to ensure that protective measures are not used to obscure or bypass a proper assessment of the risk itself. These measures must be clearly identified and capable of effective implementation.

All three types must be assessed within the return proceedings and before return is ordered or implemented. The return court need not adopt one universal sequence, but it cannot postpone the decisive inquiry until after the child has travelled. Before relying on Article 27(3), taking an Article 27(5) measure or treating a practical arrangement as sufficient, it must identify what will happen, who will do it, when it will become operative and what legal or practical consequence follows if it fails. Article 27(5) itself requires the measure to be examined and taken without unduly delaying the proceedings; Article 27(3) requires adequate arrangements to have been made; and any cross-border step essential to protection should be completed, or its completion made a condition precedent, before return.

5.9.F. Article 8 ECHR: procedural scrutiny

Article 8 ECHR does not replace Article 13(1)(b) with a general welfare assessment. It governs the quality, speed and reasoning of the decision-making process. Where a party raises a genuine and sufficiently substantiated allegation that return will expose the child to grave risk, the court must examine it effectively and respond with specific reasons. If protection is relied upon, the reasoning must address whether the proposed measures answer the risk in practice rather than referring automatically to the competence of the authorities in the State of habitual residence.[339]

The court is not required to eliminate every uncertainty or obtain a guarantee covering every future event. It must obtain and evaluate sufficiently reliable, case-specific information for the stage and summary nature of the proceedings. The adequacy of that process depends on the seriousness of the alleged risk, the information reasonably available, the urgency of the case and the degree to which the return decision depends on the safeguards.[340]

A sufficiently thorough, adversarial and reasoned assessment may satisfy Article 8 even though the information obtained does not eliminate every uncertainty. The safeguards need not predetermine the eventual custody case or create a complete post-return regime.

[339] *X v Latvia*, App. No. 27853/09 (ECtHR, 2013), §§101–108, ECtHR, *Guide on Article 8 of the European Convention on Human Rights: Right to Respect for Private and Family Life, Home and Correspondence* (updated 31 August 2025), section on international child abduction, available at <https://ks.echr.coe.int/documents/d/echr-ks/guide_art_8_eng>.
[340] The Article 8 examples are *S.N. and M.B.N. v Switzerland*, App. no 12937/20 (ECtHR, 2021); *Šneersone and Kampanella v Italy*, App no 14737/09 (ECtHR, 2011); *O.C.I. and Others v Romania,* App no 49450/17 (ECtHR, 2019).

CASE NOTE 386 | ECtHR | S.N. and M.B.N v. Switzerland
App. No 12937/20
23 November 2021

The Swiss courts ordered the child's return to Thailand after examining the child's safety and the mother's financial position and after obtaining information from the Thai authorities. The information confirmed that the mother could exercise her parental rights, would not face conviction in connection with the removal because the matter was civil rather than criminal, and could obtain access to the public prosecutor, a lawyer and legal advice. The Swiss courts also proceeded on the basis that the mother would accompany the child and could care for her in accommodation she owned in Thailand; the authorities took steps concerning the child's safety and the father's contact. The ECtHR held that the proceedings were adversarial and thorough, that the courts had examined the parties' arguments in detail and that the information obtained was sufficient at that stage to exclude a serious risk.

A safeguard is inadequate if it does not address the particular harm identified, especially where that harm is abrupt and lasting separation from the primary caregiver. External services cannot automatically be treated as equivalent to the stability supplied by an established caregiving relationship.

CASE NOTE 387 | ECtHR | Šneersone and Kampanella v. Italy
App. No 14737/09
12 July 2011

The Italian courts accepted limited future contact with the mother, kindergarten, recreational activities, Russian-language classes and psychological support as sufficient safeguards for a young child's move to Italy. The ECtHR held that those arrangements did not answer the psychological trauma expected from a sudden and lasting severance of the child's close relationship with his mother and immersion in a linguistically and culturally unfamiliar environment.

A court cannot rely on the abstract possibility of future intervention where the evidence already indicates a real risk of violence on return. It must determine whether the risk has ceased or whether concrete protection will operate from the time of return.

CASE NOTE 388 | ECtHR | O.C.I. and Others v. Romania
App. No 49450/17
21 May 2019

The Romanian courts accepted evidence that the father had used physical violence against the children but described the incidents as occasional and ordered return to Italy. They reasoned that the Italian authorities could intervene if violence recurred and was reported with evidence. The ECtHR found a violation of Article 8. The domestic courts had not established that the risk had disappeared, had treated the violence too lightly and had relied on possible later intervention without identifying concrete protection for the children on return. General mutual trust between EU Member States could not replace assessment of the particular risk.

The practical conclusion is that protective measures are not an automatic answer to Article 13(1)(b), and Article 13(1)(b) is not an invitation to demand perfect conditions before return. The court must identify the risk, select measures that address it directly, verify that they are available and effective where and when needed, and distinguish those measures from the logistics of the journey. Where that can be done without undue delay, protection enables the return mechanism to operate safely. Where it cannot, confidence in institutions or promises on paper cannot substitute for the protection the child actually requires.

5.10. Agreements and amicable resolutions in return proceedings

An agreement can end a return dispute, but it does not unite return, custody and enforcement into a single legal question. Three matters must be kept separate: what brings the proceedings under the 1980 Convention to an end; which authority has jurisdiction to approve any longer-term arrangements for the child; and what legal form will make each obligation effective where it must be performed. A settlement that answers only the first question may end the litigation while leaving the family with an unenforceable parenting plan. A settlement that answers only the second may leave the return application alive.

The practical aim is therefore to design the agreed outcome, identify the authority competent to give it legal effect, and sequence performance so that neither parent is required to surrender the return proceedings before the promised safeguards and orders exist. Within the EU, Brussels IIb can sometimes allow the court hearing the return application to deal with parental responsibility as well, but only if the Regulation's jurisdictional conditions and the forum's national procedure are satisfied (see Recital 22).

Articles 7(2)(c) and 10 of the 1980 Convention require Central Authorities to facilitate amicable resolution and the voluntary return of the child. Article 31(b) of the 1996 Convention similarly supports agreed solutions concerning the protection of the child. Negotiation, lawyer-assisted settlement, judicial conciliation, mediation and specialist cross-border co-mediation may all be used. Discussions should ordinarily be confidential to the extent permitted by the applicable law, and any applicable settlement privilege and exceptions for safeguarding or imminent harm should be explained at the outset. [341]

Agreement attempts or mediation must run alongside the return timetable.[342] The HCCH Guide to Good Practice on Mediation recommends short, intensive arrangements adapted to the case and stresses that an agreement should be made binding and enforceable before implementation where possible.[343] In an EU case, Article 25 Brussels IIb requires the court to invite the parties to consider mediation or another form of alternative dispute resolution unless that would be contrary to the child's best interests, inappropriate in the particular case or liable to cause undue delay. The six-week objectives in Articles 24 and 28 remain relevant.[344]

[341] The duty to facilitate voluntary return is an obligation of means, not of result: it does not authorise a Central Authority to delay or condition the filing of a return application on the outcome of settlement efforts. See HCCH, *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Mediation* (2012), available at <https://assets.hcch.net/docs/d09b5e94-64b4-4afe-8ee1-ab97c98daa33.pdf>, sec. 2.1.

[342] See for earlier practices: Utrecht District Court, 13 April 2005, ECLI:NL:RBUTR:2005:AT3895. The court postponed the return proceedings and required renewed settlement or mediation efforts because the parents' positions were considered sufficiently close to make an agreement realistically attainable, the mother had made detailed proposals, and the Central Authority had essentially transmitted proposals between the parties rather than actively attempting to reconcile their positions as contemplated by Article 7(2)(c). The court considered further efforts particularly appropriate where an agreed solution might better serve the child's interests and make determination of the return application unnecessary. The decision predates the HCCH Mediation Guide and Brussels IIb; today, any such postponement must be read subject to the requirement that mediation must not unduly delay return proceedings.

[343] HCCH, *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Mediation* (2012), available at <https://assets.hcch.net/docs/d09b5e94-64b4-4afe-8ee1-ab97c98daa33.pdf>.

[344] The tension between promoting mediation and preserving expedition is real and contested. Some commentators warn that ADR referrals can be used tactically to erode the six-week objective, while others argue that a brief, well-screened mediation window improves durability of outcomes without material delay. Compare N. Lowe & M. Nicholls, *International Movement of Children* (2nd edn, LexisNexis 2016), ch 22, with the more cautious view in the HCCH, *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Mediation* (2012), available at <https://assets.hcch.net/docs/d09b5e94-64b4-4afe-8ee1-ab97c98daa33.pdf>, sec. 2.1 (mediation "should not lead to any delay" in the return proceedings).

Domestic abuse, coercive control, stalking, substance misuse, acute mental-health concerns and child-protection issues require an individual suitability assessment. Participation must be voluntary and informed. Separate intake, online sessions, support persons, safe arrival and departure arrangements, limits on disclosure of location, and direct communication between lawyers or authorities may be needed. Mediation should not be used where no arrangement can provide a fair and safe process.[345]

5.10.A. What can be agreed in return proceedings?

There is no shortage of policy material explaining why mediation is desirable in international child abduction cases: it may reduce conflict, produce more durable solutions, address the interests of both parents and the child, and avoid further litigation. Much less attention is usually paid to the question practitioners actually face: what exactly may the parents agree in the course of return proceedings, what can the return court give legal effect to, and what must be taken elsewhere?

International child abduction proceedings are often framed as a binary exercise: "return" versus "non-return". In practice, however, parents can agree on a much wider range of outcomes. The HCCH Guide to Good Practice on Mediation expressly recognises that the parties may discuss return or non-return, the conditions attached to either outcome, and longer-term matters such as residence, custody, contact and even financial arrangements.[346] Mediation is not subject to the same jurisdictional limits as judicial proceedings. The difficulty arises afterwards: different parts of the agreement may require different courts, different jurisdictional bases and different procedures before they become binding and enforceable.

The practical distinction is therefore between **what the parties may agree** and **what their agreement can itself achieve legally**. A mediated agreement may be deliberately broad. It cannot, however, create judicial jurisdiction, bind authorities or third persons who are not parties to it, or make a private parenting arrangement enforceable across borders without the legal steps required in the States concerned.

The HCCH Guide to Good Practice on Mediation and the later HCCH Practitioners' Tool on Cross-Border Recognition and Enforcement of Agreements should therefore be used together: the first explains what may usefully be negotiated, while the second addresses how the resulting package can be transformed into an effective cross-border arrangement.[347]

The table below sets out, subject by subject, what a mediated or negotiated agreement can properly contain, where the legal limit lies, and the primary reference. The recurring theme is that almost anything may be *agreed*, but the *legal effect* of each term depends on the jurisdiction and

[345] There is a debate about whether mediation and "undertaking"-based safeguards are appropriate at all in cases involving domestic abuse, given the risk that power imbalance is reproduced at the table and that promises are not honoured after return. See the critique compiled in the HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §§ 43–48, and the human-rights reading discussed by Judge Pinto de Albuquerque, concurring in *X v Latvia* [GC], App. no 27853/09 (ECrHR 2013). For a firmly critical perspective, see the reform proposals of the Hague Mothers project. The mainstream position remains that carefully screened mediation can be safe and useful, but that undertakings must never be treated as a substitute for a genuine Article 13(1)(b) assessment.
[346] HCCH, *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Mediation* (2012), available at <https://assets.hcch.net/docs/d09b5e94-64b4-4afe-8ee1-ab97c98daa33.pdf>.
[347] HCCH, *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Mediation* (2012), available at <https://assets.hcch.net/docs/d09b5e94-64b4-4afe-8ee1-ab97c98daa33.pdf>.; HCCH, Practitioners' Tool on Cross-Border Recognition and Enforcement of Agreements (2022), available at: <https://assets.hcch.net/docs/333f37cc-28c9-4b6a-864a-8c335101592c.pdf>.

enforcement regime that governs it; agreement cannot manufacture jurisdiction, and a promise about a third party's act binds only the party who can perform it.

Table 22: What may be agreed in return proceedings, and the limit on its legal effect

Matter	Can it be included, and what is the legal limit?	Primary reference
Return of the child	Yes. The parties may agree that the child returns, and fix when and how. The agreement should state how the pending return proceedings are to be disposed of under the procedural law of the requested State.	1980 Convention, Arts 7(c), 10; HCCH Mediation Guide, §30(a), §49, §57.
Non-return of the child	Yes. Mediation may produce agreement that the child remains in the requested State. But the agreement does not itself create a Convention exception or oblige the court to make a finding contrary to the facts; the return application must still be terminated in a form permitted by national procedure.	HCCH Mediation Guide, § 30(a)–(b)
Practical arrangements for return	Yes. Travel date and route, accompanying parent, tickets, costs, passports, documents, handover and baggage may all be agreed. Terms should be concrete and performable; where performance depends on a third person or authority, the parents cannot guarantee that third party's act.	HCCH Mediation Guide, Ch 11 ("reality check") and § 287.
Conditions / safeguards attached to return	Yes. Return may be packaged with accommodation, financial assistance, temporary or non-contact arrangements and other safeguards. The agreement must separate obligations within the parties' control from measures needing action by a court or authority; if a protection is essential to return, its legal effectiveness should be established before implementation.	HCCH Mediation Guide, §§41–48; HCCH Guide on Art 13(1)(b), §§43–48; Re T [2023] EWCA Civ 1415.[348]
Residence / custody (after return or non-return)	Yes as a subject of agreement, but it is a matter of parental responsibility. Being agreed during return proceedings does not ordinarily give the return court jurisdiction to approve it, and agreement on non-return does not by itself move jurisdiction to the requested State: 1996 Convention, Article 7 must be considered.	HCCH Mediation Guide, §41, §51, Chs 12–13; 1996 Convention, Art 7.
Contact	Yes, for either the return or non-return scenario (holidays, online contact, travel, costs). Long-term contact is a parental-responsibility matter, so the competent authority must have jurisdiction to give it the intended legal effect.	HCCH Mediation Guide, §30(b), §81, Ch 13; HCCH Practitioners' Tool, Ch II.
Relocation	Yes. The parties may agree the child relocates or remains in the new State. A private agreement cannot by itself alter the jurisdictional allocation under the 1996 Convention or other instrument; an enforceable relocation order must come from an authority with jurisdiction.	HCCH Mediation Guide, §30(b), §43 (variation 3), §51; 1996 Convention, Arts 5–10.

[348] Court of Appeal of England and Wales (Civil Division), *Re T (Abduction: Protective Measures: Agreement to Return)* [2023] EWCA Civ 1415.

Education, health, passports, travel and other exercise of parental responsibility	Yes. These may form part of a parenting agreement, but approval or enforceability depends on the jurisdiction and domestic law of the competent authority.	HCCH Practitioners' Tool, Chs II–III; HCCH Mediation Guide, Ch 13.
Two alternative regimes (return and non-return)	Yes, and useful where return remains contested. Each branch must have a clear trigger, and its parental-responsibility terms still require an appropriate jurisdictional and enforcement route. The agreement cannot manufacture jurisdiction.	HCCH Mediation Guide, §§41–48.
Child maintenance	Yes, but maintenance is subject to different jurisdiction, applicable-law and enforcement rules. The HCCH warns that adding maintenance may complicate and delay formalisation of the core return agreement; check the Maintenance regime separately.	HCCH Mediation Guide, §41, Ch 13; EU Maintenance Regulation.[349]
Criminal proceedings connected with the abduction	Only to the extent the promised act is within a party's control (e.g. to make or withdraw a request where the law allows). A parent cannot promise that a prosecutor or criminal court will discontinue proceedings; the actual status may need verifying before return.	HCCH Mediation Guide, Sec 2.8, §§85–89.
Immigration, visas, administrative matters	The parties may agree what they will themselves do (submit documents, cooperate with an application). They cannot bind an immigration authority or guarantee a visa or permit; if the outcome is essential, treat it as a condition requiring independent verification.	HCCH Mediation Guide, sec. 2.7, §§82–84.
Choice of the court for future parental responsibility	The parents may record a preference or, where the applicable instrument permits party autonomy, make a jurisdiction agreement. They cannot create jurisdiction by agreement: the requirements of the applicable instrument must independently be met. Under the 1996 Convention party autonomy is very limited; within the EU, see Article 10 Brussels IIb.	1996 Convention, Arts 8–10; Brussels IIb, Art 10; HCCH Practitioners' Tool, Ch II.
Acts of prosecutors, police, courts, schools, landlords or other third persons	No, not as obligations binding those persons. Parents can promise only acts within their own control; a required act of a third party must be separately obtained or made an express condition of the agreement.	HCCH Mediation Guide, §85–89; and Re T [2023] EWCA Civ 1415.[350]

The four routes below suggest how to *execute* each outcome. The recurring risk is one of sequence: do not surrender the return proceedings before the promised order, safeguard or registration actually exists.

Return-only. If return is to be effected voluntarily, do not withdraw the return application until the agreed return and any essential safeguards have been implemented. If a consent return order is sought, draft the order and any material recital with the agreement before the order is made.

[349] Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (2009) OJ L 7.
[350] Court of Appeal of England and Wales (Civil Division), *Re T (Abduction: Protective Measures: Agreement to Return)* [2023] EWCA Civ 1415.

Return with safeguards or a parenting package. Test each safeguard for jurisdiction and enforceability in the State where it must operate; if a protection is essential to return, establish its legal effect before implementation. For long-term parental-responsibility terms, the default seat is the child's former habitual residence (1996 Convention, Article 7): have that authority approve the terms, obtain any declaration of enforceability, and rely on Articles 23–26 for recognition and enforcement elsewhere (Article 24 permits advance recognition). Identify which application is filed first, by whom and by when, and what happens if the second authority declines. Direct judicial communication through the International Hague Network of Judges (IHNJ) and contact between Central Authorities can narrow the gap between agreement and enforceability.

Agreed non-return. Terminate the return case and establish the future parenting arrangement separately. The applicant may withdraw, or the respondent may seek refusal on the basis of acquiescence under Art 13(1)(a); the court keeps its Convention function and need not adopt an agreed version of the facts. Jurisdiction over parental responsibility does not move merely because non-return is agreed (1996 Convention, Article 7), so use the former habitual-residence court, or a Convention transfer, until the new State has jurisdiction — and sequence withdrawal of the return case after the parenting arrangement has taken legal effect.

Partial and two-scenario settlements. Where return remains contested, the parties may settle only logistics or a protective measure, or draft two regimes — one triggered by return, one by a final non-return decision. Give each branch a clear trigger, start date, duration, competent authority and enforcement route, and separate terms common to both from terms that depend on the outcome.

Where Article 13(b) is raised, and protective measures form part of the basis for return, there is no concluded agreement to return unless the parties agree on those measures and their effectiveness in the requesting State. Residual disagreement about peripheral "soft-landing" arrangements does not defeat an otherwise-complete agreement. But the effectiveness and implementation of those measures in the requesting State is an essential element: if the parties have not agreed to it, no concluded agreement exists.

CASE NOTE 389 | UK | Court of Appeal (Civil Division) | Re T
[2023] EWCA Civ 1415
1 December 2023

The mother's agreement to return the child to Texas was conditional on protective measures being made effective there — she wanted the agreed terms mirrored in an enforceable Texas order before she would travel. The parties never agreed how the measures would be implemented or whether they would be effective (they disputed whether undertakings would even be recognised in Texas). The Court of Appeal held there was no concluded agreement: the trial judge had wrongly treated the effectiveness of protective measures as a "detail" and wrongly relied on the financial-remedy cases *Rose* and *Xydhias* to hold the parties to an incomplete bargain. The court added that had the protective measures been in place and only "soft-landing" points remained, the agreement could have been saved.

The confidentiality and admissibility of mediation communications must be checked under the applicable law; Article 30 of the 1980 Convention does not itself override otherwise applicable rules of privilege or confidentiality. The HCCH Guide recommends that mediation communications be confidential, subject to applicable law, but stresses that the protection may differ

between the legal systems concerned.[351] In common-law systems, communications made in a genuine attempt to settle a dispute may additionally attract "without prejudice" privilege. The fact that mediation material has been transmitted through a Central Authority or appended to a return application does not necessarily remove that protection.

CASE NOTE 390 | **IE** | **High Court** | [2026] IEHC 394
12 June 2026

A father sought to admit documents from an earlier mediation in England into return proceedings in Ireland. The High Court refused: the mediation was confidential and "without prejudice," no settlement had been reached, and the father wanted the material for the facts it contained rather than to prove an agreement. The communications were privileged and inadmissible.

[351] HCCH, *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Mediation* (2012), available at <https://assets.hcch.net/docs/d09b5e94-64b4-4afe-8ee1-ab97c98daa33.pdf>.

5.11. Judicial discretion under the 1980 Convention

> *" 41. To sum up, the exercise of the discretion under the Convention is acutely case-specific within a framework of policy and welfare considerations. In reaching a decision, the court will consider the weight to be attached to all relevant factors, including: the desirability of a swift restorative return of abducted children; the benefits of decisions about children being made in their home country; comity between member states; deterrence of abduction generally; the reasons why the court has a discretion in the individual case; and considerations relating to the child's welfare."*
>
> *Re G (Abduction: Consent/Discretion), 9 February 2021, Court of Appeal (Civil Division) of England and Wales*[352]

The 1980 Convention establishes a structured and conditional system of judicial discretion. As a starting point, the return of the child is mandatory once the requirements of the Convention are met. Discretion arises only where a court is satisfied that one of the Convention exceptions has been established. In such cases, the Convention permits – but does not require – the court to refuse return. The exercise of discretion therefore represents a second and distinct stage of the analysis, following the determination that an exception applies. At this stage, the court must weigh the specific circumstances that gave rise to the exception against the Convention's overarching objectives, including the prompt return of children, the deterrence of unilateral removals, and respect for the jurisdiction of the State of habitual residence. Discretion is neither unfettered nor welfare-based; it must be exercised judicially, transparently, and within the limits of the Convention framework.

At EU level there is little direct authority on the exercise of the discretion, and the reason is structural rather than a gap in the case law. Courts apply the discretionary structure of Article 13 without expressly articulating it. This reflects differences in judicial style rather than differences in legal principle; the absence of explicit discussion of discretion does not indicate its absence in law. Brussels IIb does not create a general discretionary test of its own, although it may constrain the consequences of an Article 13 exception. In particular, Article 27(3) prevents refusal solely under Article 13(1)(b) where adequate arrangements have been made. Beyond such specific rules, the discretionary weighing remains that of the 1980 Convention. The CJEU abduction jurisprudence is accordingly concerned with structure and mutual trust - which court decides, and how far another court may look behind that decision, rather than with how the discretionary weighing is performed.

In *Re M*, Baroness Hale drew a careful boundary between discretion and welfare jurisdiction.[353] Once an exception has been established, the discretion is "at large": the court may take into account the Convention's policy, the circumstances that gave rise to the discretion, and the child's rights and welfare. This does not transform the return proceedings into a custody determination. The task remains to decide whether return should nevertheless be ordered within the Convention framework, not where the child should ultimately live. No additional requirement of "exceptional circumstances" is to be imposed, because the circumstances giving rise to the discretion are themselves exceptions

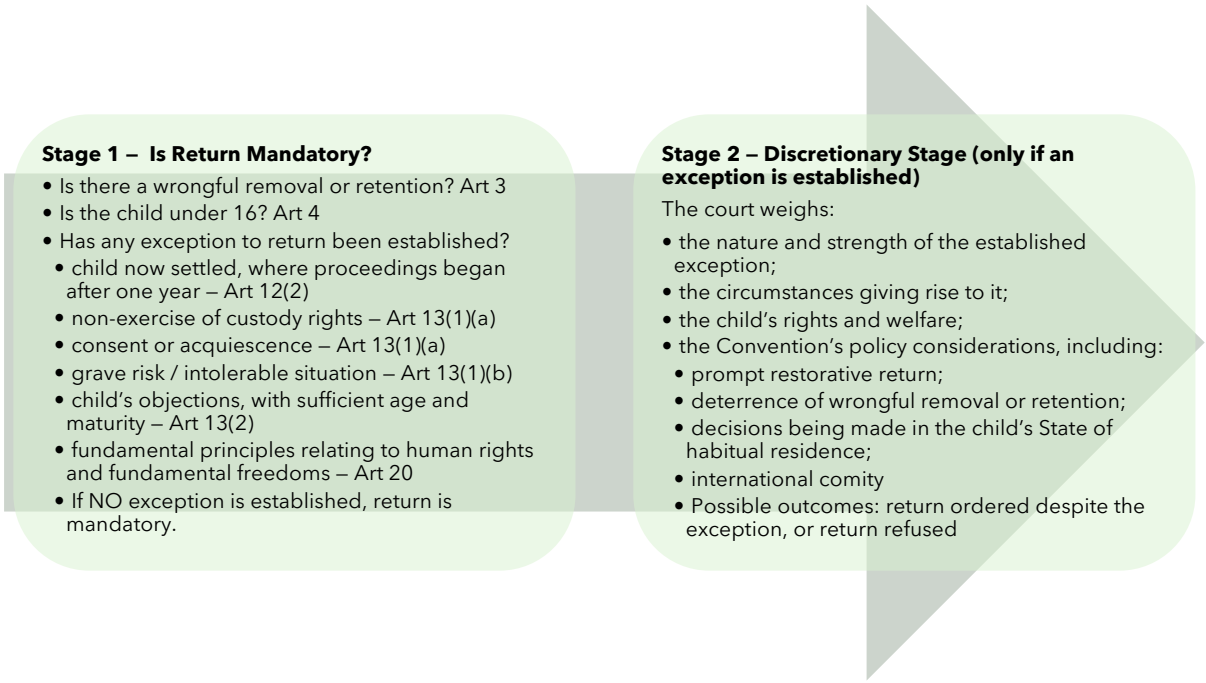
[352] England and Wales Court of Appeal, *Re G (Abduction: Consent/Discretion)* [2021] EWCA Civ 139. For summary see Elena Alina Ontanu, "The English Court of Appeal on Consent and Court Discretion in Child Abduction Cases", European Association of Private International Law (EAPIL) Blog, 22 March 2021, available at <https://eapil.org/2021/03/22/the-english-court-of-appeal-on-consent-and-court-discretion-in-child-abduction-cases/>.
[353] United Kingdom House of Lords, *Re M (Children)* [2007] UKHL 55.

to the general rule of return. The weight given to Convention policy and to the child-specific circumstances will therefore depend on the facts of the individual case.[354]

5.11.A. Areas where discretion is absent

Discretion does not arise at the jurisdictional or admissibility stage. When determining whether an application satisfies the basic requirements of the Convention (wrongful removal or retention, habitual residence, age of the child, and timing of the application), the court applies objective criteria. Similarly, where no exception is established under the Convention, the return order is mandatory: the court cannot substitute its own assessment of welfare or fairness to override the obligation to return.

The structure of the 1980 Convention requires a two-step approach. First, the court must decide whether one of the Convention exceptions is established – for example, consent or acquiescence under Article 13(1)(a), grave risk of harm or an intolerable situation under Article 13(1)(b), objections of the child under Article 13(2), or settlement under Article 12(2). If none is proven, Article 12 applies and the court is bound to order the child's return; there is no discretion at this point.



If, however, an exception is established, then the court moves to the second stage – the exercise of discretion. At that stage, the judge weighs the Convention's general policy considerations – prompt return, deterrence of abduction, respect for international comity – against the particular facts of the case, including the child's welfare and the circumstances that gave rise to the exception. Conflating the two stages is a serious error of law.

[354] United Kingdom House of Lords, *Re M (Children)* [2007] UKHL 55, §§42-48.

CASE NOTE 391 | **UK** | **Court of Appeal of England and Wales** | Re C [2021] EWCA Civ 1236
10 August 2021

The mother argued that Article 13(b) applied because she would not return with the child to France. The judge rejected this, finding no grave risk, but went on to say he would "in any event" exercise his discretion to order return. The Court of Appeal held that once Article 13(b) was dismissed there was no discretion to exercise: return was mandatory under Article 12. The judge had wrongly conflated the two stages.

5.11.B. Areas where discretion arises

Once a defence is established under Articles 12(2), 13 or 20, the position changes. The court is not obliged to refuse return but must exercise its discretion judicially, weighing all the relevant circumstances in light of the Convention's objectives. As Baroness Hale explained, once the discretion arises the court is entitled to take into account the various aspects of the Convention's policy alongside the interests of the individual child and the circumstances that gave the court a discretion in the first place; importantly, no additional test of "exceptionality" is to be imported, because the circumstances in which return may be refused are themselves the exceptions to the general rule. The established exception is the gateway to discretion; once that gateway is crossed, the discretion is at large, although the court is not determining the merits of custody.

When the Convention gives the court a discretion, it must be exercised by weighing the child-specific circumstances against the general policy considerations of the Convention. Those considerations are rooted in the Preamble and consistently reaffirmed in the case law. They include: protecting children from the harmful effects of abduction; deterring parents from taking the law into their own hands; restoring the child promptly to the State of habitual residence so that substantive disputes can be resolved there; preventing abducting parents from gaining an advantage by litigating in the new State; and maintaining comity between Contracting States by ensuring there are no safe havens for abductors. The weight given to these considerations varies from case to case, but they must always form part of the discretionary balance; courts are not bound to treat the Convention aims as overriding in every instance, yet they remain a central element of the analysis whenever discretion arises under Articles 12 or 13.

CASE NOTE 392 | **UK** | **Court of Appeal (Civil Division)**| P (A Child) [2024] EWCA Civ 1569
16 December 2024

The Court of Appeal found that the trial judge had given excessive weight to the 15-year-old child's objections and had failed to engage properly with the policy considerations of the 1980 Convention. The court stressed that these considerations extend beyond ordering speedy return: they include deterring parents from self-help, ensuring disputes are resolved in the child's State of habitual residence, and preventing abductors from gaining an advantage by litigating elsewhere (§§88–90). Because the father had deliberately avoided proceedings in Romania and wrongfully retained the child in England, the policy aims of the Convention carried considerable weight. Balancing these against the child's objections and other welfare factors, the Court of Appeal exercised its discretion in favour of making a return order (§§92–94).

5.12. Common pitfalls in national court reasoning under the 1980 Convention

The 1980 Convention is designed as a neutral, procedural instrument. Its purpose is not to decide custody disputes but to return the child to the State of habitual residence, where the merits of parental responsibility can be adjudicated. In theory, this creates a clear and predictable structure. In practice, national courts do not always apply the Convention as intended, and the resulting divergences form a recognisable pattern rather than a set of isolated curiosities.

Not every divergence is a mistake, and not every mistake is of the same kind. Before cataloguing the recurring problems, it is worth drawing the distinction the rest of this section turns on. A *difference* in judicial style is not a defect at all. Beyond that, three categories must be kept apart.[355]

An error of law is present where the court applied a rule the Convention does not permit or misapplied one it does: it reversed the burden of proof, used the wrong instrument, or refused return on a ground the Convention excludes. Such an error can be identified as wrong on the face of the decision, independently of the outcome, and it is the kind of error an appellate court can correct.

An error of method is subtler. Here the court may even reach a defensible result, but by a route the Convention's autonomous, fact-based approach forbids – for example, by deciding habitual residence from a document rather than from the child's lived integration. The outcome may happen to be right; the reasoning is not, and a decision reached by the wrong method is unsafe and cannot be relied on as a precedent, because the same method will, in the next case, produce the wrong answer.

A red flag is not, in itself, an error at all. Nationalistic rhetoric, or reliance on a parent's attitudes towards the requested State, does not by itself establish that the Convention was misapplied – but it signals that the analysis may have been influenced by considerations the Convention does not recognise, and it invites close scrutiny of whether it influenced in turn the identification or application of the legal requirements for return. The decisive question is always whether it did.

A framing observation runs through all three categories: misapplication is often noticed but rarely correctable. A mistaken application of the Convention by one national court may be identified, and implicitly criticised, by a court in another Member State – yet without any power to revise it. Because return decisions are taken at national level and mutual trust requires deference to their procedural effects, a second court is generally confined to recording its unease while still accommodating the foreign decision within the EU coordination framework. Correction runs vertically through appeal within the deciding State, not laterally between courts of different Member States. This is why the reasoning problems catalogued below persist.

[355] This section does not assess fault or rank courts against one another; the examples are drawn disproportionately from jurisdictions whose fully reasoned decisions are publicly accessible, which reflects the availability of published reasoning rather than any claim about the relative competence of particular national courts.

CASE NOTE 393 | **NL** | **Overijssel District Court** | ECLI:NL:RBOVE:2025:6188
11 September 2025

In return proceedings in Bulgaria, the appellate court refused the father's request by concluding that the child's habitual residence was with the mother in Bulgaria – reaching that conclusion not by first examining whether the child had been wrongfully removed in breach of existing joint parental authority, but by relying on a general assumption that an infant is exclusively cared for by the mother. When related parental-responsibility proceedings later came before the Dutch court, it noted, by way of a *wenk*, that the Bulgarian appellate court had not taken the alleged unauthorised removal under the existing joint parental authority as its starting point. The Dutch court did not revisit the Bulgarian return decision. In the separate merits proceedings before it, it applied Brussels IIb lis pendens to the earlier Bulgarian parental-responsibility proceedings and, once decisions had been given there, declined jurisdiction.

5.12.A. Errors of law

The first group concerns identifiable legal mistakes: the court applies a rule the Convention does not permit, omits a rule it requires, or uses the wrong legal instrument. These errors can be identified independently of whether the outcome might otherwise appear defensible and are, in principle, capable of correction on appeal.

Mixing return with the merits of custody

Return may not be refused because the child is thought "better off" in the requested State; refusal requires a ground the Convention recognises. A recurrent and serious error is to conflate the return mechanism with a substantive custody assessment – refusing return not because a grave risk within Article 13(1)(b) is established, but because the court considers the child's life in the requested State preferable. This is an error of law because it transfers to the refuge court a decision the Convention reserves to the courts of the State of habitual residence, defeating the instrument's central premise. The Explanatory Report is emphatic that a return decision is not a determination on the merits of custody – the boundary Articles 16 and 19 draw.[356] The HCCH Guide to Good Practice on Article 13(1)(b) warns against precisely this: a decision on return is "not a custody determination," and "economic or developmental disadvantages to the child upon return" do not, on their own, establish a grave risk.[357] Where an Article 13(1)(b) risk has been identified, the court should also ask whether it can be addressed by adequate arrangements. In intra-EU cases, Article 27(3) Brussels IIb provides that the court must not refuse return on the sole basis of Article 13(1)(b) if adequate arrangements to protect the child after return have been made, and under Article 27(5) it may itself take provisional protective measures. Stopping at perceived disadvantage or disruption bypasses this structured test and turns the return procedure into a de facto custody determination.

[356] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction*.
[357] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020).

CASE NOTE 394 | **PT** | **Supreme Court** | 2695/23.8T8PTM.E1.S1
12 November 2024



A nine-year-old child was wrongfully removed from Brazil to Portugal by his mother in June 2023. Both lower courts ordered return, but the Portuguese Supreme Court reversed after the child had been living in Portugal for over a year. Its reasoning concentrated on the child's present life there: the mother as his primary attachment figure, very good school performance, friendships, swimming and emotional stability, together with the disruption of changing country and school and returning to what it regarded as uncertain living conditions in Brazil. The Court concluded that separation from that environment would cause "an intolerable psychological and emotional shock" within Article 13(1)(b), and it also compared crime statistics between the Brazilian city of origin and Portuguese cities. Present welfare, integration and comparative living conditions thus became central to the grave-risk analysis.

CASE NOTE 395 | **BG** | **Sofia Court of Appeal** | 20231000501060
15 June 2023



In a case concerning return to the United Kingdom, the appellate court accepted that the child's habitual residence had been in the UK but refused return under Article 13(1)(b). The evidence included a psychological report describing domestic violence, the child's initial fear of the father and a strong, secure relationship with the mother. The court also relied expressly on "the lack of security in the father's life": it stated that the family, and in particular the father, had "no home and livelihood in the United Kingdom" and that he had no one on whom he could rely for help with the child if the mother did not accompany her. Those living-condition considerations formed part of the basis for refusal.

CASE NOTE 396 | **BG** | **Sofia City Court** | 20131100117289
19 May 2014



The court refused return after emphasising the child's present life in Bulgaria: attendance at nursery, established social contacts, stable living conditions and a strong emotional bond with the mother. It also relied on the possible psychological impact of separation and noted that no report had been produced on conditions in the State of habitual residence. Without identifying a distinct concrete danger beyond those welfare considerations, or examining whether any identified risk could be addressed by arrangements after return, the court concluded that return would place the child in an unfavourable situation.

Reversing the burden of proof under Article 13

Once the applicant establishes the Article 3 case for wrongful removal or retention, the burden of establishing an exception under Article 13 rests on the person opposing return. Article 13(1)(a) accordingly permits the respondent to establish non-exercise of custody rights, consent or subsequent acquiescence, while Article 13(1)(b) places the grave-risk exception on the person opposing return. Folding the absence of those exceptions into the elements the applicant must prove inverts the Convention's allocation of proof and can require the applicant to prove a negative. The Explanatory Report (§34 and §114) explains that the exceptions are to be construed restrictively and are for the person opposing return to invoke and establish; the HCCH Guide to Good Practice

on Article 13(1)(b) (2020) is to the same effect – the burden of the grave-risk exception rests on that person, not on the applicant.[358]

CASE NOTE 397 | BG | Sofia City Court | 20231100110589
10 July 2024

Sofia City Court treated six matters as cumulative prerequisites that the applicant had to establish for return. Alongside habitual residence, wrongfulness and timing, its list required the absence of consent or acquiescence and that "there must be no grave risk" of physical or psychological harm or an otherwise intolerable situation. After accepting that the child had been habitually resident in Germany and that the application was timely, the court held that the final condition remained unproved because the applicant mother had not conducted the necessary "full and principal proof" to establish that the risk did not exist. The formulation therefore placed on the applicant the burden of disproving Article 13(1)(b), rather than requiring the respondent to establish the exception.

Allowing a parallel custody measure to bar return

The existence of proceedings or provisional measures concerning parental responsibility does not displace the return mechanism or create an additional ground for refusing return. The return court must apply the Convention independently and may refuse only on a ground it recognises. Article 17 of the Convention provides that the mere existence of a custody decision in the requested State is not a ground for refusing return – a limit the Explanatory Report explains as essential to prevent the requested State pre-judging the merits through its own custody rulings.[359] In an intra-EU case, measures taken under Article 15 Brussels IIb are provisional and protective: where the court taking them lacks jurisdiction as to the substance, they cease when the court with substantive jurisdiction takes the measures it considers appropriate. They do not determine the return application. Allowing such a parallel measure to dispose of the return application short-circuits the Convention's analysis and lets the refuge State pre-empt a question that must still be decided under the return regime.

CASE NOTE 398 | BG | Sofia City Court | 20241100111130
25 November 2024

The court found that the child had been habitually resident in Spain, that both parents exercised custody rights and that the mother had not returned the child after the agreed travel period ended on 31 August 2024. The return application was filed on 27 September. On 2 October, in separate proceedings, the Varna District Court made provisional measures, citing Article 15(3) Brussels IIb, placing the child with the mother, fixing contact and maintenance, while in the same hearing declaring itself without international jurisdiction over the merits and providing that the measures would operate until the competent Spanish court acted. The return court then, "taking into account" those provisional measures, dismissed the return application as unfounded, without identifying an exception under Articles 12, 13 or 20 as the basis for non-return.

[358] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction,* §34 and 114; HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020).
[359] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction.*

Treating Brussels IIb as applicable in cases involving non-EU States

Where the child was habitually resident in a non-EU Contracting State immediately before the removal or retention, return proceedings in an EU Member State are governed by the 1980 Convention alone; the supplementary child-abduction provisions of Brussels IIb do not apply. Brussels IIb governs wrongful removal or retention between Member States; it does not apply where the child's pre-removal habitual residence was in a third State, even a Convention Contracting State. This is an error of law because applying the Regulation as the governing instrument imports requirements and definitions that do not belong to the case and can distort the analysis at its root – including the very identification of the States between which the Convention operates. CJEU case law may still be used as persuasive guidance on shared concepts, but only as interpretative assistance, not as the applicable legal basis.

CASE NOTE 399 | **BG** | **Sofia City Court** | 20231100111724
12 June 2024

The court expressly found that the two children had been habitually resident in Canada from birth and that their alleged wrongful retention was in Bulgaria. It nevertheless imported the Brussels IIb definition of wrongful removal or retention, stating that the child must have been taken or retained in a "Member State" different from the "Member State" of habitual residence, and also used Brussels IIb provisions and CJEU case law when analysing custody rights. The judgment thus applied the Regulation's Member-State vocabulary and concepts to a Canada-Bulgaria return case, although Canada is a third State and the Regulation's supplementary child-abduction regime was not applicable.

Applying the wrong EU instrument ratione temporis

The applicable Brussels II instrument is fixed by the date the return proceedings were instituted: Brussels IIb applies to proceedings instituted on or after 1 August 2022, Brussels IIa to those instituted before. This is an error of law, not a formality, because the two instruments impose different duties. In proceedings governed by Brussels IIb, a non-return decision based solely on Article 13(1)(b), Article 13(2), or both is subject to Article 29: the court must issue the Annex I certificate under Article 29(2) of its own motion and, if it is aware that custody proceedings are already pending in the Member State of the child's former habitual residence, must transmit the decision, certificate and relevant documents to that court within one month under Article 29(3). Relying on the predecessor provision (Article 11(6) Brussels IIa) in a post-2022 case both misstates the legal basis and omits the mandatory certificate, breaking the information flow on which the override mechanism (Article 29(6)) depends.

CASE NOTE 400 | **BG** | **Sofia City Court** | 20231100110589
10 July 2024

The case concerned a return application filed on 25 September 2023 for a child whose habitual residence was in Germany. The court refused return under Article 13(1)(b) and also relied on the child's objection, while noting that proceedings concerning parental responsibility were pending in Germany. Yet in the operative part it ordered transmission of the judgment, evidence and hearing records under Article 11(6) of Brussels IIa. Because the return proceedings had been instituted after 1 August 2022, Brussels IIb applied; the judgment did not use Article 29 or provide for the Annex I certificate required by the recast.

Treating ADR as stopping the Article 12 one-year period

Mediation or other non-court dispute resolution does not stop the one-year period in Article 12 from running. Where return proceedings begin after that period, the court must determine under Article 12(2) whether the child is now settled; negotiations between the parents do not prevent settlement developing in the meantime. The error is to treat time spent in ADR as automatically neutralising the delay, because Article 12(2) asks about the child's actual integration, not the diligence or good faith of the parents. If settlement is established, the length of the delay and the reasons for it, including genuine attempts at ADR, may be relevant to the discretion whether nevertheless to order return. ADR may explain the delay, but it does not stop the Article 12 clock or make the resulting integration legally irrelevant. Delay alone, equally, does not establish settlement, which still requires proof of the child's physical and emotional integration.

CASE NOTE 401 | **UK** | **England and Wales Court of Appeal** | Re B (A Child) [2025] EWCA Civ 1382
4 November 2025

The child B had been wrongfully retained in England in October 2022, but the father did not issue return proceedings until 13 March 2025. During those two and a half years, the parents undertook two mediation processes and extensive negotiations; the father knew where B lived, visited repeatedly, and the mother took B back to Portugal on several occasions. In October 2024, the parents even signed an agreement providing for B to return to Portugal from January 2025, before the mother later withdrew from it. The first-instance judge treated the use of mediation and non-court dispute resolution as a "separate policy point" and considered that the resulting delay should not be used against a party who had tried to settle. The Court of Appeal rejected that approach: the negotiations did not prevent B becoming settled, and a delay of more than two years remained relevant to the Article 12 discretion, even though the reasons for the delay were also relevant. The appeal was allowed and return refused.

5.12.B. Errors of method

The second group concerns the route by which the court reasons. The result may be defensible, but the analysis departs from the Convention's autonomous, fact-based method or uses legally irrelevant proxies. The problem lies in the method: the same reasoning may produce the wrong answer in the next case.

Reliance on domestic law instead of the autonomous standard

Habitual residence under the 1980 Convention is an autonomous, fact-based concept; it is not determined by a domestic statutory definition or the ordinary linguistic meaning of "habitual." The court must examine the child's actual integration into a social and family environment in light of all the circumstances. This is an error of method because reliance on nationality, national identity, formal registration or dictionary definitions replaces the child-centred assessment the Convention requires with formal criteria disconnected from the child's lived reality – and, because the concept is meant to be interpreted uniformly across Contracting States, a nationally-inflected definition also fractures that uniformity. Even where the formal approach happens to reach the right conclusion, the method remains defective: both outcome and reasoning must conform to the autonomous standard.

The same fact-based method is reflected in the CJEU's interpretation of the parallel concept, which is persuasive though not binding in a Convention-only case.[360]

CASE NOTE 402 | **BG** | **Sofia City Court** | 20201100114364
9 March 2021

A Bulgarian judgment began from nationality and ordinary language rather than the child's factual integration. It stated: "K.K.Y. is a minor child with Bulgarian citizenship and habitual residence in the Republic of Bulgaria." It continued that, "Based on the etymology of the phrase 'habitual residence', it should be understood as residence in that state which, according to custom, has been established", and relied on the Bulgarian dictionary meaning of "habitual". The court then added that Bulgarian citizens "usually live habitually" in Bulgaria because they are connected to it socially, culturally and in other ways.

CASE NOTE 403 | **BG** | **Sofia City Court** | 20181100116227
4 December 2018

In determining the child's habitual residence immediately before the removal on 14 January 2018, a Bulgarian court stated that Article 48(7) of the Bulgarian Private International Law Code was applicable. It found habitual residence in Italy on the basis that the child had been born there, held Italian nationality and had an Italian registered address, relying on Italian birth, citizenship and family-status records and an immunisation record. The judgment did not separately examine the duration and conditions of the child's actual residence, daily care or family environment in Italy, or engage with the autonomous fact-based approach reflected in CJEU case law.

Treating post-removal integration as an autonomous reason against return

Post-removal integration or loss of familiarity with the State of habitual residence is not a free-standing ground for refusing return. A finding that State A was the child's habitual residence immediately before the removal is perfectly compatible with the child later becoming settled or more closely integrated in State B; the two findings concern different moments. What the Convention controls is the legal use of that later integration. It may be relevant under Article 12(2), where the proceedings were commenced after one year and settlement is established, or in exceptional circumstances under Article 13(1)(b) if the consequences of return meet the grave-risk threshold. Ordinary readjustment, disruption or "culture shock" cannot simply be treated as an additional welfare exception. The methodological error is therefore not a logical contradiction, but bypassing the Convention's specific routes for post-removal developments and converting adaptation in the requested State into a free-standing reason against return.

[360] Judgment of 2 April 2009, A, Case C-523/07, ECLI:EU:C:2009:225; Judgment of 22 December 2010, *Mercredi v Chaffe,* Case C-497/10 PPU, ECLI:EU:C:2010:829.

CASE NOTE 404 | **BG** | **Sofia Court of Appeal** | 20251000501831
9 October 2025

The Sofia Court of Appeal accepted that the child's habitual residence immediately before the retention had been the United Kingdom. In its Article 13(1)(b) analysis, however, it relied on expert evidence that the three-year-old was now adapted to the Bulgarian cultural, linguistic and social environment, had established routines and attachments to relatives, and that "an abrupt relocation of the child to another country with a different language, culture, lifestyle at such an early age would create culture shock, social isolation and potential disorientation". The experts further explained: "This is the shock - if we take a child and send [her] to be raised by someone the child does not know." The court treated this current integration and anticipated readjustment as supporting non-return.

Rejecting the autonomous approach after excluding CJEU guidance

CJEU case law on parallel autonomous concepts may be persuasive in a Convention-only case, but it is not the source of the Convention standard. A national court applying only the 1980 Convention is entitled not to treat judgments such as *A* or *Mercredi* as binding.[361] The methodological error arises if, after excluding that jurisprudence because the instruments have different material scopes, the court then substitutes nationality, domestic family-law provisions or dictionary definitions for an autonomous, fact-based Convention analysis. The problem is therefore not the failure to follow CJEU authority; it is the abandonment of the autonomous method.

CASE NOTE 405 | **BG** | **Sofia City Court** | 20201100114364
9 March 2021

The Sofia City Court held that Brussels IIa and the CJEU case law interpreting it were inapplicable because the 1980 Convention had a "narrower material scope". It then determined the child's habitual residence through the habitual residence and nationality of the parents, Bulgarian family-law provisions, an earlier Bulgarian custody judgment and the dictionary meaning of "habitual". The court found that the child's habitual residence had remained in Bulgaria even though the child had lived with the father in the United Kingdom for about eighteen months, attended school there and, according to the judgment itself, had adapted and made significant educational progress. The methodological problem lies not in declining to treat CJEU case law as binding, but in replacing the autonomous factual enquiry with domestic and formal proxies.

5.12.C. Red flags

The final group contains warning signs rather than errors in themselves. They matter because they suggest that considerations outside the Convention may have entered the analysis. The question is not whether the language is objectionable in the abstract, but whether it influenced the identification or application of the legal requirements for return.

Nationalistic rhetoric and emotionally charged language

A child's nationality, the perceived interests of the requested State, and a judicial preference for keeping children with a parent of the same nationality are not grounds for refusing return.

[361] Judgment of 2 April 2009, *A*, Case C-523/07 PPU, ECLI:EU:C:2009:225; Judgment of 22 December 2010, *Mercredi v Chaffe,* Case C-497/10 PPU, ECLI:EU:C:2010:829.

Return turns on whether the removal or retention was wrongful under Article 3 and, if so, whether an exception under Articles 12, 13 or 20 is established; nationality is not a connecting factor under the Convention, which instead uses the child's habitual residence as a question of fact rather than a nationality-based connecting rule, a choice the Explanatory Report records as deliberate.[362] References to children as national assets, to the interests of the nation, or to protecting a national parent against a foreign legal system are a red flag because they substitute considerations of nationality and domestic solidarity for the Convention's criteria and create an appearance of partiality that erodes the mutual confidence between Contracting States on which the whole system rests. Such rhetoric is not, by itself, proof of misapplication; the decisive question is whether it influenced the identification or application of the legal requirements for return.

CASE NOTE 406 | BG | Sofia City Court | 20201100114364
9 March 2021

In a return case, the Bulgarian court stated that Bulgarian children are both an "invaluable intangible asset" of their parents and "the future of the Bulgarian State". It added that the forced return of even one Bulgarian child without the Convention's requirements being satisfied would conflict with the constitutional duty of the judiciary to protect citizens, legal persons and the State, and declared that the court could not permit a Bulgarian mother to be forcibly separated from her child. The language placed nationality and the interests of the State prominently inside the reasoning on return.

Reliance on the parties' attitudes towards the requested state

The parties' personal attitudes towards the requested State or its population are not a criterion under the 1980 Convention. This is the mirror of the previous flag: there, nationalism in the court's own voice; here, the court importing the parties' attitudes into the analysis. The criteria for a return decision are set out in Articles 3, 12 and 13, and whether the applicant holds favourable or unfavourable views about the requested State, or about the other parent's nationality, is not among them. Introducing such material – particularly by recording statements in terms likely to produce an unfavourable impression of the applicant – is a red flag because it extends the analysis beyond the Convention's authorised grounds and raises a real question whether the decision is reasoned on permissible criteria or on prejudice against the applicant.

CASE NOTE 407 | BG | Sofia Court of Appeal | 20251000501831
9 October 2025

At the appellate stage, the Court of Appeal set out separate reasons on "the identity of the child and the connection of [the child] with the Republic of Bulgaria". It then recorded witness testimony and correspondence concerning the applicant father's negative views of Bulgaria and Bulgarians, including a racial slur directed at the maternal grandfather and derogatory descriptions of Bulgaria. The court treated this material as relevant to its return analysis and, immediately after that discussion, concluded that Article 13(1)(b) was established.

[362] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction, 66.*

Unit 6: Decision, Enforcement, and Post-Decision Scenarios

6.1. The decision in return proceedings

A return decision must explain why the 1980 Convention requires return or permits non-return in the particular case, and it must formulate an operative order capable of being implemented in practice. These functions should be kept distinct: the reasons identify the Convention path to the result; the operative part tells the parties and enforcement authorities exactly what must happen next.

For practitioners, submissions should not stop at "return" or "non-return": where return is sought, the court should also be given a workable proposal for destination, timing, documents, handover and any necessary fallback if voluntary compliance fails. Where non-return is sought, the precise Convention ground relied upon should be identified and supported by the evidence necessary for that ground.

6.1.A. What the court must decide and explain

The decision sequence

A decision should disclose the Convention sequence that leads to the result: identify the child and the relevant removal or retention; confirm the applicability of the 1980 Convention and, where applicable, Brussels IIb; determine habitual residence, custody rights, actual exercise and breach under Article 3; apply the temporal rule in Article 12; decide any material exception relied upon under Articles 12, 13 or 20; and state the precise legal basis on which return is ordered or refused. It should also deal with the child's views where they were required or relied upon, and with protective arrangements where they are material to an Article 13(1)(b) analysis. This structure preserves the separation between summary return and the merits of custody.

The table below sets out the principal elements that ordinarily appear in a decision under the 1980 Convention, from the applicable legal framework and the finding of wrongful removal or retention to the grounds for return or non-return and the operative terms of the order. Its purpose is to show the sequence and scope of the judicial analysis, while recognising that not every issue will arise in every case and that a court does not need to determine alternative grounds once the application can be resolved on another basis.

Table 23: Structure of a decision in return proceedings

Element of the decision	What should be clear from the judgment
Background and procedural position	The identity and age of the child, the relevant States, the alleged removal or retention, the date on which it became wrongful if disputed, the date proceedings were commenced, and any relevant parallel or interim proceedings. The factual

	background should be sufficient to understand the legal issues without turning the return proceedings into a history of the wider parental dispute.
Applicable legal framework	Why the 1980 Convention applies, including the relevant Contracting States and the child's age. In an intra-EU case, the judgment should also identify the supplementary provisions of Brussels IIb that apply and, where relevant, its temporal applicability.
Wrongful removal or retention under Article 3	The child's habitual residence immediately before the removal or retention; the rights of custody relied upon and the law or other source from which they arise; whether those rights were actually exercised or would have been exercised but for the removal or retention; and whether the removal or retention was in breach of them.
Burden of proof	The allocation of the burden should be identifiable from the reasoning. The applicant must establish the elements necessary to show wrongful removal or retention under Article 3. The person opposing return bears the burden of establishing an exception relied upon under Article 13.
Article 12 and the passage of time	Whether the return proceedings were commenced within one year of the wrongful removal or retention. If more than one year had elapsed, the judgment should address any allegation that the child is now settled in the new environment and distinguish settlement from the ordinary consequences of the passage of time.
Grounds relied upon against return	Which grounds under Articles 12(2), 13 or 20 were actually relied upon and which require determination. The judgment should apply the particular legal test governing each ground rather than conduct a general welfare assessment.
Assessment of the evidence	The material findings of fact on which the decision rests and how the evidence relates to the relevant Convention test. Where an arguable ground for non-return is raised, the reasoning should demonstrate a genuine and individualised examination rather than formulaic acceptance or rejection of the allegation.
Child's views and participation	Where relevant, whether the child was given an opportunity to express views, by what method, and how the court assessed the child's age, maturity and views. Where Article 13(2) is relied upon, the judgment should distinguish the existence of an objection from the subsequent question whether return should nevertheless be ordered. In intra-EU cases, the requirements of Brussels IIb concerning the child's opportunity to express views must also be observed.
Article 13(1)(b) and protection on return	Where grave risk is relied upon, the judgment should identify the risk said to arise, determine whether the Article 13(1)(b) threshold is met, and, where relevant, examine whether effective arrangements or protective measures are available to address that risk. In an intra-EU case, the additional requirements of Article 27 Brussels IIb should be addressed where applicable.
Exercise of discretion	Where a Convention exception is established but does not mandate non-return, the judgment should distinguish the finding that the exception exists from the separate exercise of discretion whether nevertheless to order return.
Decision and precise legal basis	Whether return is ordered or refused and the exact legal basis for that result. A non-return decision should identify the Convention ground on which refusal rests; a return decision should make clear whether return follows from Article 12 or is ordered notwithstanding the establishment of an exception.
Operative terms where return is ordered	The destination of return, the date or period for compliance, who is expected to carry out the return, and any necessary arrangements concerning handover, travel documents, travel costs or other immediate practical matters. Where voluntary compliance may fail, the order should be sufficiently precise to permit effective enforcement without deciding long-term residence or custody.

Protective or provisional measures	Any protective measure forming part of the return arrangement should be identified separately from purely practical travel arrangements, together with its duration and, where cross-border operation is intended, the legal basis on which it can take effect in the State of return.
Consequences of a non-return decision	The judgment should not imply that refusal of return determines parental responsibility. In an intra-EU case falling within Article 29 Brussels IIb, the court should address the required certificate and transmission of the decision and relevant material to the competent court in the Member State of the child's former habitual residence, where the Regulation so requires.
Judicial and administrative cooperation	Where necessary, the decision may record or direct communication with Central Authorities, foreign courts or competent child-protection authorities, particularly where information or protective arrangements are necessary for return or for subsequent parental-responsibility proceedings.
Costs and other consequential orders	Any order concerning necessary expenses under Article 26, domestic litigation costs, penalty payments or other ancillary matters should be stated separately from the substantive decision on return and supported by the appropriate Convention or domestic legal basis.

Genuine examination of material objections

The Convention is not an automatic-return mechanism: a material objection capable of falling within a Convention exception must be genuinely examined and answered. The summary character of the proceedings does not permit mechanical reasoning. Under Article 8 ECHR, an arguable objection to return must receive an individualised examination and reasons sufficient to show why the Convention does or does not permit non-return. The court is not required to conduct a general welfare investigation; it must examine the particular objection within the boundaries of the relevant Convention provision.

CASE NOTE 408 | **ECtHR** | **İlker Ensar Uyanık v Türkiye**
App. No 60328/09
3 May 2012

The ECtHR emphasised that the 1980 Convention cannot be applied automatically or mechanically. The domestic decision-making process must permit an in-concreto assessment of the child's situation and of the evidence relevant to the Convention issue. The case is useful as an early statement of the Strasbourg requirement that speed and the Convention presumption of return do not eliminate the need for genuine judicial examination.

CASE NOTE 409 | **ECtHR** | **G.S. v. Georgia** | App. No 2361/13
21 July 2015

The Georgian courts refused return to Ukraine under Article 13(1)(b), relying on the psychological trauma suffered by the child following his sister's death and the risk of further harm on return. The ECtHR found that the evidence had not been adequately examined: no expert assessment addressed the consequences of return, the courts relied on reports that did not establish the alleged grave risk, and they failed to engage with evidence concerning the child's lack of contact with both parents. The Court found a violation

Alternative grounds

A court does not have to decide every alternative defence once one ground is dispositive of the return application. As explained in Chapter 4.5.A., the Convention grounds for refusal are legally independent, and courts may either stop once one sufficient ground has been established or proceed to examine the remaining grounds. The duty to give reasons concerns issues material to the outcome. If one Convention exception has been established and the court has exercised its discretion in a way that disposes of the case, it may be unnecessary to rule on another defence that could not alter the operative result. The judgment should, however, make clear why the remaining issue is no longer material rather than simply ignoring a potentially dispositive argument.

CASE NOTE 410 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2022:472
22 March 2022

The Hague Court of Appeal upheld the appeal on the basis of the children's objections under Article 13(2). Having reached that conclusion for both children, it stated that the separate appeal based on Article 13(1)(b) no longer required discussion.

6.1.B. Person or authority to whom the child is returned

A return order determines that the child must be returned; it does not determine who should have custody after return. The person who physically receives or accompanies the child is therefore a matter of implementation rather than a determination of parental responsibility. Depending on the circumstances, the order may require the taking parent to return with the child, provide for delivery to the applicant or another authorised person if voluntary return does not occur, or adopt another practical arrangement necessary to secure the child's return. The crucial distinction is between identifying the person through whom return is effected and deciding with whom the child is to live afterwards.

The child does not have to be returned into the care of the left-behind parent, although delivery to that parent may be used as the practical mechanism for effecting return. The key distinction is between the destination and legal purpose of the order, on the one hand, and the person who physically implements it, on the other. Article 19 prevents the mechanics of handover from being converted into a custody adjudication. The requested court may, where its domestic law permits, order the taking parent to return with the child, order delivery to the applicant or the applicant's representative for the sole purpose of return, or use another authorised enforcement mechanism. The HCCH Enforcement Guide expressly identifies these alternatives at §76–77 and recommends that the return order specify the chosen method as clearly as possible.[363]

CASE NOTE 411 | CY | Second Instance Family Court | ECLI:CY:DOD:2021:4
19 March 2021

The mother argued that the return order was unlawful because it directed delivery of the child to the father, thereby allegedly deciding custody in his favour. The Cypriot appellate court rejected that argument. It relied on Article 19 of the 1980 Convention, §20 of the HCCH Guide to Good Practice, and §110 of the Pérez-Vera Report. The court emphasised that the Convention does not specify to whom the child must be returned, nor the exact place within the State of habitual residence.

[363] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement*, §§76-77.

Where voluntary return by the taking parent is the preferred route, the order may provide a second mechanism that activates if that parent does not comply. A cascading order preserves the least disruptive option first while ensuring that non-compliance does not require the applicant to start again. The trigger, deadline, person authorised to collect the child and travel-document arrangements should be stated precisely. The HCCH Enforcement Guide expressly recommends considering a hierarchy of options in appropriate cases.[364]

CASE NOTE 412 | NL | The Hague District Court | ECLI:NL:RBDHA:2024:3224
7 March 2024

In a case concerning return to Denmark, the father asked that the children be returned directly to him and that their passports be surrendered to him. The court declined to make him the primary recipient. It ordered the mother to return the children to Denmark by 25 March 2024. Only if she failed to do so was she required to hand the children, together with the necessary valid travel documents, to the father so that he could take them back himself. The order thus separated voluntary return by the mother from the fallback handover needed to secure compliance.

6.1.C. Place of return

The 1980 Convention requires the "return of the child", but it does not define the destination of return in exhaustive terms. In most cases the destination and the child's habitual residence immediately before the wrongful removal or retention coincide. The harder cases arise where the applicant has moved elsewhere, another State is proposed as the destination, or a party asks the return court to specify a particular city, address or household. The text of Article 12, the drafting history and the case law therefore need to be read together. The Pérez-Vera Explanatory Report (§110) is particularly important because it records that a proposal requiring return invariably to the State of former habitual residence was not adopted.[365]

Where the child's habitual residence is in a State with different systems of custody law in its territorial units, such as the United States, Article 31 requires references to habitual residence and the applicable law to be understood by reference to the relevant territorial unit. The return order itself may nevertheless identify the Contracting State without fixing the particular internal court or final place of residence.[366] Determining which specific court within that country will deal with the case is a matter for the internal jurisdiction rules of that State, not for the court deciding the return application. In practice, however, this may create practical and legal uncertainty where it leaves the precise forum to be determined after the child's arrival, which can lead to additional procedural steps or disputes about the appropriate state court.

If the applicant no longer lives in the former habitual-residence State, it may affect the practical destination of return, but the applicant's physical presence in another country does not by itself determine that question. The 1980 Convention does not expressly regulate the situation in which the left-behind parent moves away from the child's former habitual-residence State while return proceedings are pending. The Pérez-Vera report (§110) treats the Convention's silence as deliberate and notes, in particular, the practical difficulty that may arise where the applicant no

[364] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement*.
[365] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction*, §110.
[366] For example, see Court of Appeal of The Hague, 13 May 2020, ECLI:NL:GHDHA:2020:1025, ordering the return of the children to the United States.

longer lives in the former habitual-residence State.[367] The cases show that the factual position matters: temporary presence elsewhere is different from an actual relocation, and neither situation should be assumed without examining the evidence.[368]

CASE NOTE 413 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2026:113
30 January 2026

The child had been taken by the father from Egypt via Turkey to the Netherlands, while the mother was by then living in Sweden with permanent residence status. The District Court ordered the child's return to the mother in Sweden rather than to the State from which the child had been removed, after considering Pérez-Vera (§110) and obtaining information from the Swedish authorities about the child's ability to reside there. The Hague Court of Appeal upheld the return to Sweden. (The Dutch court applied the 1980 Convention framework by analogy under national law as Egypt is not a contracting state.)

Return to the state of habitual residence

The ordinary return order is territorial: it sends the child back to the State of habitual residence immediately before the wrongful removal or retention. The Convention normally restores the child to the State whose legal and factual order was disrupted by the abduction, so that questions of custody and future residence can be dealt with there. The return court does not normally select the child's ultimate home within that State. The HCCH materials describe this as return to the State of habitual residence, while recognising flexibility as to the person who carries out the return and the precise place within that State. The HCCH Guide to Good Practice on Article 13(1)(b) (§20) describes the Convention's ordinary operation as prompt return to the State of habitual residence while confirming that the Convention does not specify to whose care the child must be returned or the precise location within that State.[369] The HCCH Guide to Good Practice, Part IV – Enforcement (Principles 4.1–4.6; §§76-84) likewise treats the country of destination as an element normally identified in the return order and stresses the need for sufficient precision about the practical implementation of return.[370]

CASE NOTE 414 | DE | Karlsruhe Local Court
ECLI:DE:AGKARLS:2019:1114.2F1701.19.00
14 November 2019

The mother had unilaterally relocated the children from Connecticut to Germany during ongoing custody proceedings. The court held that Connecticut remained the children's habitual residence and that the father was exercising custody rights. It ordered return to Connecticut even though the children had spent almost a year in Germany and were integrated into kindergarten. The order thus restored the children to the territorial unit of their pre-removal habitual residence; it did not determine their ultimate residence there or require that they be placed in the father's care.

Return to a state other than the habitual residence

Article 12 does not expressly name the State to which the child must be returned, and some courts have treated return to another State as legally possible. Pérez-Vera (§110) explains that the

[367] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction,* §110.
[368] See P R Beaumont and P E McEleavy, The Hague Convention on International Child Abduction (OUP 1999) pp 31–33; A Schulz, 'Zum Aufenthaltswechsel des Antragstellers im Rahmen des Haager Kindesentführungsübereinkommens' (2002) IPRax 201 ff.; Advocate General Strikwerda, Public Prosecutor's Office at the Supreme Court, 28 September 2007, ECLI:NL:PHR:2007:BB3193, §8.
[369] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §20.
[370] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement*.

Convention deliberately avoided an inflexible formulation requiring return always and only to the former habitual-residence State.[371] That drafting history leaves room for a different destination in an appropriate case, but it does not supply a complete test for deciding when that course should be taken. The national decisions therefore focus on the connection between the proposed destination, the child's pre-abduction situation, the applicant and the forum that will deal with parental responsibility.

CASE NOTE 415 | FR | Supreme Court | ECLI:FR:CCASS:2024:C100509
10 July 2024

A child had been habitually resident in Ukraine before being wrongfully removed to France by the mother. The father, who lived in Denmark, sought return to Denmark rather than Ukraine. The French Court of Cassation held that the Convention does not specify the State to which return must be ordered and accepted that, exceptionally, return may be sought to another State. It nevertheless upheld the refusal of return to Denmark because the five-year-old child had never lived there, had never met the father and had no familiar environment there.

The possibility of another destination does not mean that a third State can simply be substituted whenever return to the former habitual-residence State is difficult or unsafe. A court may instead conclude that the appropriate result under the Convention is non-return, particularly where the proposed State has no meaningful connection with the child's previous life or would not place the child before the authorities competent to determine custody.

CASE NOTE 416 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2022:1013.17UF186.22.00
13 October 2022

A mother removed her infant from Ukraine to Germany on 2 March 2022. The German court considered return to Ukraine to involve a grave risk under Article 13(1)(b). The father proposed, in the alternative, that the child be sent to Moldova, where he had rented accommodation. The court rejected that alternative because the child had not been habitually resident in Moldova and the Moldovan courts would not thereby become the competent custody forum. It refused return rather than redirecting the child to Moldova.

In any event, return to a third State must be approached with caution as it may amount to substantive relocation decision. The Convention's return mechanism is designed to restore the situation that existed immediately before the wrongful removal and to allow the courts of the child's habitual residence to determine custody and residence. If a court orders return to a country where the child did not previously live, the order may effectively relocate the child and determine the child's future residence without the welfare assessment normally required in custody proceedings. For this reason, courts warn that the Convention should not be used to achieve what is, in substance, a relocation decision. [372]

[371] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction,* §110.
[372] For further analysis of the third-State return discussion in England and Wales Court of Appeal, *Re B (A Child) (Abduction: Habitual Residence)* [2020] EWCA Civ 1187, see Katarina Trimmings, 'Return of a Child under the 1980 Convention to a "Third State"?' (2021) *Journal of Social Welfare and Family Law, vol 43(2),* available at <https://www.tandfonline.com/doi/full/10.1080/09649069.2021.1880165>, pp 202–204, suggesting that returning a child elsewhere would risk placing the case before a court without proper jurisdiction and could effectively amount to an unexamined relocation decision, which the Convention does not allow.

CASE NOTE 417 | UK | England and Wales Court of Appeal | Re B (A Child) [2020] EWCA Civ 1187
10 September 2020

The English Court of Appeal considered whether the 1980 Convention permits a court to order the return of a child to a State other than the child's habitual residence immediately before the abduction ("return to a third State"). In obiter remarks, Moylan LJ suggested that such a possibility might exist, referring to the Explanatory Report, which indicates that the Convention does not absolutely prohibit return to another State where this restores the pre-abduction situation. At the same time, it was argued in the proceedings that directing return to a third State risks turning return proceedings into a relocation decision, since "the word 'return' means return and not relocation to a third State" (§41). The Court ultimately did not decide the issue because it found that the child had in fact been habitually resident in France and therefore ordered return there.

Return without fixing a city, address or final placement

Even where the destination State is clear, the return order does not need to determine the child's final address or post-return placement. The distinction is functional. An order may need enough geographical or logistical detail to make return executable, but that is different from deciding where the child should live after arrival or which parent should have care. Article 19 preserves that boundary by providing that a decision concerning return is not a determination on the merits of custody, and the HCCH Guide confirms that the Convention does not specify the precise location within the State of habitual residence to which the child must be returned.

CASE NOTE 418 | AT | Supreme Court
ECLI:AT:OGH0002:2009:0020OB00103.09Z.0716.000
16 July 2009

The father sought return of the child not merely to Greece but specifically to the child's former place of residence on Santorini. The Austrian Supreme Court ordered return to Greece but rejected the additional request concerning Santorini. It explained that return did not mean delivery into the father's care and that the child's residence after return was a matter for the competent Greek guardianship court. The court also found no legal basis for formally compelling the mother to accompany the child.

CASE NOTE 419 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2019:1223.17UF198.19.00
23 December 2019

Children had been wrongfully removed from Serbia to Germany by their mother. The Stuttgart court ordered their return to Serbia but expressly clarified that this did not require the children to live with their father after return. The father had stated that he did not insist on taking immediate care of them and accepted that they could remain elsewhere in Serbia until the Serbian courts determined the custody arrangements.

CASE NOTE 420 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2018:759
11 April 2018

The left-behind parent asked the Court of Appeal to order return to a specific home address in the State of habitual residence so that the other parent could not take the child to another address after return. The court rejected that request. It held that Article 12 did not prescribe a particular return address and that the question where and with whom the child should ultimately live belonged to the substantive proceedings between the parents.

CASE NOTE 421 | NL | The Hague Court of Appeal
ECLI:NL:GHSGR:2012:BX5499
22 August 2012

After the mother's appeal against a return order under Article 13(1)(b) was dismissed, the father brought an incidental appeal asking that the child be returned specifically to his home rather than simply "to Italy". The appellate court rejected the request and left intact the order for return to Italy. The child's precise living arrangements after arrival were left to the Italian authorities.

6.1.D. Practical arrangements in return orders

Practical arrangements in return proceedings are measures aimed at facilitating the effective implementation of the return of the child to the State of habitual residence. As reflected in the HCCH Guide to Good Practice (§49), courts may include such arrangements in the return order in order to ensure that the return can be carried out in a concrete and workable manner, for example by determining logistical aspects such as travel arrangements.[373]

These measures are distinct from protective measures. The distinction matters because a ticket, passport, handover time or airport collection does not, by itself, mitigate a grave risk under Article 13(1)(b). Conversely, a measure described as "soft landing" may become protective in substance if the return decision depends upon it to neutralise a grave risk. The legal character follows the function of the measure, not its label.374 The distinction is explicit in the HCCH Guide to Good Practice on Article 13(1)(b), which defines practical arrangements as provisions in a return order used to facilitate and implement return and distinguishes them from measures addressing grave risk.[375] The HCCH Enforcement Guide likewise recommends deciding necessary practical arrangements before enforcement begins and, where possible, after hearing the parties' proposals.[376] For the classification of practical arrangements and their distinction from adequate arrangements under Article 27(3) and protective measures under Article 27(5) Brussels IIb, see Chapter 5.9.C.

Facilitative ("soft-landing") measures in return proceedings are limited to arrangements necessary to enable and organise the practical implementation of the return. They do not extend to regulating broader aspects of the child's situation or resolving ancillary disputes between the parties. Requests that go beyond what is required for the execution of the return (such as the transfer of personal belongings or general matters unrelated to the child's immediate travel) may fall outside the scope of return proceedings.

CASE NOTE 422 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2020:1021
29 May 2020

A court ordered the return of the child to Italy and specified that the child was to be delivered to the father, together with the necessary valid travel documents, within a fixed time limit, so that the return could be carried out. A request to order the surrender of additional items, including the child's international insurance card, personal belongings and electronic devices, was rejected as falling outside the scope of the return proceedings.

[373] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §49.
[374] R. Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) pp. 289–298, especially pp. 291–294, on the distinction between measures facilitating return and undertakings or measures relied upon to secure safe return, and on the limits of undertakings whose effect depends on enforceability in the State of return.
[375] HCCH, *Guide to Good Practice under the 1980 Convention – Part VI: Article 13(1)(b)* (2020), §49 and glossary.
[376] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement*.

Practical arrangements in return proceedings may include measures necessary to ensure the effective execution of the return, such as securing the issuance of travel documents for the child. Courts may require the cooperation of the taking parent for this purpose and, where such cooperation is withheld, may provide that the judgment substitutes the parent's consent. These arrangements are limited to what is necessary to organise and enable the return and do not extend to broader matters unrelated to the child's immediate travel.

CASE NOTE 423 | RO | Bucharest Court of Appeal | 1197/2015
11 September 2015

The court ordered the return of two minors to Germany and required the taking parent to cooperate in obtaining the necessary travel documents. It further provided that, in case of refusal, the judgment would substitute for the parent's consent, thereby enabling the documents to be issued and the return to be carried out. The court also set a time limit for compliance and imposed a financial penalty in case of non-compliance.

A court may require disclosure of information needed to implement return even though it must not decide the child's ultimate residence. There is no inconsistency between refusing to prescribe a permanent address and requiring a party to disclose where the child or accompanying parent must initially travel. The first would determine residence; the second may simply make the return order executable. Any disclosure order should be limited to information genuinely required for implementation and should take account of legitimate safety concerns.

CASE NOTE 424 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2021:2413
29 November 2021

In a case concerning the return of a child to Sweden, the father had moved to a secret address and refused to disclose it during the proceedings, claiming security concerns. The court held that the mother nevertheless needed to know the address in order to travel to Sweden with the child and arrange accommodation nearby. It therefore ordered the father to disclose his full address within one week and set the deadline for the child's return only after the address had been communicated to the mother.

Return orders may include practical arrangements authorising the applicant to collect the child personally or through a representative. To ensure the effectiveness of a return order, courts often specify how the child will be physically transferred to the left-behind parent. These provisions ensure that the return order is not merely declaratory but can be implemented smoothly even if logistical or practical obstacles arise. Two common arrangements are used in practice: the applicant parent may be authorised to collect the child personally, or to arrange collection through a representative such as a family member.

CASE NOTE 425 | RO | Bucharest Tribunal | Decision of 3.3.2017
3 March 2017

In ordering the return of a child wrongfully removed from Italy to Romania, the court anticipated the mother's possible refusal to comply. It therefore authorised the father to take the child back either personally or through a representative. The court also ordered the mother to hand over the child's passport and, in case of refusal, substituted her consent for the issuance of new travel documents.

The applicant may, where national law permits, be required to meet reasonable expenses necessary to enable the return to be carried out, including travel and short-term accommodation for the child and, where appropriate, the accompanying parent. Where such financial support merely enables the practical implementation of return, it may operate as a practical arrangement. If, however, the return decision depends on the payment in order to address a grave risk under Article 13(1)(b), the arrangement is protective in substance rather than merely facilitative. In either case, such an order concerns the immediate implementation of return and does not determine long-term maintenance or other financial obligations between the parties.

CASE NOTE 426 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2018:0917.17UF146.18.00
17 September 2018

The court considered it appropriate to facilitate the mother's return with the two young children to the United States. It required the father to pay €2,000 to the mother to assist her in accompanying the children and meeting the immediate costs of return. Payment was made a precondition for enforcement of the return order and could not be set off against other financial claims.

A return order may also contain cooperation directions (distinct in their nature from practical arrangements). The return court may, where national procedure permits, direct that material gathered in the return case be transmitted to the court already dealing with parental responsibility. This does not transfer the return court's jurisdiction or bind the foreign court. It avoids duplication and gives the merits court immediate access to child-focused information that may remain relevant after return. Direct judicial communication and Central Authority cooperation may serve the same practical objective, subject to procedural fairness and the safeguards governing judicial communications.[377] The HCCH principles on Direct Judicial Communications encourage appropriately safeguarded communication between judges in international child-protection cases.[378]

CASE NOTE 427 | BG | Sofia City Court | 20141100105233
11 June 2024

The court ordered return of a child after wrongful retention in Bulgaria and added a cooperation direction to the operative part. Once the return judgment became final, copies of the child's psychological assessment, social report and pedagogical evaluation were to be sent to the court in the State of return that was already seised of custody proceedings. The direction supported continuity between the summary return case and the subsequent merits litigation without purporting to decide custody in Bulgaria.

6.1.E. Date of return

Return is not just about travel logistics but also about support before, during, and after the transfer. The return thus may not be "immediate" but with a short transitional period. Although the 1980 Convention emphasises the immediacy of return ("prompt return"), courts sometimes set a short

[377] See R. Schuz, *The Hague Child Abduction Convention: A Critical Analysis* (Hart Publishing 2013) pp 296–298, on direct judicial communication and its practical value in coordinating return and post-return protection while preserving the responsibility of the deciding court.
[378] HCCH, *Direct Judicial Communications: Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications, including commonly accepted safeguards for Direct Judicial Communications in specific cases, within the context of the International Hague Network of Judges* (2013), available at <https://assets.hcch.net/docs/62d073ca-eda0-494e-af66-2ddd368b7379.pdf>.

implementation period instead of ordering return at once. The reason is practical: the Convention aims not only at speed but also at ensuring that the return is safe, coordinated, and sustainable. Where a child is subject to child protection measures, supervision orders, or ongoing welfare involvement, an immediate transfer without preparation may expose the child to risk or create a legal vacuum.

A return order may fix a specific date or a short period within which the child must be returned. Article 12 requires return "forthwith", but this does not necessarily mean that the child must travel on the day the judgment is delivered. The order may allow the short period reasonably necessary to organise travel, obtain documents, prepare the child or put necessary arrangements in place. What matters is that fixing the date does not become a means of postponing implementation. The HCCH Guide to Good Practice on Enforcement does not prescribe a particular period for return.[379] It emphasises in §§86–87 and §91; Principle 7.1 and §101 that a return order should be implemented without undue delay and, where appropriate, contemplates orders fixing a date for voluntary compliance and providing a further enforcement mechanism if the child has not been returned by that date.[380]

In practice, return dates are not arbitrary - they must balance promptness (a Convention aim) with practical arrangements, school schedules, and child welfare. Courts may also tie in supportive measures from both the requesting and requested States to make the return safe.

A court may leave the precise date of return to be agreed by the parties, while fixing the parameters within which return must take place. Article 12 requires return forthwith where no exception prevents it, but this does not require travel on the day judgment is delivered. The parties may be permitted to agree the precise date in light of travel arrangements, costs and the child's immediate needs, provided that the agreement does not delay return. If agreement is not reached, the order should permit the court or the applicable enforcement mechanism to fix or implement the return without further substantive litigation.

CASE NOTE 428 | UK | England and Wales High Court | J (A Child)
[2018] EWFC 85
14 December 2018

The court ordered the child's return to Portugal forthwith but left the precise date to be agreed between the parents. The judge noted the importance of fixing a date that avoided excessive travel costs and ensured the child was back in Portugal in time to resume school in January (§83).

The school calendar may influence the exact date of return where it helps organise a prompt transition, but it cannot justify substantial postponement of return. In fixing the precise date, the court may take account of the child's schooling and immediate routine, provided that this does not undermine the requirement of prompt return.

CASE NOTE 429 | NL | The Hague District Court
ECLI:NL:RBSGR:2007:BB3806
18 September 2007

In a case concerning the return of two children to Norway, the court coordinated the return date with the Norwegian autumn school holiday (*Høstferien*). It fixed return for 14 October 2007, immediately before school resumed, so that the eldest child could resume school without an avoidable interruption.

[379] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement.*
[380] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement,* §§86–87, §91; sec 7.1, §101.

CASE NOTE 430 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2016:2384
10 August 2016

The mother asked for time so that the children could prepare for return to France and the older child could say goodbye to friends and a teacher after the summer holiday. The father stressed that the French school year began on 1 September. The court reconciled the two considerations by requiring return no later than 25 August 2016 and, if the mother did not comply, handover to the father with valid travel documents by 27 August so that he could effect the return. The order used two precise dates to combine a short transition with certainty of enforcement.

The period allowed for return may take account of practical information that the accompanying parent reasonably needs in order to organise the return. The court need not determine the child's ultimate address or residence, but uncertainty about where the child will initially stay may justify a short implementation period where that information is necessary to arrange travel, accommodation or the handover.

CASE NOTE 431 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2021:2413
29 November 2021

The mother did not know the father's current address in Sweden. The Court considered that she needed to know where she and the child would travel and where the child would stay while with the father, including so that she could arrange accommodation nearby. The Court therefore took the absence of that information into account when determining the period within which the child had to be returned.

A slightly longer implementation period may be justified where return would otherwise create a protection or placement gap. Where the child is under supervision or subject to welfare measures in the requested State, the court may allow a short period for the authorities in the two States to transfer responsibility, identify the immediate placement and ensure that the competent court in the State of return can act promptly. The need for coordination should be concrete, and the return deadline should remain fixed.

CASE NOTE 432 | NL | The Hague District Court
ECLI:NL:RBDHA:2018:15836
28 December 2018

The Court allowed a three-week return period because the child was under the supervision of the Salvation Army in the Netherlands and continuity of supervision had to be coordinated with the Italian authorities. The court considered it important that the Italian juvenile judge be in a position to decide immediately where the child would live and that it be clear who would care for the child on arrival. It nevertheless set a firm deadline and included a fallback: if the mother did not return the child herself, she had to hand the child and valid travel documents to the guardian so that the guardian could complete the return.

6.1.F. Allocation of costs

The Convention itself permits an award of necessary expenses caused by the abduction and return. Under Article 26(4), when ordering return the court may, where appropriate, require the person who removed or retained the child to reimburse necessary expenses incurred by or on behalf of the

applicant, including travel expenses, costs of locating the child, legal representation and the costs of returning the child. The HCCH Guide to Good Practice, Part II – Implementing Measures describes this as a mechanism for shifting the financial burden associated with the abduction and return to the respondent (section 7.3).[381]

The power under Article 26(4) is discretionary, and the procedure for making and enforcing a costs award is governed by the law of the requested State. This is distinct from the reservation permitted under Articles 26(3) and 42 concerning the State's obligation to assume costs arising from legal representation or court proceedings. The HCCH Enforcement Guide also treats financial measures as part of the broader effectiveness of return, while leaving the precise costs machinery to national law.[382]

CASE NOTE 433 | NL | The Hague District Court
ECLI:NL:RBSGR:2010:BN8746
19 August 2010

The Central Authority acting for the mother sought approximately US$1,600 in travel expenses under Article 26. The court declined the claim, applying the Dutch family-law approach under which each party ordinarily bears their own costs. It noted that the mother had received representation through the Central Authority without paying for that legal assistance, whereas the father had paid his own lawyer.

Article 26(4) is confined to necessary expenses incurred by or on behalf of the applicant in connection with the abduction and return. Ordinary living expenses that would have been incurred in any event need not qualify. The scope of reimbursable expenses is limited. Only those costs that are necessary and causally connected to the abduction and the return process qualify. These include travel to attend hearings, accommodation and transport necessary for the child's return, and administrative expenses directly tied to the proceedings.

CASE NOTE 434 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2019:3878
6 November 2019

The Court reimbursed documented expenditure for parking, road tolls, diesel, public transport and accommodation incurred in connection with the return proceedings but refused food expenses because ordinary meals would have been purchased even if the parent had remained at home. In the same judgment, the court distinguished these return-related expenses from procedural legal costs such as mediation, notifications, interpretation and document translation, which were governed by the applicable litigation-cost regime and had in any event not been sufficiently substantiated.

CASE NOTE 435 | NL | The Hague District Court | ECLI:NL:RBDHA:2016:4758
2 May 2016

The applicant claimed more than €7,000. The court excluded legal expenditure relating to child-protection proceedings and other litigation abroad because those sums were not sufficiently connected with the return application. The award was confined to expenses attributable to pursuing the child's return.

[381] HCCH, *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Part II – Implementing Measures* (2003), sec 7.3.
[382] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement.*

CASE NOTE 436 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2017:798
22 March 2017

In a non-Convention case in which Dutch law applied the Convention framework by analogy, a father sought reimbursement of his partner's airfare to attend the return hearing. The Court of Appeal rejected the claim because the partner's attendance was a personal choice rather than an expense necessary to secure the child's return. Article 26 therefore did not extend to discretionary third-party travel.

An order for return-related costs may extend to necessary future expenses that will be incurred in implementing the return. The amount of costs already incurred should normally be established, but costs that will necessarily arise only when the return is carried out may be awarded prospectively, even if their precise amount is not yet known.

CASE NOTE 437 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2022:2156
12 October 2022

The father documented €897.09 in travel expenses already incurred for the first-instance and appeal hearings. The Court of Appeal ordered the mother to reimburse that amount and, in addition, to pay any necessary travel costs the father might subsequently incur in connection with the children's return to Italy. Lawyers' fees and other procedural costs were treated separately and remained for each party to bear.

A return proceeding may be terminated before the decision, while the costs issue remains for determination under national law. Where an application is withdrawn, the court may still have to decide whether costs should be borne by one party, shared or left where they fall. The answer can take account of the procedural history and the likely merits at the point of withdrawal, subject to the domestic costs regime.

CASE NOTE 438 | DE | Munich Higher Regional Court | 12 UF 1132/21
23 February 2022

The father had obtained a first-instance order for the children's return to Ukraine. The mother appealed. During the appeal, the father withdrew the return application and agreed that the children could remain in Germany. The appellate court therefore had only to determine costs. It considered that the mother's appeal had not been without prospects of success: the children apparently objected to return within Article 13(2), and the first-instance court had not examined that issue sufficiently. Taking this together with the father's subsequent agreement to their remaining in Germany, the court divided the court costs equally and ordered no reimbursement of out-of-court expenses.

Where national law permits conduct-based costs orders, deliberate or repeated defiance of custody and return orders may justify an adverse award. The point should not be confused with the Convention merits: misconduct is not an additional ground for return. It may, however, be relevant to the domestic question of who should bear the litigation costs generated by repeated or bad-faith non-compliance.

CASE NOTE 439 | NL | The Hague District Court | ECLI:NL:RBDHA:2021:14705
29 December 2021

The Court ordered the mother to reimburse the father's legal costs after finding that she had deliberately and repeatedly breached his custody rights and court orders. She had previously returned the children to the United Kingdom following litigation but later removed them again to the Netherlands despite orders restricting travel. The repeated, knowing non-compliance was treated as sufficient reason to depart from the ordinary family-law approach to costs and require her to bear the father's expenses.

6.1.G. Penalty payments and financial sanctions for non-compliance

Courts may have the power to attach penalty payments to ensure compliance when voluntary return seems unlikely. A penalty payment is a financial sanction imposed on the abducting parent for each day (or week) of non-compliance with the return order, usually capped at a maximum amount. The HCCH Guide to Good Practice, Part IV – Enforcement (§23) recognises pecuniary fines as one of the principal coercive measures available under domestic law for enforcing return orders.[383]

A penalty payment attached to a return order is therefore a coercive enforcement device, not compensation for the abduction. Its availability, amount, commencement and maximum cap depend on national law. The order should state clearly what conduct triggers the penalty, the amount per day or other unit of non-compliance and any maximum. The sanction should be high enough to create a real incentive to comply but remain proportionate to its coercive purpose.[384]

CASE NOTE 440 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2019:2286
28 August 2019

In a non-Convention case governed by Dutch international child-abduction law, the Court of Appeal attached a penalty of €10,000 for each day of non-compliance with the return order, capped at €1,000,000. The unusually high sanction reflected the father's persistent lack of cooperation, the wrongful removal of the child from her familiar environment and the systematic obstruction of contact with the mother.

A penalty payment does not necessarily become enforceable abroad merely because the underlying child-related order circulates. Where cross-border execution may be necessary, the practitioner should check whether the amount must first be finally fixed or liquidated in the State of origin. Omitting that step can leave a powerful domestic coercive clause unusable once the debtor or assets are in another State.

CASE NOTE 441 | CJEU | C-4/14
09 September 2015

Under Brussels IIa, the CJEU held that a penalty payment imposed to secure compliance with rights of access was ancillary to the parental-responsibility decision and therefore followed the same family-law enforcement regime rather than Brussels I. The Court further held that the penalty could be enforced in another Member State only once its amount had been finally determined by the courts of the Member State of origin. (The judgment concerned Brussels IIa and rights of access; in proceedings governed by Brussels IIb rules must be checked separately)

[383] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement*, §23.
[384] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement*. §23 and fn. 52 expressly mentions the French and Luxembourg *astreinte* (a recurring sum payable for each day of non-compliance) and records similar mechanisms in many other Contracting States.

6.2. Appeals and extraordinary remedies

The 1980 Convention does not establish a uniform system of appeals or extraordinary remedies. Whether a return or non-return decision may be appealed, the time limit, the competent appellate court, the scope of review and the availability of any later extraordinary challenge are principally matters of national procedural law. Those national rules nevertheless operate within a Convention procedure whose effectiveness depends on expedition.

For practitioners, three questions should be kept distinct. First, can the decision still be challenged? Second, while an appeal is pending, can the return order already be enforced? Third, once ordinary appellate review has ended, does national law permit any exceptional form of reopening or annulment? These questions overlap in practice, but they are not the same procedural issue.

The HCCH Guide to Good Practice, Part IV - Enforcement treats appeals and other legal challenges as part of an effective return system.[385] It recommends procedures capable of reaching a final decision quickly, limited levels of ordinary challenge where possible, and clarity as to the effect of an appeal or reopening application on enforceability (Principle 2.3 and §§53-65; Principles 3.1-3.3 and §§72-75).[386]

Physical return of the child to the state of its habitual residence after a first-instance return order does not necessarily deprive an appeal of its purpose. The procedural consequences depend on national law. A useful distinction is between return before any first-instance decision has been given and return after a first-instance order has already been made. In the latter situation, the fact that the order has been complied with or enforced does not necessarily remove the respondent's legal interest in appellate review of that order.

CASE NOTE 442 | AT | Supreme Court | ECLI:AT:OGH0002:2021:E133145
15 November 2021

In proceedings concerning return from Austria to Germany, the Austrian Supreme Court distinguished between the two situations. It held that where the child returned to the State of origin before the first-instance decision, the return proceedings were to be discontinued because the abduction situation no longer existed at the relevant time of decision. Where the child returned only after the first-instance return order but before that order became final, whether voluntarily or through enforcement, the respondent retained a legal interest in the appeal and the appellate proceedings could continue.

CASE NOTE 443 | DK | Supreme Court | BS-61751/2025-HJR
8 May 2026

The Court of Appeal ordered the child's return to the United States on 1 October 2025. The order was enforced on 10 October and the child returned with the father the following day. The Supreme Court nevertheless held in May 2026 that the mother retained a legal interest in challenging the return decision. It relied on the highly intrusive nature of the decision and its interference with her Article 8 family life and observed that a finding that return should have been refused could affect the parties' legal position in subsequent US proceedings concerning the child. The Court therefore examined whether the conditions for refusal had been satisfied at the time the Court of Appeal made the return decision, although the child had already been living in the United States for several months. It ultimately upheld the return order.

[385] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement,* sec 2.3, §§53-65; sec 3.1-3.3, §§72-75.
[386] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement,* sec 2.3, §§53-65; sec 3.1-3.3, §§72-75.

Execution of a first-instance return order and appellate review are therefore separate procedural questions. The child may already have been returned while the legality of the first-instance order remains capable of appellate review. Whether the appeal remains live, and what consequences follow if it succeeds, are matters for the applicable procedural law.

Within the EU, Brussels IIb does not create a uniform right of appeal, but it extends the requirement of expedition to appellate proceedings. Under Article 24(3), except where exceptional circumstances make this impossible, a court of higher instance must give its decision no later than six weeks after all required procedural steps have been taken and the court is in a position to examine the appeal. Recital 42 also states that Member States should consider limiting the number of appeals against a decision granting or refusing return to one.

Brussels IIb expressly permits provisional enforcement of a return order notwithstanding an appeal where the statutory condition is met. Article 27(6) provides that a decision ordering return may be declared provisionally enforceable where return before the appellate decision is required by the best interests of the child. The Regulation therefore does not make every first-instance return order automatically enforceable pending appeal; it creates a power to permit earlier enforcement in the circumstances specified by Article 27(6). Recital 47 confirms that national law may determine which court has power to make that declaration.

6.2.A. Effect of an appeal on enforceability

Filing an appeal does not, by itself, answer whether the return order may be enforced while the appeal is pending. National systems use different models. An appeal may automatically suspend enforcement; the order may remain enforceable unless the appellant obtains a stay; or the order may ordinarily require finality but be capable of being declared provisionally enforceable. The applicable national rule should therefore be identified immediately after the decision.

A *"stay pending appeal"* is a temporary suspension of enforcement while the appeal is being determined. It does not set aside the return order, alter its terms or determine whether the appeal will succeed. It simply prevents the order from being carried out for the time being. A separate application for a stay is relevant where the return order would otherwise be enforceable while the appeal is pending; where the appeal itself has automatic suspensive effect, no separate stay is required for that reason.

The possibility of a stay must be reconciled with the need for expedition in return proceedings. The fact that return before the appeal is decided may cause disruption or may make the situation more difficult to reverse if the appeal later succeeds may be relevant under national law. Those considerations do not necessarily require suspension. The court must apply the domestic test for a stay in the context of a procedure designed to secure prompt return.

CASE NOTE 444 | CY | Second Instance Family Court | (2010) 1 AAD 655
12 May 2010

After a Cypriot court ordered the return of two children to the United States, the mother appealed and asked the court to stay the return order until the appeal had been decided. She argued that returning the children beforehand would reduce the practical effectiveness of the appeal and relied on the older child's schooling and the younger child's dependence on her daily care. The court considered those matters but refused the stay. It also found no basis for assuming that, if the appeal subsequently succeeded, the United States would fail to give effect to the resulting decision.

Provisional enforceability addresses the opposite question: whether the return order may be carried out before ordinary appellate review has been completed. Declaring an order provisionally enforceable does not remove the right of appeal or decide its outcome. It changes the timing of implementation by allowing the successful applicant to seek enforcement before the order has become final. If return occurs before the appeal is decided, whether the appeal nevertheless continues is a separate question. The HCCH Guide to Good Practice, Part IV - Enforcement expressly distinguishes these models. It favours systems in which final decisions are reached rapidly and, as a rule, coercive enforcement follows finality, while preserving the possibility of immediate or provisional enforceability where the circumstances of the case require it (Principles 3.1-3.2; §§72-74).[387]

CASE NOTE 445 | NL | The Hague District Court | ECLI:NL:RBDHA:2021:14705
29 December 2021

After rejecting the Article 13 objections in a case concerning return to the United Kingdom, the District Court of The Hague declared the return order provisionally enforceable. It considered that the children were already burdened by continuing parental conflict, repeated removals and uncertainty, and that postponing implementation would prolong that instability. The court therefore fixed a concrete return date while leaving the ordinary appellate process available.

6.2.B. Extraordinary remedies after a final decision

Once ordinary appellate review has ended, any further challenge depends on the extraordinary remedies available under national law. The 1980 Convention does not create or harmonise procedures such as reopening, annulment, revision or constitutional review. Their availability, statutory grounds, time limits and procedural effects must therefore be established under the law of the State concerned.

The HCCH Guide to Good Practice, Part IV - Enforcement recognises that some systems permit constitutional challenges or reopening because of newly discovered circumstances.[388] It recommends a clear distinction between ordinary and extraordinary challenges and states that an application to reopen should not, as a rule, affect the enforceability of the return order (Principle 3.3 and §75).[389]

An extraordinary remedy is not an additional ordinary appeal. Its function is defined by the domestic procedural provision that creates it. A court must therefore distinguish a defect falling within the statutory ground for annulment or reopening from an argument that the earlier court

[387] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement,* sec 3.1-3.2, §§72-74.
[388] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement.*
[389] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement,* sec 3.3, §75.

assessed the evidence, interpreted a document or applied the Convention incorrectly. The latter ordinarily seeks another merits review rather than the exceptional review provided by the remedy.

CASE NOTE 446 | SI | Ljubljana Higher Court
ECLI:SI:VSLJ:2021:IV.CP.1984.2021
8 December 2021

A parent sought reopening of completed proceedings concerning the return of children to Switzerland. The Ljubljana Higher Court held that reopening was not an available remedy for this type of decision. A return order under the 1980 Convention was, in its procedural character, closest to a provisional measure designed to restore the position disrupted by the wrongful removal or retention; under the applicable Slovenian enforcement procedure, such an order was not among the decisions capable of being reopened. The Supreme Court subsequently refused leave for further review.

Disagreement with the earlier court's assessment of evidence or law does not, without more, satisfy a narrowly defined ground for annulment. This distinction is particularly important where the domestic remedy is limited to procedural nullities or material errors rather than errors of legal interpretation.

CASE NOTE 447 | RO | Bucharest Court of Appeal | Case No 374/2015
3 June 2015

The mother challenged a final return order by an appeal for annulment, relying on alleged irregularities in the composition of the court and procedural or material errors. The Court dismissed the challenge. It held that the complaints presented as material errors concerned the assessment of evidence and legal reasoning rather than defects falling within the statutory scope of the extraordinary remedy, while the alleged irregularity in the composition of the court was not established.

CASE NOTE 448 | RO | Bucharest Court of Appeal | Decision 557/2014
11 December 2014

The father sought annulment of a final decision because, in his view, the appellate court had wrongly translated and assessed an Italian document and had consequently reached the wrong conclusion that he had consented to the child's stay in Romania. The Court rejected the application. Disagreement with the translation, interpretation and evidential assessment of the document did not constitute the type of material error for which the extraordinary remedy was available; the possibility of another interpretation was not sufficient to reopen the judgment.

Material relied upon as "new" must satisfy the domestic statutory conditions for reopening. Evidence already raised and determined does not become new merely because it is reformulated or supplemented. Likewise, an allegation that evidence or documents were false does not displace any domestic requirement governing how falsity or fraud must be established.

CASE NOTE 449 | BG | Supreme Court | Case No 453/ 2020
13 April 2020

The father sought reopening of a final return decision on the basis of crime statistics and reports of terrorist incidents in the United States and alleged that documents and expert opinions used in the proceedings were false. The Supreme Court held that the material concerning safety in the United States had already been raised and considered in the appeal and was therefore not new; renewed reliance on it was treated as an abuse of procedural rights. The allegations of falsity also failed because the statutory requirement that the alleged wrongdoing be established by a criminal conviction had not been satisfied. The reopening application was dismissed, and the suspension of enforcement was lifted.

6.3. Enforcement of a Return Order

A return order achieves the object of the 1980 Convention only if it is implemented. The Convention does not provide uniform rules of execution, so the practical machinery of enforcement is largely supplied by the law of the requested State. That procedural autonomy is constrained by the obligation to secure prompt and effective return and, under Article 8 ECHR, to organise enforcement in a manner that gives appropriate weight to the child's situation. The central operational source is the HCCH Guide to Good Practice under the 1980 Convention, Part IV – Enforcement, which provides detailed guidance on the content of return orders, voluntary compliance, coercive measures, preparation of the child, and cooperation between courts, enforcement officers, Central Authorities and child-protection services.[390]

The Guide deliberately distinguishes voluntary compliance from coercive execution: for its purposes, "enforcement" means implementation by coercive measures, while voluntary compliance is normally regarded as the solution best serving the child. The practical lesson is broader. Implementation should be planned as a continuum – beginning with a return order that can actually be executed, continuing with voluntary or facilitated compliance where realistic, and moving to coercive measures without avoidable procedural gaps if cooperation fails. The Guide's enforcement principles were developed against targeted comparative and empirical research on the execution of Convention return orders.

The enforcement stage must be kept conceptually separate from the return decision itself. The return court has already determined whether the Convention requires return and has dealt with the exceptions properly before it; enforcement asks how an enforceable order is to be carried out. That distinction protects finality, but it does not require enforcement authorities to ignore genuinely new circumstances arising only after judgment. The difficult cases therefore lie at the boundary between impermissibly re-litigating the return case and legitimately responding to a new obstacle to execution. For the distinction between recognition, enforceability and enforcement, and the status of return decisions under the 1980 Convention, see Handbook part 1, Sections 3.6.A, 3.6.D, 3.6.F and 6.5.B.

Enforcement is not a second return proceeding. Once the return court has determined wrongfulness and the Convention exceptions relied upon, the enforcement stage is ordinarily concerned with giving effect to that order under the applicable procedural law. A party should not be able to reproduce an Article 12 or Article 13 case that has already been determined simply by relabelling it as an objection to execution. A genuinely new circumstance arising after judgment is different, and is considered separately in Chapter 6.3.B.

CASE NOTE 450 | ECtHR | X v. Czech Republic (revision)
App. No 64886/19
30 March 2023

During the enforcement phase, after the domestic courts had already found the child's retention wrongful and rejected the objections to return, the mother again relied on circumstances said to make return inappropriate. The ECtHR found that the domestic courts were not required to reopen the substantive assessment of the return order where no significant post-decision change had been established, and held that the enforcement process had complied with Article 8.

[390] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement*.

6.3.A. Methods of enforcement and the child

Enforcement is rarely a single procedural act. Depending on the legal system and the facts, implementation may move from voluntary return, to a facilitated handover, to indirect pressure on the non-complying parent, and ultimately to physical recovery of the child. The 1980 Convention does not prescribe a universal hierarchy of measures. The important requirements are that the available measures are effective, can be activated quickly, and are proportionate to the situation of the child. The Enforcement Guide accordingly combines two ideas that must be kept together: States need a range of effective coercive measures, but the child should be prepared and protected so far as reasonably possible when those measures are used (Principles 1.5, 5.1–5.3 and 6.1–7.5).[391]

Voluntary compliance should continue to be pursued where it remains realistic, but it must not become a source of delay. Even after a return order has been made, a parent may still agree to travel with the child or cooperate in a planned handover; courts, Central Authorities, enforcement officers, lawyers and, where appropriate, mediators or psycho-social professionals can assist. The Guide nevertheless makes the qualification explicit: efforts to secure voluntary compliance are without prejudice to the overriding obligation to avoid undue delay in implementing the return order (Principle 5.2).[392]

Where cooperation fails, domestic law must provide measures capable of producing actual compliance. The available tools vary considerably: they may include penalty payments or fines, orders directed at the taking parent, powers of search and entry, police assistance, seizure or recovery of the child by a bailiff or other enforcement officer, and – in legal systems that permit them – other personal coercive measures. The function of these measures is execution, not punishment. Financial sanctions are considered separately in Chapter 6.1.G; at the enforcement stage the critical question is whether the system can move beyond an ineffective warning and secure the ordered return. For the distinction between coercive and non-coercive enforcement measures in parental responsibility matters, see Handbook part 1, Section 5.4.C.

Where domestic law permits, the return order itself may contain the measures needed to make it executable, avoiding a second round of proceedings merely to determine how an already-ordered return is to be carried out. The order may identify who must act, the time for compliance, the person authorised to receive the child, the role of enforcement officers or police, and any fallback measures if voluntary compliance fails. The Guide recommends that the court make the return order as detailed and specific as possible and, where appropriate, include a hierarchy of implementation options and the coercive measures that may be used if necessary (Principles 4.1–4.4).[393]

CASE NOTE 451 | DE | Nuremberg Local Court | 103 F 3113/21
3 November 2021

In a case concerning wrongful removal from Slovakia to Germany, the Nuremberg court anticipated resistance and incorporated detailed enforcement provisions in the return decision. The order authorised the enforcement officer to use direct force, to search the respondent's home – including, where necessary, at night or on holidays – and to request police assistance. The Youth Welfare Office was involved in securing the child's welfare and coordinating the transfer.

[391] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement,* sec 1.5, 5.1-5.3, 6.1-7.5.
[392] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement,* sec 5.2.
[393] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement,* sec 4.1-4.4.

The child is not merely the object of execution. The manner in which physical enforcement is carried out matters independently of the correctness of the return order. The child's age, understanding, emotional condition and relationship with the adults involved may affect how the handover should be prepared and who should be present. The Guide recommends that the child be kept informed in an age-appropriate way, that enforcement officers have full information about the case, and that social workers, psychologists, mediators or interpreters be involved where useful – while warning that the involvement of additional professionals must be weighed against the delay it may cause (Principles 6.1–7.5).[394] The ECtHR similarly treats preparation and sensitivity as part of the State's positive obligations, although the obligation to use coercion is not unlimited.

CASE NOTE 452 | ECtHR | F.D. AND H.C. v. Portugal
App. No 18737/18
7 January 2025

The police removed a seven-year-old child from school after locating him through a Schengen alert while simultaneously arresting his father under a European Arrest Warrant. The child was taken to a police station and remained there for several hours before being transferred and later handed to his mother. The ECtHR found that the authorities had failed to show the care and sensitivity required by Article 8, including by not involving child-protection professionals and by keeping the child in a police environment despite other available arrangements. The case did not concern execution of a Hague return order, but it is relevant to the standards governing the physical recovery and transfer of a child.

The implementation of return may also be sequenced around a concrete and imminent event, where a short delay serves the practical execution of the order rather than postponing return indefinitely. A court can distinguish between the decision that return is required and the precise date on which steps under that decision must begin. Any sequencing should be tightly defined and should make clear what happens when the identified event occurs.

CASE NOTE 453 | UK | England and Wales High Court | Re Y (A Child)
[2023] EWHC 1676 (Fam)
14 February 2023

The High Court ordered the child's return to Romania but took account of a Romanian hearing fixed for the following week on the mother's application for temporary permission to remain in England. The mother was not required to take steps under the English return order before that hearing. If permission to remain was not obtained, the order required her to book flights by a specified date and return the child to Romania by 12 March 2023; if permission was obtained, an application could be made to stay, vary or discharge the order.

The need for sensitivity does not remove the obligation to make enforcement effective. The ECtHR has long stated that the adequacy of enforcement measures is judged in particular by the swiftness of their implementation, while recognising that reunion may require preparatory measures and that coercion must remain limited by the rights and interests of those concerned (Ignaccolo-Zenide v.

[394] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement,* sec 6.1-7.5.

Romania, App. no. 31679/96, 25 January 2000, esp. §§94–102); that authority is taken up in Chapter 6.3.C.[395]

6.3.B. New circumstances after the return decision

The passage from judgment to execution creates a particular difficulty: circumstances can change while an order remains unexecuted. Finality prevents the respondent from turning enforcement into another Article 13 hearing, but an enforcement system cannot always proceed as if events occurring after judgment were legally irrelevant. The correct starting point is therefore temporal. The authority should identify whether the alleged obstacle existed and was capable of being raised before the return decision, or whether it arose only afterwards, and should then apply the specific rules of the enforcement law governing the consequences of that new circumstance.

A genuinely new circumstance arising after a return decision may justify a stay even where it is not yet possible to determine whether the return order should ultimately be set aside. A stay may preserve the position while a temporary obstacle is resolved; setting aside requires the higher threshold of a fundamental change of circumstances undermining the basis on which the return order was made.

CASE NOTE 454 | UK | England and Wales Court of Appeal | Re HG (Abduction: Application to Set Aside Return Order) | [2026] EWCA Civ 971
30 July 2026

The original return order required the mother to accompany the young child to Texas and proceeded under the assumption that he would remain in her care there. After the order was made, the mother's health deteriorated during late pregnancy and two treating doctors advised that she was not fit to fly. The Court of Appeal held that the order could not presently be implemented as contemplated. Sending the child instead with the father, separating him from his mother for the first time shortly before the birth of his sibling, would amount to a fundamental change in the return arrangements and was at least arguably capable of creating an Article 13(1)(b) risk. The Court therefore stayed the return order until after the birth and directed that the application to set it aside be reconsidered once the mother's post-birth circumstances were known.

A change arising after the return decision must be separated from facts that were, or could have been, litigated before the order was made. The legal consequences of a true post-judgment change depend on the applicable enforcement law: it may justify adapting the manner of execution, or a temporary suspension while an obstacle is addressed.

CASE NOTE 455 | PL | Supreme Court | I CSKP 38/21
17 March 2021

The Polish Supreme Court held that genuinely new circumstances arising at the enforcement stage may justify temporary suspension and measures aimed at facilitating execution. It expressly stated, however, that such circumstances do not provide a basis for changing the final return order.

Current circumstances may become relevant at the enforcement stage where the passage of time has materially changed the child's situation, but this is not an autonomous Convention

[395] *Ignaccolo-Zenide v. Romania*, App. no. 31679/96, (ECtHR, 2000), §§94–102.

exception created after judgment. The inquiry is context-specific and must distinguish a genuine subsequent development from a situation produced by avoidable delay. In Article 8 review, the ECtHR has attached weight to the current family situation and to the clearly expressed views of an older child where the authorities had otherwise taken the measures reasonably expected of them.

CASE NOTE 456 | ECtHR | M.K. v. Greece | App. No 51312/16
1 February 2018

A Greek judgment requiring the younger child to return to his mother in France was based on circumstances that had materially changed by the time enforcement was considered. The two brothers, then aged 13 and 16, were heard; the younger child clearly wished to remain with his father and brother in Greece, and professional material emphasised the brothers' close relationship. The ECtHR found no violation of Article 8, considering that the authorities had taken the measures reasonably expected of them and had been entitled to give significant weight to the child's current situation and clearly expressed views.

6.3.C. State responsibility for effective and timely enforcement

A return order may fail in practice without any formal refusal of enforcement. Long periods of inactivity, repeated requirements that the applicant start the machinery again, poorly prepared recovery attempts, or failure to maintain contact while enforcement is pending can gradually change the child's circumstances until return becomes much harder. This is why expedition at the enforcement stage is not simply an administrative preference. Under Article 8 ECHR, the adequacy of measures taken to secure family reunification is assessed in light of their speed as well as their content; in abduction cases, the passage of time can itself alter the relationship that the legal process is intended to protect (on the duty of expedition generally, see Chapter 5.3).

The State's obligation is one of effective and timely action, not a guarantee that every return order will be physically executed. Authorities must take the steps reasonably capable of securing compliance in the circumstances and may need to prepare the child or facilitate cooperation before using force. At the same time, the fact that enforcement is difficult does not justify administrative passivity. The Enforcement Guide recommends institutional supervision of implementation and requires the authority responsible for effecting the return to seek execution in accordance with the order at the earliest practicable date consistent with it (Principle 7.1).[396]

CASE NOTE 457 | ECtHR | Ignaccolo-Zenide v. Romania
App. No 31679/96
25 January 2000

The ECtHR stated that the adequacy of measures taken to execute a family-law decision is judged in particular by the swiftness of their implementation, because delay can have irremediable consequences for relations between the child and the parent who does not live with the child. The Court also recognised that reunion may require preparatory measures and that coercion must remain limited by the rights and interests of those concerned.

[396] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement,* sec 7.1.

A State cannot ordinarily rely on obstacles that were materially produced by its own delay. Integration in the requested State, deterioration of the relationship with the left-behind parent, or resistance to return may become factually powerful with time. Where those developments are p

CASE NOTE 458 | **ECtHR** | **Sévère v Austria** | App. No 53661/15
21 September 2017

The domestic courts issued the return order promptly, but after one unsuccessful attempt to locate the mother and children, no further enforcement steps were taken for a prolonged period. Nearly five and a half years later, enforcement was refused because separation from the mother would by then harm the children. The ECtHR accepted that changed circumstances may exceptionally become relevant but found a violation of Article 8 because the decisive change had been largely produced by the authorities' own failure to enforce the return order.

CASE NOTE 459 | **ECtHR** | **Makhmudova v Russia** | App. No 61984/17
1 December 2020

Four enforcement attempts were spread over almost two years, with gaps of approximately six months and a year and a half. The attempts were not preceded by preparatory measures aimed at making the transfer psychologically manageable for the children, and regular contact with the mother was not secured. The ECtHR held that the children's subsequent refusal to go with their mother was largely attributable to the authorities' failures and could not justify non-enforcement.

The applicant may be required to cooperate, but the enforcement system cannot be reduced to a sequence of fresh initiatives by the left-behind parent. Once the competent authorities know that an enforceable return order exists, responsibilities allocated to them by national law should be exercised without unnecessary repetition or procedural restarting. The Enforcement Guide accordingly emphasises supervision, coordination between enforcement actors and cross-border cooperation rather than leaving the applicant to reconstruct the enforcement process after every failed attempt (Principles 7 and 8).[397]

CASE NOTE 460 | **ECtHR** | **M. A. v Austria** | App. No 4097/13
15 January 2015

Italian courts – the courts of the child's habitual residence – had ordered the child's return under the override mechanism, and the order was enforceable in Austria under the certified-decision regime. The Austrian authorities nevertheless allowed long periods of inactivity, made enforcement dependent on repeated applications by the father, and ultimately never returned the child. The Court held that in this procedural setting the authorities were required to act swiftly and, in substance, of their own motion; shifting the entire procedural burden onto the left-behind parent was incompatible with Article 8.

[397] HCCH, *Guide to Good Practice under the 1980 Convention, Part IV – Enforcement,* sec 7-8.

6.3.D. Enforcement under Brussels IIb Regulation

Brussels IIb deals with three different situations that should not be merged: execution of a return order in the Member State where it was made; cross-border enforcement of that same return order after the child is moved onward to another Member State; and enforcement of a later custody decision entailing return under Article 29(6). Only the second situation brings the original return order into the Chapter IV cross-border regime. The third is a different decision and is dealt with separately in the Article 29 Chapter in 6.4. Further, for the overriding mechanism and decisions entailing return made under that mechanism, see Handbook part 1, Sections 6.4.A and 6.5.C.

This distinction also explains the division between EU law and national law. Article 28 adds a specific EU duty of expedition. Chapter IV supplies uniform rules on circulation, certificates, service, suspension and refusal when a decision must be enforced in another Member State. The actual enforcement machinery remains largely national. The European Commission's Practice Guide for the application of the Brussels IIb Regulation is particularly useful on that division of functions.[398]

Table 24: Enforcement Routes for Return Orders and Return-Entailing Decisions under Brussels IIb

Situation	Decision	EU rules	Practical effect
Order enforced where it was made	1980 Convention return order	Article 28, national enforcement law	Expeditious execution; national law supplies the enforcement tools.
Child moved onward before execution (further abduction)	Same 1980 Convention return order, now enforced in another Member State	Article 1(3), Article 2(1)(a), Articles 34–36 and 51–57; Annex IV	No exequatur; Chapter IV governs cross-border circulation and enforcement.
Later custody decision after qualifying non-return under the overriding mechanism	New Article 29(6) decision entailing return	Article 29(6), Articles 42 and 47	Separate privileged route; see the Article 29 section.

Enforcement in the member state where the return order was made

Article 28 imposes an EU duty of expedition. Where an application is made to enforce a decision ordering the return of a child to another Member State, the competent enforcement authority must act expeditiously. If enforcement has not occurred within six weeks from the initiation of enforcement proceedings, the person seeking enforcement or the Central Authority of the Member State of enforcement may request a statement of the reasons for the delay. The six-week period is an accountability mechanism: it does not cause the order to lapse, and it does not reopen the merits of return.

What EU law does not permit is a national mechanism that neutralises the urgency of the return procedure by automatically freezing enforcement without meaningful judicial assessment. Where the return order is executed in the same Member State in which it was made, Article 28 is the principal additional EU rule; the means of execution otherwise remain those of national law.

[398] European Commission, *Practice Guide for the Application of the Brussels IIb Regulation* (2022), available at <https://op.europa.eu/en/publication-detail/-/publication/ff34bda5-ea90-11ed-a05c-01aa75ed71a1/language-en>.

CASE NOTE 461 | **CJEU** | C-638/22 PPU
16 February 2023

Polish law allowed specified public authorities, including the Children's Ombudsman and the Prosecutor General, to obtain automatic suspension of enforcement of a final Hague return order merely by filing a request; the court could not examine whether suspension was justified. The CJEU held that Article 11(3) Brussels IIa, read in the light of Article 47 of the Charter, precluded that mechanism because it undermined the expedition and effectiveness of the return procedure. Brussels IIb was not applicable ratione temporis.

Cross-border enforcement after a further abduction

If the child is moved onward before the return order is executed, the same return order can be enforced in the new Member State. Article 1(3) and Recital 16 expressly cover this situation: a return decision given in Member State A and requiring return to Member State B may be recognised and enforced in Member State C if the child is taken there after the order was made. For Chapter IV purposes, the return order is treated as a "decision" under Article 2(1)(a); no declaration of enforceability is required. Practically, this means that substantively it remains a Convention return order; for circulation purposes, Brussels IIb treats it as a decision. Recital 16 nevertheless preserves the alternative possibility of bringing a new 1980 Convention application in respect of the further abduction. For the concept and legal consequences of further abduction, see Handbook part 1, Section 6.4.B.

The applicant needs the return decision and the Annex IV certificate. Under Articles 35 and 36, the person seeking enforcement provides a copy of the decision and the certificate issued under Article 36(1)(c), using Annex IV. The decision must be enforceable in the Member State of origin. The application is then made to the authority competent for enforcement under the law of the Member State where enforcement is sought (Articles 51–52).

Protective measures forming part of the safe-return arrangement cannot be separated from the return order. Article 53(3) prohibits partial enforcement that would enforce the return without also enforcing provisional or protective measures ordered to protect the child from the Article 13(1)(b) risk. This is especially important where return depended on measures adopted under Article 27(5).

Service must precede the first cross-border enforcement measure. Article 55 requires the appropriate certificate to be served on the person against whom enforcement is sought before the first enforcement measure; the decision must accompany it if it has not already been served. Where a translation or transliteration is properly requested under Article 55(2), only protective measures may be taken until it is supplied. This gives the person concerned a real opportunity to use the remedies available under Chapter IV without turning service into an additional merits stage.

CASE NOTE 462 | **CJEU** | Joined Cases C-325/18 PPU and C-375/18 PPU
19 September 2018

The CJEU held under Brussels IIa, in an international child-abduction setting, that enforcement could not proceed before the relevant order authorising enforcement had been served on the parents, because they had to have an effective opportunity to exercise the available remedy. Brussels IIb now states the service requirement before the first enforcement measure expressly in Article 55.

The enforcement State cannot use its own later measures to neutralise a certified return decision from the State of origin. The point is most clearly illustrated by the predecessor Brussels IIa case law on the later custody decision entailing return. That case law concerns the predecessor of Article 29(6), not enforcement of an ordinary return order, but it remains useful for understanding the limits of the enforcement State's role.

CASE NOTE 463 | **CJEU** | C-211/10 PPU
1 July 2010

The Italian court, as the court retaining jurisdiction after the abduction, ordered the child's return and issued the certificate required by the Brussels IIa privileged regime. The mother relied in Austria on a later provisional custody measure. The CJEU held that the Austrian measure could not prevent enforcement of the certified Italian decision.

EU law does not prescribe a single method of execution. Article 51 leaves the enforcement procedure to the law of the Member State of enforcement, subject to Chapter IV. Recital 60 recognises that the competent authority may be a court, bailiff or other body under national law, and that national enforcement tools may include non-coercive measures as well as coercive measures such as fines, imprisonment or recovery of the child by a bailiff.

The choice of measure must be child-sensitive without making enforcement optional. Recital 65 requires a case-by-case balance between the applicant's entitlement, in principle, to implementation as quickly as possible – including by coercive measures where necessary – and the need to limit as far as possible the child's exposure to potentially traumatising coercion. At this stage the enforcement authority is deciding how an enforceable order should be implemented, not whether the return court reached the correct result.

Suspension and refusal in cross-border enforcement

Articles 56 and 57 are enforcement safeguards, not another appeal and not a new return hearing. They apply when a decision from another Member State is being enforced under Chapter IV and a defined obstacle arises in the Member State of enforcement. The grounds operate within the enforcement process and should not be used to recreate the Article 12 or Article 13 assessment.

Table 25: Grounds for suspension or refusal of cross-border enforcement (Brussels IIb, Articles 56–57)

Situation	Basis	Effect	Limit
Enforceability suspended in the Member State of origin	Art. 56(1)	Enforcement must be suspended.	The enforcing authority follows the status of the decision in the State of origin; it does not reconsider the merits.
Ordinary appeal pending; appeal period open; refusal application pending; or withdrawal of an Article 47 certificate sought	Art. 56(2)–(3)	Enforcement may be suspended in whole or in part on an authorised application.	Discretionary; the procedural event is a trigger for suspension, not a new return hearing.
Post-decision temporary impediment or other	Art. 56(4)–(6); Recital 69	Enforcement may exceptionally be	Before refusal, appropriate steps must be taken to

significant change creating grave risk of physical or psychological harm		suspended; it resumes when the risk ceases. If the risk is lasting, enforcement may ultimately be refused on application.	facilitate enforcement and try to overcome the impediment.
National law provides another ground for suspension or refusal	Art. 57	The national ground may be applied under the law of the Member State of enforcement.	It must be compatible with Articles 41, 50 and 56 and may not recreate a prohibited merits review.

The existence of one of the circumstances listed in Article 56(2) permits, but does not itself require, suspension of enforcement. Where an ordinary appeal is pending in the Member State of origin or an application for refusal of enforcement has been lodged in the Member State of enforcement, the enforcement court may suspend execution and determine whether suspension is justified in the circumstances of the case.

CASE NOTE 464 | **NL** | **Gelderland District Court** | ECLI:NL:RBGEL:2023:2591
3 May 2023

A Belgian court had ordered the children's immediate return to the Netherlands and their handover to the father. After the mother returned with the children to the Netherlands, enforcement was sought there of the remaining handover obligation. The mother had appealed the Belgian judgment and had also applied in the Netherlands for refusal of its recognition and enforcement. The District Court Gelderland held that the situations in Article 56(2)(a) and (c) were therefore present and suspended enforcement of the handover requirement. In exercising that discretion, it took account of the children's current care situation and the imminent Dutch proceedings concerning permission for the mother to relocate with them to Belgium.

Effective cross-border enforcement

Cross-border enforcement must remain effective in practice, not merely available in law. The existence of procedural remedies does not justify long periods of inactivity, repeated procedural restarts or institutional obstruction. The Article 8 case law developed under Brussels IIa remains useful at this level of principle: once an enforceable cross-border return decision exists, the authorities must organise enforcement with real initiative and speed. The following cases concerned the predecessor certified-decision regime and do not define the current Brussels IIb certification rules.

CASE NOTE 465 | **ECtHR** | **M. A. v Austria** | App. No 4097/13
15 January 2015

An Italian decision entailing the child's return under the Brussels IIa override mechanism was enforceable in Austria under the then certified-decision regime. The Austrian authorities nevertheless allowed extended periods of inactivity, repeatedly required the father to initiate further enforcement steps and ultimately did not return the child. The ECtHR found a violation of Article 8 because the authorities had failed to act with the speed and initiative required to make the enforceable decision effective.

CASE NOTE 466 | **ECtHR** | **Rinau v Lithuania** | App. No 10926/09
14 January 2020

Enforcement of the child's return to Germany was repeatedly obstructed through reopening and suspension attempts against a background of substantial political and media intervention. The ECtHR found a violation of Article 8, holding that the procedural developments and the failure to respond adequately to the urgency of the case were incompatible with the obligations arising in the cross-border return process.

6.4. Overriding mechanism – Article 29 Brussels IIb Regulation

6.4.A. Nature and scope

Where return is refused in an intra-EU case, the return proceedings may be followed by a second, and quite different, form of litigation. Article 29 Brussels IIb links a qualifying non-return decision to proceedings on the substance of rights of custody, before the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention. Those courts do not hear an appeal from the return decision; they decide parental responsibility on the merits. If the resulting custody decision entails the child's return, it may then benefit from the Regulation's special recognition and enforcement regime.

This is what "overriding mechanism" captures.[399] The later decision does not retrospectively erase the non-return decision. It may nevertheless produce a different practical result, because the court with jurisdiction over custody makes the substantive determination that the return court was never asked to make.

The most important substantive change made by the recast concerns what a decision must contain to qualify for privileged, exequatur-free enforcement. Under Brussels IIa, once return had been refused, the court of origin could issue a new return order and have that order certified for fast-track enforcement without first ruling on custody; a second return order was, in effect, enough. Article 29(6) Brussels IIb raises that threshold. The privileged decision must now be a decision on the substance of rights of custody that entails the child's return – a full determination of who should have custody, not merely a renewed order to return the child. Only where the custody ruling itself results in return does the decision attract the special enforcement regime.

Before the court of origin can certify a decision that entails the child's return, it must have taken into account the reasons and facts behind the earlier non-return decision. This is required by Article 47(4) Brussels IIb, and it applies where return was refused under Article 13(1)(b) or Article 13(2) of the 1980 Hague Convention. The certificate is what allows the decision to be enforced in another Member State without exequatur, so if the court has not engaged with the earlier refusal, no certificate can issue. The court does not have to agree with the earlier reasoning: it may take full

[399] Terminology varies: the mechanism is also called the *second-chance procedure* or the *trumping mechanism*. Brussels IIb deliberately narrowed its predecessor (Art. 11(6)–(8) Brussels IIa) by confining the privileged decision to one on the *substance* of custody. See the European Commission, *Practice Guide for the Application of the Brussels IIb Regulation* (2022), available at <https://op.europa.eu/en/publication-detail/-/publication/ff34bda5-ea90-11ed-a05c-01aa75ed71a1/language-en>, pp. 137–142.

account of a grave-risk finding and still order return, as long as it addresses that finding and any arrangements needed for a safe return. Because this is checked and certified in the State of origin, the requested State cannot re-examine it at the enforcement stage.

The mechanism is available only where non-return is based solely on Article 13(1)(b), Article 13(2), or both, and it operates only within the EU. A refusal on any other Convention ground does not activate this special route, and the mechanism does not extend to a return procedure between a Member State and a third State.

CASE NOTE 467 | CJEU | C-35/23
20 June 2024

The reference concerned a child whose pre-removal habitual residence was in Germany and who was subsequently living in Poland. The father brought proceedings in Poland under the 1980 Convention seeking the child's return to Switzerland. Interpreting Brussels IIa, the CJEU held that Article 11(6)–(8) did not apply where the return proceedings were between a third State and the Member State in which the child was present, even though the child had previously been habitually resident in another Member State. The structural point carries over to Brussels IIb: Article 29 is an intra-EU mechanism.

6.4.B. The procedure before the court of origin

After a qualifying non-return decision, the next procedural step turns on whether custody proceedings are already pending in the State of the child's former habitual residence.

If the return court is aware that such proceedings are already pending, Article 29(3) requires transmission of the non-return decision, the relevant certificate and, where appropriate, the record of the hearings, directly or through the Central Authorities. If no custody proceedings are pending, Article 29(5) places the initiative on the party wishing to continue in the State of origin: that court must be seised within three months of notification of the non-return decision. The certificate itself must be issued by the return court of its own motion under Article 29(2).

CASE NOTE 468 | NL | The Hague Court of Appeal
ECLI:NL:GHDHA:2022:472
22 March 2022

Applying former Article 11(6) Brussels IIa, the Court directed its registry to send the appellate and first-instance decisions, the record of the hearing and the reports of the special curator to the Dutch Central Authority, with a request that the material be forwarded within one month to the competent court or Central Authority in Spain.

The operation of the mechanism is not conditional on the non-return decision first becoming final. Under Brussels IIb the three-month period runs from notification of the non-return decision, and the EU mechanism cannot be neutralised by repeated reopening or by exhausting remedies in the State of refuge. This does not mean enforcement can never be suspended; suspension and refusal of enforcement are separate questions.

CASE NOTE 469 | **CJEU** | C-195/08 PPU
11 July 2008

After the Lithuanian non-return proceedings, the German court ordered the child's return and certified its decision under Brussels IIa. The mother, supported by the Prosecutor General, obtained repeated reopenings and suspensions in Lithuania and sought to prevent recognition of the German decision. The CJEU held that the non-finality of the non-return decision did not prevent certification, and that the post-refusal mechanism could not be neutralised by multiplying remedies in the State of refuge.

Proceedings under Article 29 do not automatically end with an order bringing the child back. The court of origin may decide the custody merits in a way that entails return, but it may equally conclude that the child should remain. In that event, there is simply no overriding custody decision entailing return.

CASE NOTE 470 | **BE** | **Supreme Court**
ECLI:BE:CASS:2013:ARR.20130304.4
4 March 2013

The child had been wrongfully removed from Belgium to Spain, where the Spanish courts refused return. In the subsequent Belgian proceedings under former Article 11(7) Brussels IIa, the father sought to fix the child's primary residence in Belgium. The Brussels Court of Appeal refused after weighing the child's young age, her established care by the mother, the family environment in Spain and the consequences of separation; the Court of Cassation upheld the decision.

6.5. Further abduction, re-abduction and prevention

Further abduction is the situation in which a child, already wrongfully removed, is moved again to another State. For litigation, the timing of that second move is decisive. A child may be moved again *before* the first return proceedings are decided, after a return order has been made but before it is enforced, or after the child has actually been returned in compliance with an order. Each scenario carries different procedural consequences, and this section is organised around them, before turning to the preventive measures — travel bans, contact restrictions, and border alerts — that operate at the enforcement and post-decision stage.

Two terms are used throughout. Further abduction describes onward movement while the original return process remains unresolved, and in particular after a return order but before enforcement; it is the term used in Recital 16 of the Brussels IIb Regulation. Re-abduction describes a fresh wrongful removal after an earlier return order has already been carried out. The second term is descriptive rather than a defined Convention term.

6.5.A. Onward movement before or pending enforcement of a return order

In cross-border abduction cases, a further abduction typically unfolds in the following way. The child was habitually resident in State A. The abducting parent wrongfully removes the child to State B. A court in State B, applying the 1980 Convention, orders the child's return to State A. Before that order can be enforced, the abducting parent leaves State B with the child and goes to State C. This second move — from State B to State C — is what Recital 16 of the Brussels IIb Regulation calls a further abduction. It is not a new wrongful removal in the Article 3 sense but a continuation of the same wrongful situation.

If a return order has already been made and the child is moved to another EU Member State before enforcement, the existing return order may be recognised and enforced there under Chapter IV of Brussels IIb; a fresh 1980 Convention application also remains possible. Recital 16 ensures that the further movement does not render the original return order ineffective. Although return proceedings are not concerned with the substance of custody, Article 2(1)(a) treats a return order entailing the return of the child as a "decision" benefiting from recognition and enforcement under Chapter IV. The return order made in State B can therefore be directly recognised and enforced in State C without commencing new proceedings under the Convention. The left-behind parent may still choose to initiate a fresh return application in State C, but this is optional. The practical purpose of Recital 16 is to close enforcement loopholes and prevent abductors from defeating a return order by crossing another border: a lawful return order follows the child and remains enforceable wherever the child is taken within the EU. In procedural terms, the parent seeking enforcement obtains a copy of the return decision together with the certificate under Article 36(1)(c), using Annex IV; no declaration of enforceability is required, though the decision must be enforceable in the Member State of origin. Where the return order is accompanied by protective measures adopted under

Article 27(5), the return element should not be separated from that protective package in cross-border enforcement (Article 53(3)). For the enforcement mechanics, see Chapter 6.3.

If the child is moved onward to a State outside the Brussels IIb system, the special EU circulation route is unavailable, and any further response depends on the 1980 Convention or applicable bilateral instruments.

6.5.B. Onward movement, the Article 12 time-limit, and evasion of a return order

A later move by the same abducting parent does not create a new wrongful removal under Article 3 and does not restart the one-year period in Article 12(1); time continues to run from the original wrongful removal or retention. Under the 1980 Convention, once a child has been wrongfully removed or retained within the meaning of Article 3, any subsequent relocation by the same abducting parent to another Contracting State does not constitute a new abduction (see Case Note 153).

Where a further abduction is used to evade an existing return order, a court hearing a new 1980 Convention application may treat the onward flight as a serious abuse of law and order return notwithstanding the lapse of time or the child's settlement. Because the further move does not reset the Article 12(1) clock, a parent who relocates the child precisely to defeat enforcement may find that the year has expired and that the child has begun to settle in the new State by the time a fresh application is brought. The court is not obliged to allow that to succeed. Article 12(2) is discretionary, and where the lapse of time and the child's settlement are themselves the product of the abductor's flight from an existing order, the court may exercise its discretion to order return regardless. The threshold is high: it is not the ordinary wrongfulness present in every abduction but conduct of a particular gravity – open and deliberate defiance of a binding return decision – that justifies the override. The concern is systemic, since a final return order cannot be allowed to be levered out simply by moving the child to a new country and running down the clock.

CASE NOTE 471 | DE | Stuttgart Higher Regional Court
ECLI:DE:OLGSTUT:2023:1116.17UF205.23.00
16 November 2023

The mother stated that she would remain in Germany regardless of the outcome and did not regard herself as bound by the courts of either State. The court characterised her flight to defeat the Romanian order as a "serious and obvious abuse of law" (*gravierender und offensichtlicher Rechtsmissbrauch*) reflecting a "law-hostile disposition" (*rechtsfeindliche Gesinnung*), and held that this justified ordering return even on the assumption that the child had settled – since otherwise an abductor could dismantle a final return order simply by relocating and waiting out the year.

6.5.C. Re-Abduction after the first return has been executed

Once a return order has been executed and the child has been returned to the State of habitual residence, that order is exhausted. A later wrongful removal requires a new return application and a new Article 3 analysis; the original order cannot be re-enforced. A return order answers a particular wrongful removal or retention and performs its function once return occurs. It cannot operate as a standing warrant for every later movement of the child. The previous proceedings remain highly relevant evidence, but the court hearing the later case must determine anew the child's habitual residence, the custody rights then in force, their exercise, and the circumstances of the new removal or retention.

CASE NOTE 472 | NL | Court of Utrecht | ECLI:NL:RBUTR:2010:BP1552
10 December 2010

A mother complied with a Dutch return order and brought the child back to Guatemala. Within three months she removed the child again to the Netherlands. The father sought to enforce the first Dutch return order a second time, but the court rejected this, holding that the first order had already been satisfied and could not serve as a standing enforcement measure for later removals. Each new wrongful removal requires a fresh procedure under the 1980 Convention.

A previous abduction and the deliberate breach of return, residence, or travel orders may be powerful evidence in the later proceedings, but they do not replace the Convention tests or automatically defeat an Article 13 defence. Where a parent has already abducted the child once, complied with a return order, and then wrongfully removed the child again, that pattern weighs heavily against them. Repeat conduct may bear on credibility, on the source of instability affecting the child, on the circumstances in which the child's views developed, and on any discretion that remains once an exception is established. The court must nevertheless examine the defence actually

raised on the current evidence: previous unlawful conduct cannot by itself establish that a present allegation of risk, or a child's objection, is unfounded.

CASE NOTE 473 | **NL** | **The Hague District Court** | ECLI:NL:RBDHA:2021:14705
29 December 2021

After the first return proceedings in early 2021, the mother returned the children to the United Kingdom in compliance with a Dutch return order. The English court then prohibited her from travelling with the children and confirmed that they were to reside in the UK. Despite those orders, she removed them a second time to the Netherlands. The Dutch court treated this re-abduction as serious, finding that the mother had knowingly violated court decisions and exposed the children to renewed instability. That pattern undermined her Article 13 arguments: the children's objections were not considered authentic, and the alleged risks were rejected, and the re-abduction weighed strongly in favour of ordering immediate return.

6.5.D. Preventing further abduction: travel bans, contact restrictions, and border alerts

The risk of abduction does not end with the decision. Between a return order and its enforcement, a taking parent facing the loss of the case may attempt to move the child onward to a third State; and after a refusal of return, or after the child has been returned, the resumption of cross-border contact creates a renewed opportunity for unilateral removal. Courts and practitioners therefore dispose of a preventive toolkit that operates at the enforcement and post-decision stage: travel (exit) bans, passport surrender, restrictions on the international exercise of contact, and border alerts. During pending return proceedings, urgent provisional, including protective, measures may be taken under Article 15 Brussels IIb (see Chapter 5.9). Where return is ordered, Article 27(5) provides a more specific possibility: the return court may take Article 15 measures to protect the child from the grave risk referred to in Article 13(1)(b) of the 1980 Convention. Measures directed specifically at preventing a further removal, such as travel bans, passport surrender, restrictions on international contact or border alerts, therefore require an appropriate basis under the applicable national law or parental-responsibility or enforcement framework; they should not generally be attributed to Article 27(5).

The HCCH Guide to Good Practice, Part III – Preventive Measures sets out the wider framework of tools that States should have in place, from consent requirements for passports and travel to rapid emergency stop orders at borders.[400]

An intended abduction warranting travel ban may be established from a constellation of risk indicators, including concrete preparations for departure, threats or statements of an intention to remove or conceal the child, previous abduction attempts or breaches of contact arrangements, weak ties to the child's State of residence, and personal or family circumstances facilitating relocation abroad. Relevant indicators may include obtaining travel documents or visas, purchasing one-way tickets, terminating accommodation or disposing of assets, withdrawing the child from school, repeated requests for the child's passport, lack of stable financial, professional or emotional ties to the State, strong family support in another country, different parental nationalities, previous criminal conduct, domestic violence or psychological instability. The assessment is

[400] HCCH, Guide To Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Part III – Preventive Measures (2005).

cumulative: the question is whether the circumstances as a whole disclose a concrete and genuine risk of removal.

CASE NOTE 474 | **BG** | **Varna District Court** | 20253110112617
12 March 2026



In proceedings for a preventive travel ban, the court grouped relevant indicators of a contemplated abduction into three categories. First, preparatory steps, including obtaining a new passport or visa, purchasing one-way tickets, terminating a tenancy, selling property or liquidating assets, and withdrawing the child from school or kindergarten. Second, the parent's conduct and expressed intentions, including direct threats to take the child permanently, previous attempts at abduction, failure to comply with contact arrangements, and lack of financial, professional or emotional ties to the State where the child lives. Third, personal and family factors, including parents of different nationalities, a strong supporting family network in another State, criminal history, domestic violence and psychological instability. On the facts, the father had repeatedly stated that he would take the child and that the mother would never know where the child was, repeatedly sought the child's passport, had no established residence or other meaningful ties in Bulgaria, and was alleged to have a criminal background. The court considered these circumstances cumulatively sufficient to establish a concrete risk of unlawful removal and imposed a one-year travel ban.

A travel ban may require proof of a real, concrete, and immediate risk of unlawful removal arising from the parent's actual conduct; generalised mistrust, foreign nationality, or a criminal record may be insufficient. Because the measure restricts the cross-border movement of the child – and, in practice, of the accompanying parent – proportionality requires that it be imposed only where strictly necessary to counter a genuine threat. Within the Schengen Area the objection is sharper still, since such an order may also engage the child's and parent's free-movement rights under Article 21 TFEU and Article 45 of the Charter and must therefore be justified and proportionate where EU law applies. A prior wrongful removal is highly relevant conduct for this assessment, but it does not make the ban automatic: the question remains whether, on the facts as they now stand, a further removal is realistically threatened.

CASE NOTE 475 | **BG** | **Sofia City Court** | 20241100502089
22 April 2024



A mother sought an order under Article 127b of the Bulgarian Family Code prohibiting her two children from leaving Bulgaria with their father, alleging that he had threatened to abduct them and pointing to his criminal record and Montenegrian nationality. The court rejected the request, holding that the evidence did not demonstrate a specific, immediate risk of wrongful removal. Past criminal convictions, foreign nationality, or generalised fears are insufficient; a travel ban may be granted only where there is clear proof of a real and serious threat of abduction, grounded in the individual's conduct.

Where the evidence establishes a stated, imminent intention to leave and severe, irreversible consequences for the child's relationship with the other parent, a court may impose both a relocation ban and a travel ban, which may affect even a parent holding sole custody. Sole custody does not extinguish the child's right to family life with the other parent, and preventive restrictions may be necessary to protect that right. Both prohibitions contribute to prevention, but at different stages: the travel ban at the emergency stage of suspected flight, the relocation ban at the

planning stage of a proposed move. Whether such prohibitions can be imposed on a parent with sole custody, however, depends on the national law.

CASE NOTE 476 | NL | North Holland District Court
ECLI:NL:RBNHO:2025:10321
22 April 2025

In urgent proceedings, the court prohibited the mother from travelling and relocating with her child to South Africa. The decision rested on evidence of her stated intention to leave imminently, the lack of any preparation for life abroad, and the severe and irreversible consequences for the child's bond with the father. The court imposed both a relocation and a travel ban, enforceable with financial penalties, stressing that even a parent with sole custody must respect the child's right to family life with the other parent.

Requiring both parents' consent for a child's international travel is a key preventive tool, but the power to withhold consent must be exercised in good faith and in the child's interests. In many States, a child cannot leave the country without the written consent of both holders of parental responsibility, a requirement that prevents unilateral removal at the border. Consent mechanisms are a valuable preventive tool, but they must not be abused as bargaining chips in a parental dispute. A parent may withhold consent where there are legitimate concerns for the child's safety or welfare, but arbitrary withdrawal – especially at the last minute and for reasons unrelated to the child's welfare – may give rise to liability.

CASE NOTE 477 | NL | Court of Rotterdam | ECLI:NL:RBROT:2025:1969
14 February 2025

The mother initially consented to the father taking their daughter on holiday to Cape Verde, then revoked her consent two days before departure and informed the border police, preventing the child from leaving. The court found that she had acted unlawfully, using her consent as leverage to secure approval for her own holiday plans rather than out of any concern for the child's safety, and ordered her to reimburse nearly €5,000 in lost holiday expenses.

Cross-border contact may be restricted or conditioned where exercising contact abroad would expose the child to a real and objective risk of non-return, even without evidence of an intent to abduct, particularly where the destination State is not bound by the 1980 Convention. Such measures regulate how and where contact takes place rather than imposing a general prohibition on the child's movement, and they are preventive rather than punitive. This is the central structural question in post-abduction contact arrangements: if contact is exercised in a State from which no effective return mechanism operates, a prolonged stay can become legally irreversible, and the contact regime itself becomes the vehicle for the next abduction. Any restriction should therefore

be tailored to that risk – for example by regulating where contact may occur – rather than imposing a broader prohibition than necessary.

CASE NOTE 478 | **HU** | **Supreme Court** | Pfv.II.21.550/2010/3
24 May 2011

The Court upheld restrictions confining the exercise of contact abroad to specified European States party to the 1980 Convention. The father's State of residence was not party to the Convention and no bilateral instrument ensured the child's return if retention occurred. The restriction did not depend on proof that the father intended to abduct or retain the child; it responded to the absence of an effective legal mechanism capable of securing return.

Border alerts operationalise a travel-ban order; a judicial prohibition that is never flagged at the border is, for a determined parent, no prohibition at all. Within the EU, the principal instrument is the Schengen Information System. Under Article 32 of Regulation (EU) 2018/1862[401], an alert may be entered for a child at concrete and apparent risk of imminent unlawful removal by a parent, family member or guardian. If the child is located in another participating State, Article 33 requires communication with the issuing State and immediate consultation on the measures to be taken; the competent authorities may, in accordance with national law, move the child to a safe place to prevent continuation of the journey. The SIS alert therefore enables rapid cross-border intervention, but does not itself make every attempted journey result automatically in interception. Outside SIS, national border-alert and passport-flag systems and, internationally, INTERPOL notices – in particular Yellow Notices for missing children – perform a comparable function, though an INTERPOL notice is a locating tool and not the legal equivalent of a judicial travel ban.

For practitioners, three points are decisive. First, timing: the alert should be requested simultaneously with the travel-ban or passport-surrender order, since the gap between the judicial decision and the administrative entry is precisely the window a determined parent will use. Second, accuracy: the child's identity data in the alert must match the travel documents exactly, because discrepancies in spelling, second surnames, or transliteration are a common cause of failed interceptions. Third, withdrawal: when the ban is lifted, the proceedings end, or an authorised return is executed, the alert must be removed without delay, since a stale alert can itself unlawfully obstruct lawful travel and expose the requesting party or the State to liability.

6.6. Determination of parental responsibility after return proceedings – Article 19

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of a custody issue.

[401] Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (2018) OJ L 312, art 32.

A decision concerning return under the 1980 Convention does not determine the merits of custody or parental responsibility. Article 19 defines the limited effect of the Convention decision: the return court decides whether the child should be returned, without deciding the substantive custody dispute. The Pérez-Vera Report explains in §124 that this provision expresses an idea underlying the Convention as a whole.[402] For return to operate as an immediate or speedy remedy, it must not prejudge the merits of custody; at the same time, prompt return seeks to prevent a later custody determination from being influenced by a change of circumstances created unilaterally by one of the parties.

The same distinction applies where return is refused. The return court may necessarily make findings concerning habitual residence, rights of custody, consent, grave risk or the child's objections in order to apply the Convention. Those findings are made for the purposes of the return proceedings; the resulting decision does not thereby become a determination of the custody merits.

CASE NOTE 479 | CJEU | C-497/10 PPU
22 December 2010

A French court had issued a final judgment in the return proceedings. The CJEU held that, by virtue of Article 19 of the 1980 Convention, that judgment had no effect on the determination of the merits of custody. If the English court had jurisdiction over parental responsibility under the Regulation, it had to decide the custody case independently; the final French return judgment did not bind or prejudge that merits determination. (§§65-66)

Physical return of the child is not a prerequisite for the court retaining jurisdiction in the State of the child's former habitual residence to determine parental responsibility. Where jurisdiction remains with that court under the applicable jurisdictional rules, it may decide the merits even while the child remains in the State of wrongful removal. Physical return and determination of parental responsibility are therefore separate questions. The fact that the child remains abroad may make evidence more difficult to obtain, but those practical difficulties do not themselves prevent the court retaining jurisdiction from deciding the case and may be addressed through judicial cooperation.

CASE NOTE 480 | SI | Supreme Court | ECLI:SI:VSRS:2021:II.IPS.25.2021
21 April 2021

The Supreme Court rejected the argument that the child first had to be returned before the courts of the State of origin could determine custody and upbringing. Because jurisdiction had not transferred to the State of wrongful removal, the court of origin could decide parental responsibility while the child remained abroad; the resulting evidential difficulties were capable of being addressed through cross-border judicial cooperation. (§42)

A previous wrongful removal is an important circumstance in the later parental-responsibility proceedings, but it does not determine the custody outcome. The merits court should consider the effect of the removal on the child and on the child's relationship with the other parent, the reasons for the parent's conduct, and what that conduct reveals about parental abilities. The fact of abduction alone does not establish that the taking parent is unsuitable to care for the child.

[402] Explanatory Report by Pérez-Vera, *Acts and Documents of the Fourteenth Session (1980)*, tome III, *Child abduction,* §124.

CASE NOTE 481 | **SI** | **Supreme Court** | ECLI:SI:VSRS:2021:II.IPS.25.2021
21 April 2021



The mother had taken the child to Croatia without the father's consent. The Supreme Court regarded that conduct as unlawful and as an important circumstance, particularly because it interfered with contact with the father, but rejected the argument that it should determine custody by itself. The courts were entitled to consider the mother's reasons for leaving, the conflictual circumstances, her lack of practical alternatives, and the fact that she had neither sought to conceal the child nor alienate her from the father. What mattered was what the removal and its consequences revealed about the child's welfare and the mother's parental abilities. (§§43-44)

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PRACTICAL HANDBOOK ON EU FAMILY LAW

Part 2

Nadia Rusinova

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