

## **Training Session No. 2**

### **“International Child Abduction”**

**BUDAPEST (HUNGARY) | 29 March 2019**

#### **TRAINING PACKAGE**

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**4 EU training sessions on family law regulations for  
Cross-border Lawyers And Social Services**

**Training Session No. 2**

**“International Child Abduction”**

**BUDAPEST (HUNGARY) | 29 March 2019**

**PROGRAMME**

- 08:30 – 09:00 *Registration*
- 09:00 – 10:15 **International child abduction: general overview**  
Anabela Gonçalves
- 10:15 – 11:15 **Return proceedings and exceptions to return under the  
1980 Hague Convention**  
Agne Limante
- 11:15 – 11:30 *Coffee break*
- 11:30 – 12:30 **The role and tasks of the Central Authority in child  
abduction cases**  
Mária Kurucz
- 12:30 – 13:30 *Lunch break*
- 13:30 – 14:45 **International child abduction in Brussels Ila Regulation  
(Articles 10 and 11)**  
Anabela Gonçalves
- 14:45 – 15:15 *Coffee break*
- 15:15 – 16:45 **Art. 11(6-8) and recognition and enforcement of  
decisions in Brussels Ila Regulation**  
Costanza Honorati and Sara Bernasconi



## **PRESENTATIONS**

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# International Child Abduction: General Overview

**Anabela Susana de Sousa  
Gonçalves**

Assistant Professor  
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## Contents of this session

- 1. International Child Abduction
- 2. Relevant legal texts
- 3. Objectives of the Hague Convention
- 4. The scope of application of the Hague Convention
- 5. Central Authorities
- 6. The Hague Convention System
- 7. Exceptions underlying the decision of retention
- 8. Return order
- 9. Subsequent to non-return

# International Child Abduction

European Court of Human Rights (ECtHR):

- Case *Ignaccolo-Zenide v. Romania*, App. No. 31679/96.
- Case *Bianchi v. Switzerland*, Application No. 7548/04.
- Case *Susanne Paradis and Others against Germany*, App. No. 4065/04.

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# International Child Abduction

European Union Court of Justice (ECJ):

- Case *Inga Rinau vs. M. Rinau*, C-195/08 PPU

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## Relevant legal texts

- Regulation 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation 1347/2000 (Brussels Ila Regulation).
- Convention of 25 October 1980 on the civil aspects of international child abduction (Hague Convention).

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## Relevant legal texts

### **Article 60**

#### **Relations with certain multilateral conventions**

In relations between Member States, this Regulation shall take precedence over the following Conventions in so far as they concern matters governed by this Regulation:

- (e) the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

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# Relevant legal texts

Legal texts:

- when a child is abducted from one EU Member State to another, the Hague Convention applies, but is complemented by the Brussels IIa Regulation;
- when a child is abducted from a Hague Convention Contracting State 3<sup>rd</sup> State to the EU to an EU Member State, or from an EU Member State to a Hague Convention Contracting State 3<sup>rd</sup> State to the EU, the Hague Convention applies.

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## Objectives of the Hague Convention

«Article 1

The objects of the present Convention are -

- a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States».

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# Scope of application of the Hague Convention

## 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.

The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

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# Scope of application of the Hague Convention

## Article 5

For the purposes of this Convention -

- a) "rights of custody" 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 residence;
- b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence

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# Scope of application of the Hague Convention

The Hague Convention applies to children habitually resident in a Contracting State before the breach of the right of custody or access and its application ceases when the child reaches the age of 16 (Article 4).

At the time, the Hague Convention has 98 contracting States: all EU Member States, Brazil, Argentina, Australia, Canada, Chile, Japan, Paraguay, Switzerland, United States of America, China, Russia.

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## Central Authorities

Functions of the central authority:

- to locate the child;
- to prevent further damage to the child or to the parties concerned by the promotion of precautionary measures;
- to seek a friendly solution or voluntary return of the child;
- if it is useful, to exchange information on the social situation of the child;
- to exchange information about the law of their State within the scope of the Convention;
- if necessary to obtain a return decision, it shall initiate or facilitate the opening of judicial or administrative proceedings for that purpose;
- to facilitate or advise legal aid;
- to guarantee the safe return of the child, taking all necessary administrative measures;
- to exchange information with the other central authorities to remove obstacles to the implementation of the Convention.

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# Central Authorities

Article 55 Brussels IIa

## **Cooperation on cases specific to parental responsibility**

The central authorities shall, upon request from a central authority of another Member State or from a holder of parental responsibility, cooperate on specific cases to achieve the purposes of this Regulation. To this end, they shall, acting directly or through public authorities or other bodies, take all appropriate steps in accordance with the law of that Member State in matters of personal data protection to:

- (a) collect and exchange information:
  - (i) on the situation of the child;
  - (ii) on any procedures under way; or
  - (iii) on decisions taken concerning the child;
- (b) provide information and assistance to holders of parental responsibility seeking the recognition and enforcement of decisions on their territory, in particular concerning rights of access and the return of the child;
- (c) facilitate communications between courts, in particular for the application of Article 11(6) and (7) and Article 15;
- (d) provide such information and assistance as is needed by courts to apply Article 56; and
- (e) facilitate agreement between holders of parental responsibility through mediation or other means, and facilitate cross-border cooperation to this end

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# Central Authorities

- [https://e-justice.europa.eu/content\\_matrimonial\\_matters\\_and\\_matters\\_of\\_parental\\_responsibility-377-pt-en.do?member=1](https://e-justice.europa.eu/content_matrimonial_matters_and_matters_of_parental_responsibility-377-pt-en.do?member=1)
- <https://www.hcch.net/en/instruments/conventions/authorities1/?cid=24>

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# Hague Convention System

## 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 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.

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.

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# Hague Convention System

## Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

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# Hague Convention System

## Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

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# Hague Convention System

## Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be».

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# Hague Convention System

## 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.

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# Hague Convention System

## 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.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child».

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# Hague Convention System

Grounds for the decision of retention:

1. The child has been abducted more than a year earlier and has become settled in his or her new environment (Article 12, Section 2).
2. The person requesting the return has not actually exercised his or her rights of custody at the time of the removal or retention or had subsequently acquiesced in the removal or retention [Article 13, Section 1 (a)].
3. There is a grave risk that returning the child would expose him or her to psychological harm or otherwise place him or her in an intolerable situation retention [Article 13, Section 1 (b)].
4. The child objects to the return while it is appropriate to take account of his or her views, given his or her age and degree of maturity (Article 13, Section 2).
5. Returning the child is not permitted under the law of the requested State as it would be contrary to the fundamental principles (Article 20).

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# Hague Convention System

Two options:

- After considering the grounds of retention, the court of the abducted State orders the return of the child.
- Using one of the grounds of refusal listed in the Hague Convention, the court of the abducted State rules that the child must not return.

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## **Return Proceedings and Exceptions to Return**

**Dr. Agne Limante**

Senior researcher  
Law Institute of Lithuania

Training Session No. 2

Budapest (Hungary)

29 March 2019

A client approaches you claiming that his child was abducted by the mother of the child to another country.

He asks your advise how to have the child back.

**What are the questions you will have to find out first?**



- Was there abduction?
  - Does the client have “right of custody”?
  - Were the rights of custody actually exercised?
  - Where was the child’s habitual residence?
  - Is there a court order/clients consent allowing removal?
- When removal / non-return happened?
- To which country was the child brought?
  - defines the instrument to be applied
- Has the client already applied to some institution?
- (Why did the abduction happened?)

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## Legal instrument to be applied

Countries involved	Instruments to be applied
Both countries are EU Member States	1980 Hague Convention and Brussels II bis Regulation
One country is EU Member State, the other – not EU Member State but party to 1980 Hague Convention	1980 Hague Convention
One country is EU Member State, the other is not party to 1980	Bilateral treaty on legal assistance (if signed) and

## 1980 Hague Convention and Regulation Brussels IIa

- B2a builds upon 1980 HC, however, it strengthens 1980 HC rules among Member States
- Under Article 60 of B2a, in relations between MS Regulation is to take precedence over the 1980 HC
- Convention's scope of application is not altered - see CJEU in *McB* (C-400/10 PPU)

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## 1980 Hague Convention and Regulation Brussels IIa

- Regulation provides additional rules on safeguards as regards:
  - expeditious proceedings
  - mandatory hearing of the child and a left-behind parent
  - non-possibility of refusal to return a child if **adequate protection measures** are ensured
  - Art 11(8) overruling procedure

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## Where to apply in case of abduction?

- Central authorities → important assisting institutions
- Police?
- Court of **State of refuge** → an application to return a child (starting return proceedings under the 1980 HC)
- In addition, sometimes the court of child's HR is approached → an application for parental responsibility and custody/access.



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## Court of State of refuge

- Verifies if there was an abduction
- Hearing of the child and of the left-behind parent (duty under Regulation B2a)
- Has a general duty to issue a decision to return the abducted child
- Order a return within **6 weeks**
- Checks if there are no grounds to refuse return



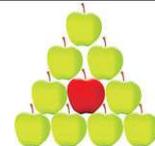
8

## The essence of the order to return the abducted child

- Procedure before courts of State of refuge is **not about the future of the child, but about the returning** of the child to his/her original home-State so that the custody questions be decided there
- Main questions to be covered: **was there abduction** and **is there ground to refuse return**

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## Exceptions to return



- Art. 12(2) HC – elapse of one year + settlement
- Art. 13 (1)(a) HC – acceptance or acquiescence
- Art. 13 (1)(a) HC – lack of exercise of custody rights
- Art. 13 (1)(b) HC – grave risk of physical or psychological harm
- Art. 13 (2) HC – child opposes return
  
- Art.20 HC– violation of fundamental rights in the State of refuge
  
- (also) Art. 3 HC – lack of habitual residence in the State of origin (no abduction)

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## CASE STUDY

Edina (Hungarian) and Nick (British) live in Brussels. They have 3 kids: John (16), Adam (6) and Eva (2). After separation in 2016, children mostly live with the mother, however, they sometimes stay with the father.

Edina decides to move to Budapest and informs Nick about this in August 2018.

On 1<sup>st</sup> September, John starts French school, Adam and Eva are placed in Hungarian pre-school. Edina begins working.

In March 2019, Nick decides to get children back. 11

- 1. Can Nick start abduction proceedings? How and where this should be done?
- 2. Do we have child abduction here? What importance should be attached to the fact that the couple was not married? Were the custody rights exercised properly by the father?
- 3. Would the situation change if Nick would not start abduction proceedings until 1 September 2019? Under what conditions return could then be refused?

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## Question block 1: Father's consent?

Edina claims that she informed the father that she intends to leave with children and he did not object.

Almost 7 months passed since they moved to Hungary.

*4. Was there father's consent to removal? How consent should be expressed?*

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## Acceptance or acquiescence to removal – Art 13a

- Only true and unequivocal consent counts
- This does not mean that it should necessarily be expressed in a formal written document (can be inferred from the circumstances)
- The burden of proving the consent/ acquiescence rests on the party who asserts it



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## Question block 1: Children's integration?

Almost 7 months passed since they moved to Hungary. Edina claims that time children settled in the new environment.

Kids go to school / day care. All children considerably improved their Hungarian, have many friends and relatives here.

*5. Can return be refused due to children's integration?*

*Would Edina have more chances to persuade the court in non-return if return proceedings would be started in October 2019?*

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## Article 12(2) HC

### **Two cumulative conditions:**

- Return procedure was initiated after a period of 1 year from the date the abduction took place
- Child is now settled in its new environment



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## Question block 1: Child objections?

*6. Should the kids' opinion as to their return be heard?*

- *What if John and Adam oppose return?*

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## Art. 13 (2) HC – child opposes return

- Hearing of the child is the duty of the court
- Age from which the child is heard varies in MS
- Child is heard, objections are considered, but they are not decisive in court's judgement

Child's opinion should be linked to the return to the State of prior residence itself, and not to the question of custody or with whom of the parents he/she prefers to stay



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## Question block 2: Grave risk exception?

Edina claims they separated due to the fact that the father became mean, aggressive and started abusing her. She worries that he might also be aggressive towards children. In addition, he started drinking beer in big quantities and often.

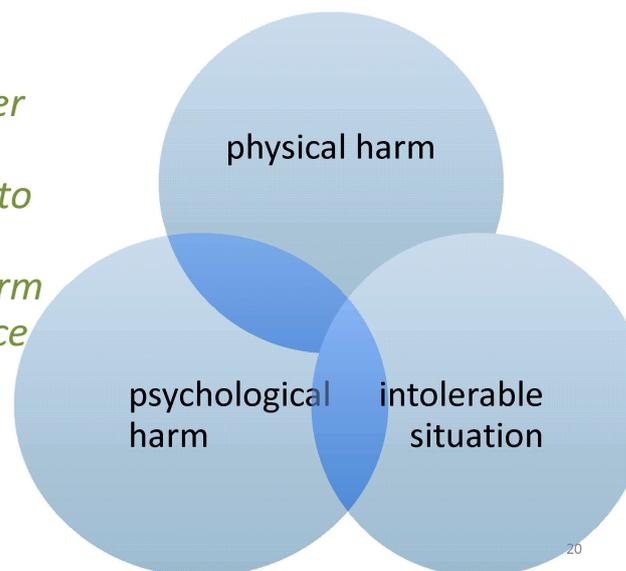
*7. Could abuse of the mother and father drinking result in grave risk exception?*

*Also consider possible use of adequate arrangements (Article 11(4) of Regulation 2201/2003).*

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## Grave risk exception – Art 13b

*“there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation “*



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## NB!

In the EU context, the **use of this exception is restricted by Article 11(4)** of the Regulation B2a, which prohibits refusal on this ground where **adequate arrangements** have been made to secure the protection of the child after the return.

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## “adequate arrangements”

- measures guaranteeing safe temporary return
- make return (nearly) **always** possible
- focuses on how to minimize/avoid harm
- adds additional question to court's evaluation

## Examples of adequate measures

- providing secure accommodation for the mother and/or for the child
- ensuring that the left-behind parent keeps away from the mother and the child
- requiring the left-behind parent to bear the costs associated with the return (or share them)
- suspending/withdrawing criminal proceedings for abduction of minor

## Question block 2: Grave risk exception?

Edina also considers that due to Brexit there are almost no chances that Nick's employment with the EU will continue. As a result, neither she, nor him will have job in Brussels. She and kids are financially better in Hungary.

*8. Could economic situation be linked with 'grave risk' exception?*

*Example: Court of Appeal of Lyon, 19 September 2011, No de RG 11/02919*

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### Question block 3: Separation from the mother /siblings as ‘intolerable situation’?

For John this will be the last year at school thus he should stay in Hungary.

Edina has to stay due to her business here and no job in Brussels.

*9-11. Returning Adam and Eva would place children in ‘intolerable situation’ as they would need to be separated from the mother and siblings?*

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### See, as examples:

- Schleswig Holsteinisches Oberlandesgericht, 12 UF 169/13, 08 January 2014 (INCADAT reference HC/E/DE 1410)
- *Court of Appeal of Paris, 5 July 2013, No de RG 13-11509).*
- *High Court of England and Wales, In WA (A Child) (Abduction) (Consent; Acquiescence; Grave Risk of Harm or Intolerability) [2015] EWHC 3410 (Fam)*

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## The role of the Central Authorities in cases of child abduction

**Dr. Mária Kurucz**

Ministry of Justice of Hungary

Guest speaker

Training Session No. 2

Budapest (Hungary)

29 March 2019

## 1980 Hague Child Abduction Convention

- Adopted on 25 October 1980
- Hungary acceded in 1986

EU: 2201/2003/EC Regulation Article 11

Applicable since 1 March 2005

## Main achievements of the Hague Convention

- Created a special procedure for the child's return
- Provides Central Authority help for left behind parents
  - Response to the imbalance between the parties' position
  - Direct applications are still possible!

3

## Functions of Central Authorities

- HC Article 7:  
Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.  
In particular, either directly or through any intermediary, they shall take all appropriate measures -
  - CAs do not necessarily act directly, but „the Central Authority in every case remains the repository of those duties which the Convention imposes upon it, to the extent of its being the 'engine' for the desired co-operation which is designed to counter the wrongful removal of children”.  
(Perez-Vera Report)

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## Functions of Central Authorities

*HC Article 7:*

- In particular, either directly or through any intermediary, they shall take all appropriate measures -
- *a)* to discover the whereabouts of a child who has been wrongfully removed or retained;
- *b)* to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- *c)* to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- *d)* to exchange, where desirable, information relating to the social background of the child;
- *e)* to provide information of a general character as to the law of their State in connection with the application of the Convention;
- *f)* to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access;
- *g)* where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- *h)* to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- *i)* to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

5

## Discover the whereabouts of the child

If the address is not certain, in Hungary

- Contacting the address registry,
- The police,
- The local child protection authorities.

6

## Prevent further harm to the child by provisional measures

If the child is thought to be in danger, alert the local child protection authority to check the child's wellbeing and to take protective measures if necessary.

7

## Secure the voluntary return of the child or to bring about an amicable

- Contacting the abducting parent about voluntary return,
- Organizing mediation if parties agree.

8

**Exchange, where desirable,  
information relating to the social  
background of the**

- Health, housing, education
- In the requested state to check if child protection measures are necessary during the return procedure.
- In the requesting state to check if everything is suitable for the child's safe return.

9

**Provide information of a general  
character as to the law**

- To support the application that the applicant had rights of custody by law.
- If necessary, about child protection law, restraint orders.

10

## Initiate proceedings for return or access

- Directly by the CA,
- By law firm appointed by the CA (in Hungary by contract between the Ministry and the law firm),
- By a law firm appointed by the legal aid board,
- By the state prosecutor.

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## Provide legal aid and advice, including the participation of legal counsel

- In Hungary automatically cost-free by the subject-matter.
- In other states, transmittal of legal aid applications.

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## Administrative arrangements to secure the safe return of the child

- Passports, visas, provisional child protection measures (eg. organizing access between the returned child and the left-behind parent by supervision).

13

## Keep each other informed about the operation of the Convention and eliminate any obstacles to its application

- Country profiles, questionnaires.
- Implementation legislation, modifications if necessary (in Hungary, about enforcement of taking over the child).

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## + Help to prepare a complete application

- Not a Convention obligation, but good practice.
- Legal advice,
- Supporting documents,
- Translation of documents.

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## Additional CA function under Brussels IIA

- Facilitate communications between courts, in particular for the application of Article 11(6) and (7) – overriding mechanism
  - If an order on non-return is made, the decision and supporting documents shall be forwarded to court proceeding or may proceed in a custody case.

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## The CA is not the applicant's lawyer

- Though helps the applicant, but not the applicant's lawyer.
- It helps to submit the application and participation in the procedure in another state.
- During the procedure it assists the court, if necessary, to find appropriate information about both parties.
- The CA is in contact with both parties and helps amicable resolution of the case, voluntary return or enforcement of court orders.

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## The CA does not decide the case

- The CA helps the initiation of the court case and does not decide the case.
- It may only reject the application „when it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded“ (Article 27). Direct application is still possible.

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# Different states, different societies, different Cas

More active and more passive Cas

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## International Child Abduction in Brussels Ila Regulation (Articles 10 and 11)

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## Contents of this session

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  - 3.2. Sub-paragraph (b)
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    - 3.2.3. Point (iv)
- 4. Article 11
  - 4.1. Article 11 and the Hague Convention
  - 4.2. Deadline
  - 4.3. The decision of the court of the country of abduction
  - 4.5. The priority of the court of habitual residence of the child
  - 4.6. The right of the child to be heard
- 5. Conclusion

# Legal notions

## Article 2

9. the term 'rights of custody' shall include rights and duties relating to the care of the person of a child, and in particular the right to determine the child's place of residence;
11. the term 'wrongful removal or retention' shall mean a child's removal or retention where:
- (a) it is in breach of rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention; and
  - (b) provided that, at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. Custody shall be considered to be exercised jointly when, pursuant to a judgment or by operation of law, one holder of parental responsibility cannot decide on the child's place of residence without the consent of another holder of parental responsibility

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## Article 10

- General rule: Article 8 - child's habitual residence at the time the court is seized
- Article 8 is overridden by special rules, like Article 10
- Article 10: In case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction

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## Article 10

The courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention retain their jurisdiction until the child has acquired a habitual residence in another Member State and:

- (a) each person, institution or other body having rights of custody has acquiesced in the removal or retention; or

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## Article 10

or

- (b) the child has resided in that other Member State for a period of at least one year after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child and the child is settled in his or her new environment and at least one of the following conditions is met:
  - (i) within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, no request for return has been lodged before the competent authorities of the Member State where the child has been removed or is being retained;
  - (ii) a request for return lodged by the holder of rights of custody has been withdrawn and no new request has been lodged within the time limit set in paragraph (i);
  - (iii) a case before the court in the Member State where the child was habitually resident immediately before the wrongful removal or retention has been closed pursuant to Article 11(7);
  - (iv) a judgment on custody that does not entail the return of the child has been issued by the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention.

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# Article 11

Articulation with the 1980 Hague Convention (article 11, section 1):

1. Where a person, institution or other body having rights of custody applies to the competent authorities in a Member State to deliver a judgment on the basis of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, in order to obtain the return of a child that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, paragraphs 2 to 8 shall apply.

7

# Article 11

- Expeditious proceedings and deadline (Article 11, Section 3):
3. The court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.

8

## Article 11

- Decision of the court of the country of abduction: preferably a return decision, but may also result in a retention order.
- Grounds provided for in the 1980 Hague Convention.
- Article 13 (b) of the 1980 Hague Convention: the return if the return represents a serious risk to the physical or mental health of the child or if places the child in an intolerable situation.

9

## Article 11

### Article 11

4. A court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.

10

## Article 11

Safeguard of the position of the person who made the request for return (Article 11, section 5):

5. A court cannot refuse to return a child unless the person who requested the return of the child has been given an opportunity to be heard.

11

## Article 11

Priority of the court of habitual residence of the child:

- Article 11, Section 6, 7 and 8

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# Article 11

## Article 11

6. If a court has issued an order on non-return pursuant to Article 13 of the 1980 Hague Convention, the court must immediately either directly or through its central authority, transmit a copy of the court order on non-return and of the relevant documents, in particular a transcript of the hearings before the court, to the court with jurisdiction or central authority in the Member State where the child was habitually resident immediately before the wrongful removal or retention, as determined by national law. The court shall receive all the mentioned documents within one month of the date of the non-return order.

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# Article 11

7. Unless the courts in the Member State where the child was habitually resident immediately before the wrongful removal or retention have already been seised by one of the parties, the court or central authority that receives the information mentioned in paragraph 6 must notify it to the parties and invite them to make submissions to the court, in accordance with national law, within three months of the date of notification so that the court can examine the question of custody of the child.

Without prejudice to the rules on jurisdiction contained in this Regulation, the court shall close the case if no submissions have been received by the court within the time limit.

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# Article 11

## Article 11

8. Notwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with Section 4 of Chapter III below in order to secure the return of the child.

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# Article 11

## Right of the child to be heard (Article 8 section 2)

2. When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity.

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## Recognition and Enforcement of Decisions on International Child Abduction

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Training Session No. 2  
Budapest (Hungary)  
29 March 2019

## Contents of this session

A double track-system for recognition and enforcement in parental responsibility cases

### 1) The “Standard Track” procedure

- Procedure
- Grounds for non recognition/enforcement

### 2) The “Fast track” procedure for “Brussels return orders”

- Decisions subject to the fast track
- Abolition of exequatur
- Certificate

### 3) Concluding remarks

## **A DOUBLE TRACK SYSTEM FOR RECOGNITION AND ENFORCEMENT IN PARENTAL RESPONSIBILITY CASES**

3

### Brussels IIa double track system

When given by the State of the child's habitual residence, decisions may be recognised and enforced under:

➤ **Standard Track** rules: Arts 21 + 28 ff

or

➤ **Fast Track** rules: Arts 11(8) and 42

4

## I) THE “STANDARD TRACK” PROCEDURE

5

### The **standard track** procedure

- Automatic recognition
- Exequatur → declaration of enforceability!



applies also to decisions given by the court of the child's habitual residence ordering that the child, unlawfully removed, must be returned

(CJEU 19 September 2018, *Hampshire County Council v C.E.* )

6

## Grounds for non recognition/enforcement (Art 23)

A judgment relating to parental responsibility shall not be recognised when:

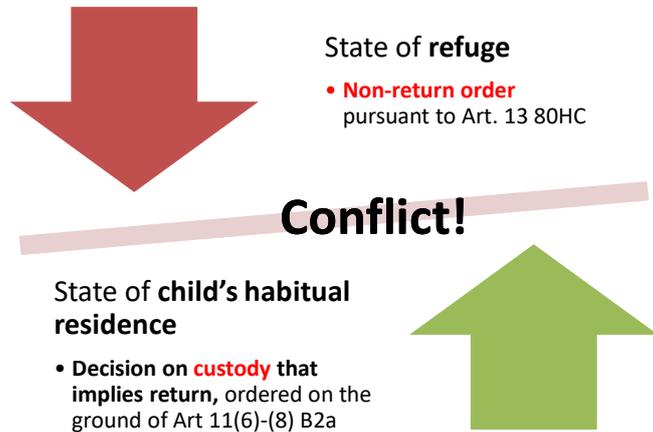
- a) recognition is manifestly contrary to public policy of the MS where recognition is sought, taking into account the best interests of the child;
- (b) the child was not given an opportunity to be heard (except in case of urgency), in violation of fundamental principles of procedure of the MS where recognition is sought;
- (c) given in default of appearance if the person in default was not served with the document commencing proceedings in sufficient time and in such a way as to enable that person to arrange for his or her defence → unless unequivocal acceptance of the judgment;
- (d) no opportunity to be heard given to the person claiming that the judgment infringes his or her parental responsibility (upon his/her request);
- (e) irreconcilability with a later judgment relating to parental responsibility given in the MS where recognition is sought;
- (f) irreconcilability with a later judgment on parental responsibility given in another MS or in the third State of the child's habitual residence, which fulfils the conditions necessary for its recognition in the MS where recognition is sought;
- (g) violation of procedure laid down in Art 56 for the child's placement in an institutional care or a foster family in another MS.

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## II) THE “FAST TRACK” PROCEDURE FOR “BRUSSELS RETURN ORDERS”

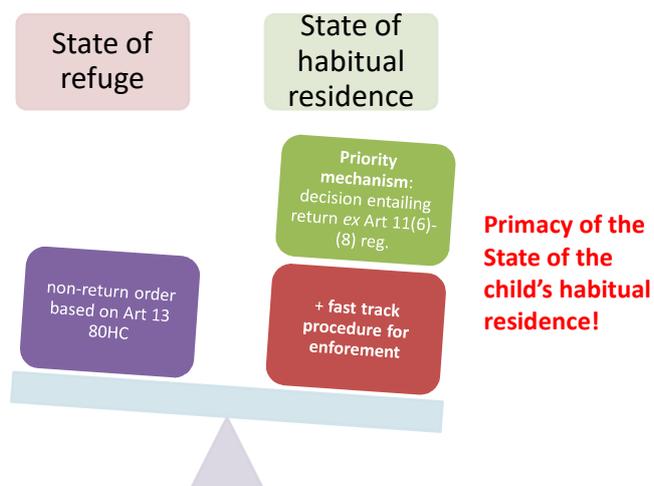
8

## The scenario...



9

## ... and its solution



10

## *Rationale* of the priority mechanism

The priority mechanism is intended to:

- **strengthen** the competence of the court of **habitual residence** → **natural judge of the child!**
- reinforce children' protection in a more integrated area, such as the EU → 1980 HC v Brussels *IIa*: **same objectives** but **different balance** btw. State of refuge – State of habitual residence

→ **Priority** to the **State of habitual residence**, should have the last word!

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## Requirements

- i. Hearing of the child → a serious opportunity should be given
- ii. Hearing of the parties → also of abducting parent
- iv. Consideration of reasons and evidence used by the court of the State of refuge → cooperation among courts for a better understanding of situation

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## *Nota Bene!*

- i. TIME! → huge responsibility on HR court:  
child's best interest v general policy of  
preventing abduction
- ii. Scope of competence of State of habitual  
residence

Not a proceeding on return ....

...but a full proceeding on custody

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## The **fast track** procedure

### 1) **Abolition of *exequatur***

- i. no need for a declaration of enforceability
- ii. no opposition to recognition and enforcement  
→ see *Povse*

+ **Certification** by the MS of origin pursuant to  
Art 42(2) →

the certificate **replaces** *exequatur* proceedings

### 2) **Enforceability** is grounded on Reg. also if not provided under national law and also if pending an appeal

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## The **rationale** of the fast track

The fast track procedure is meant to:

- strengthen the priority mechanism → the decision of the natural judge of the child (i.e. that of habitual residence) should not be rendered futile by lengthy court proceedings (*exequatur*)

→ **Time** is of essence!

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## **Conditions** to issue a certificate

Conditions to be cumulatively met

- 1) conflict btw. 2 decisions given in 2 different MSs
- 2) child's (serious) opportunity to be heard
- 3) parties' opportunity to be heard (esp. abducting parent)
- 4) taking account of the decision under Art 13 80HC → consideration of reasons for and evidence underlying the non-return order + reasons and evidence for overruling
- 5) information on specific measures for the protection of the child → translation needed!



The **State of habitual residence** ordering **custody and return** can issue the certificate!

**PS → NOT ALL decisions on return are granted a certificate!**

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# Contents: Standard form

ANNEX IV

## CERTIFICATE REFERRED TO IN ARTICLE 42(1) CONCERNING THE RETURN OF THE CHILD (1)

1. Member State of origin
2. Court or authority issuing the certificate
  - 2.1. Name
  - 2.2. Address
  - 2.3. Tel./fax/e-mail
3. Person to whom the child has to be returned (to the extent stated in the judgment)
  - 3.1. Full name
  - 3.2. Address
  - 3.3. Date and place of birth (where available)
4. Holders of parental responsibility (2)
  - 4.1. Mother
    - 4.1.1. Full name
    - 4.1.2. Address (where available)
    - 4.1.3. Date and place of birth (where available)
  - 4.2. Father
    - 4.2.1. Full name
    - 4.2.2. Address (where available)
    - 4.2.3. Date and place of birth (where available)
  - 4.3. Other
    - 4.3.1. Full name
    - 4.3.2. Address (where available)
    - 4.3.3. Date and place of birth (where available)

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5. Respondent (where available)
  - 5.1. Full name
  - 5.2. Address (where available)
6. Court which delivered the judgment
  - 6.1. Name of Court
  - 6.2. Place of Court
7. Judgment
  - 7.1. Date
  - 7.2. Reference number
8. Children who are covered by the judgment (1)
  - 8.1. Full name and date of birth
  - 8.2. Full name and date of birth
  - 8.3. Full name and date of birth
  - 8.4. Full name and date of birth
9. The judgment entails the return of the child
10. Is the judgment enforceable in the Member State of origin?
  - 10.1. Yes
  - 10.2. No
11. The children were given an opportunity to be heard, unless a hearing was considered inappropriate having regard to their age or degree of maturity
12. The parties were given an opportunity to be heard
13. The judgment entails the return of the children and the court has taken into account in issuing its judgment the reasons for and evidence underlying the decision issued pursuant to Article 13 of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
14. Where applicable, details of measures taken by courts or authorities to ensure the protection of the child after its return to the Member State of habitual residence
15. Names of parties to whom legal aid has been granted

Done at ..... date .....

Signature and/or stamp

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## Can the certificate be challenged ?

- Does further appeal or legal proceedings on return in the MS of refuge matter?  
**No!** (see *Rinau*)
- Other remedies against an incorrectly granted certificate?  
**No!** → should be challenged in the State of HR  
except for mere **rectification** of typing or similar errors (Art. 43 reg.)
- **No** opposition possible even in case of
  - subsequent change of circumstances (see *Povse*)
  - violation of fundamental rights (see *Zarraga*)

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## Effects of certification

Return order + certificate = enforceable title



- No appeal or stay of proceedings
- **Only 1** reason to refuse enforcement → i.e. irreconcilability with a subsequent enforceable judgment (Art 47(2) 2<sup>nd</sup> sent.)
- Enforcement cannot be refused because, due to a subsequent change of circumstances, it might be seriously detrimental to the best interest of the child (see *Povse*)

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## Enforceability v Enforcement

Enforceability

Arts 28  
and 42  
B2a

Enforcement  
procedure

Art 47 B2a  
→ *lex fori*

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### Enforcement procedure (Art. 47)

- Enforcement is governed by national law of the MS of enforcement (*lex fori*)
- same conditions as a national decision apply
- Relevant principles set forth by the CJEU → *effet utile* reg.
- Some principles also set by the ECtHR in cases of breach of Art 8 ECHR
  - obligation to equip itself with adequate and effective means (see e.g. the cases *Maire v. Portugal*, 26 June 2003; *Ignaccolo-Zenide v. Romania*, 25 January 2000)
  - duty to make adequate and effective efforts to secure the return of the child to be reunited with parent (see e.g. *Santos Nunes v. Portugal*, 22 May 2012; *Iglesias Gil and A.U.I. v. Spain*, 29 July 2003)

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## Documents to be submitted

The party seeking enforcement must submit:

- 1) copy of the decision
- 2) Art 42 certificate
- 3) *If applicable*: a translation of the adequate arrangements taken to ensure the child's safe return pursuant Art. 11(4)

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## **CONCLUSIONS**

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## Concluding remarks

Does the system work? Does it work well?

- *e.g. Povse and Zarraga* cases → **Time** is a crucial issue! → huge responsibility on HR court to balance individual child's best interest v general policy of preventing abduction
- System based on cooperation among courts
- MSs do not enforce decisions against the child's will
- need for more effective instruments → pressure on abducting parents to discourage non-compliance: e.g. monetary penalties (see *Bohez v. Wiertz*)

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- Recast COM(2016) 411 fin. → Council General Agreement 12 Dec. 2018
  - Art 11(6)-(8) → Art 21 ff recast
  - Fast track procedure confirmed!
  - General abolition of *exequatur* → replaced by certification
  - Minimum procedural standards for enforcement
  - Uniform grounds for refusing enforcement → also for return orders!
  - Possibility to challenge and revoke the certificate

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## CJEU relevant case-law

- 11 July 2008, *Rinau*, Case C-195/08 PPU
- 1 July 2010, *Povse v Alpage*, Case C-211/10 PPUE
- 22 December 2010, *Aguirre Zarraga v Pelz*, Case C-491/10 PPU
- 19 September 2018, *Hampshire County Council v C.E. and N.E.*, joined Cases C-325/18 PPU and 375/PPU
- 9 September 2015, *Bohez v Wiertz*, Case C-4/14

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## Thank you!

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## **CASE STUDIES**

## Case Study No. 1

### MAIN TOPIC

International Child Abduction: general overview

### FACTS

- António and Beatriz, a Brazilian couple, who live in Portugal. They have been married for 10 years and decided to move to Portugal 8 years ago.
- They have a 4 years old child, Tomás, born in Portugal, that has Brazilian and Portuguese nationality.
- António and Beatriz decided to get a divorce and the divorce proceedings are still pending.
- Beatriz takes Tomás to visit their relatives in Brasil. António has agreed with the visit to Brazil during the summer vacation for two weeks.
- Beatriz and Tomás did not return as planned. António tried to phone to Beatriz, unsuccessfully, until he gets an e-mail, on 15 September 2018, from Beatriz, where she states that she does not like Portugal and she will stay with Tomás in Rio de Janeiro. She also states that she already rent an apartment and she is looking for a school for Tomás.

### Related questions

- What is the legal instrument applicable?
- What can António do?

### VARIATION No. 1

Consider that no amicable solution was found.

### Related questions

- What should be done?

### LEGAL INSTRUMENT(S) TO BE APPLIED

Regulation No 2201/2003

1980 Hague Convention

## Case Study No. 2

### MAIN TOPIC

Return Proceedings and Exceptions to Return

### FACTS

Edina is Hungarian national. Her partner Nick is British. The couple met in Brussels where both worked for the EU Commission. In 2002, their first son John was born and in 2013 their second son Adam. In 2016, the couple started living apart. However, in January 2017 their daughter Eva was born.

After separation, children mostly lived with the mother, however, they would often stay with the father over the weekends or when the mother travelled because of her work. In summer 2018, Edina's contract with the EU Commission ended, at the same time she found out that she inherited small family business in Budapest.

On 30<sup>th</sup> August 2018, Edina called Nick informing that she is leaving Brussels. She took all three children and all her belongings and moved to Budapest. On 1<sup>st</sup> September, John started French school there, Adam and Eva were placed in Hungarian pre-school. Edina began working with the family business and with her active personality the business blossomed.

In the beginning the father hesitated to start abduction proceedings. But in March 2019, Nick turned 50 and this was a breaking point for him. Nick understood that children are all he has and he decided to get them back. Nick hires you as his lawyer. Edina opposes return.

### Related questions

1. Can Nick start abduction proceedings? How and where this should be done?
2. Do we have child abduction here? What importance should be attached to the fact that the couple was not married? Were the custody rights exercised properly by the father?
3. Would the situation change if Nick would not start abduction proceedings until 1 September 2019? Under what conditions return could then be refused?

### Question block 1: Father's consent? Children's integration? Child objections?

Edina claims that she informed the father that she intends to leave with children and he did not object.

Moreover, almost 7 months passed since they moved to Hungary. In that time children settled in the new environment. John goes to school, Adam and Eva attend day care, moreover, Adam

was already accepted to school which he will start in September. All children considerably improved their Hungarian (in fact Eva speaks only Hungarian), have many friends here. In addition, they have many extended family members in Budapest who have regular contacts with children.

4. Was there father's consent to removal? How consent should be expressed?
5. Can return be refused due to children's integration? Would Edina have more chances to persuade the court in non-return if return proceedings would be started in October 2019?
6. Should the kids' opinion as to their return be heard? What if John and Adam oppose return?

### **Question block 2: Grave risk exception?**

Edina claims they separated due to the fact that the father became mean, aggressive and started abusing her. She is psychologically distressed and worries that the father might also be aggressive towards the children. In addition, he started drinking beer in big quantities and often.

Edina also considers that due to Brexit there are almost no chances that Nick's employment with the EU will continue. As a result, neither she, nor him will have job in Brussels. In Budapest, on the other hand, family's economic situation is much better. She owns wonderful large apartment in the city centre and can afford much better extra-curriculum activities for children.

7. Could abuse of the mother and father drinking result in grave risk exception? Also consider possible use of adequate arrangements (Article 11(4) of Regulation 2201/2003).
8. Could economic situation be linked with 'grave risk' exception?

### **Question block 3: Grave risk exception? Separation from the mother and separation of siblings as 'intolerable situation'?**

Edina argues that for John this will be the last year at school thus he should stay in Hungary. Changing school again would be very bad for his results. She also has to stay due to her business here and no job in Brussels. And returning small Adam and little Eva (she is still being breastfeed) would place children in 'intolerable situation' as they would need to be separated from her and siblings.

9. Article 13(b) exception to be invoked?
10. How important is the possible separation from the mother?
11. How important is the possible separation of siblings here? Could this mean the application of grave risk exception?

**LEGAL INSTRUMENT(S) TO BE APPLIED**

Regulation No 2201/2003

1980 Hague Convention on Abduction

## Case Study No. 3

### MAIN TOPIC

Article 10 and 11 Brussels IIa Regulation

### FACTS

- António and Beatriz, a Portuguese couple, who live in Paris. The divorce proceedings are pending.
- Beatriz takes their 4 years old child, Mathieu (Portuguese nationality, born in Paris), to Portugal to visit their relatives, for a short two week vacations.
- António agreed to the visit.
- After two weeks, they did not return as planned.
- António phones Beatriz, and she tells him that she and Mathieu are going to stay in Portugal and they are not going back to Paris.
- Beatriz has started looking for an apartment and a school for Mathieu.

### Related questions

- What can António do?
- What documents should he submit?

### VARIATION No. 1

The Central Authority of France contacted the Central Authority in Portugal.

The Central Authority in Portugal contacted Beatriz and attempted to establish the voluntary return of the child, with no success.

The Portuguese Central Authority assists in instituting legal proceedings for the return of the child.

### Related questions

- What should be done, taking into consideration that the Portuguese court has ruled that Mathieu must not return, because the abduction took place more than a year

earlier and the child has become settled in his or her new environment (Art. 12 Hague Convention).

- What should be done, taking into consideration that the Portuguese court has ruled that Mathieu must not return, because There is a grave risk that returning the child would expose him to physical or psychological harm, or would place him in an intolerable situation, while no adequate measures to protect the child have been taken in the State to which the child is to be returned.

<b>LEGAL INSTRUMENT(S) TO BE APPLIED</b>
--

Regulation No 2201/2003

1980 Hague Convention

## Case Study No. 4

### MAIN TOPIC

International child abduction: recognition and enforcement of judgments on child abduction.

### FACTS

Marina, an Italian national, and Daniel, a Hungarian national, met in Italy in May 2010. They immediately fell in love and moved to live together in Milan (Italy). In December 2011 they got married in Italy.

At the beginning of 2013 Daniel receives an incredible job offer from an important company in Budapest. Marina agrees to move to Hungary, also because she works as a freelance reporter and she can easily manage to do her job everywhere.

Daniel flies to Budapest, rents an apartment and starts his new job on 1 March 2013. Marina joins him a month later. Immediately after her arrival in Hungary, she discovers to be pregnant and on 2 December 2013 gives birth to a baby boy, Thomas.

Soon the spouses' relation begins to deteriorate due to Daniel's absence: although he loves his family very much, he works more than 10 hours a day, including the weekends, and goes very often on business trips abroad.

Tired of fighting, the spouses agree that spending separate holidays could help them to think over their relation and decide whether how to continue. On 1 July 2014, Marina obtains Daniel's consent to leave Hungary with their 8-month son for a two-month holidays at her parents' house in Tuscany (Italy) with the promise to return to Budapest at the end of August. Marina travels with Thomas to Italy, where she has remained ever since.

From September 2014 on Daniel repeatedly phones Marina asking her to return to Budapest with Thomas. She promises to think over his proposal and asks to stay until December. He then flies twice to Italy to see his son and persuade Marina to go back with him.

Marina and Thomas however did not return to Hungary. She texts her husband saying: "I and Thomas are settled here in Italy. Coming back to Hungary would be extremely detrimental for both of us as we will be completely alone".

Daniel seeks for legal advice and on 1 March 2015 files an application to the Italian Central Authority in order to obtain the return of his son to Hungary, pursuant to the 1980 Hague Convention. An application for return is lodged with the Court in Florence on 1 July 2015.

At the same time, on 1 September 2015, Daniel applies also to the court in Budapest seeking for divorce from Marina and the sole custody of their son Thomas.

On 1 February 2016 the Italian Court seized for child abduction hands down a decision refusing the return of the child on the following grounds: a) the application was filed more than a year from the removal of the child, and the child is now settled, as the report made by the courts experts shows; b) when in Hungary the father was not effectively exercising his parental rights, he gave no daily care to Thomas; c) the child – who in the judge's opinion is too young to be heard directly – was heard indirectly through social services and their report says he proved happy and very well integrated in his mother's family network so that d) separating from the mother, his only reference, to return to Hungary with a father he barely knows and with whom he has no strong emotional ties would risk to cause him serious psychological harm.

On 1 February 2016 Daniel lodges the Budapest court, already seised for divorce and parental responsibility, with an application for overruling the Italian non-return order pursuant to Art 11(8) Brussels IIa. He asks that the decision is properly 'reviewed' as he claims that none of the grounds used by the Italian court to refuse return is founded.

On 1 April 2016 the Budapest court grants divorce and provisionally awards joint custody to both parents over Thomas, therefore commanding his immediate return to Hungary. The court upholds Daniel statement and says that the Italian decision was wrongly taken.

### Related questions

1. Can the order of the Budapest court be qualified as a priority decision under Art 11(8) and prevail over the Italian non-return order (even if provisional)?
2. Can such decision be enforced in Italy?

### VARIATION No. 1

On 1 May 2016 the Budapest court gives a final decision on parental responsibility, confirming its previous provisional order and, at Daniel's request, issues a certificate under Art 42 Brussels IIa. Daniel seeks to enforce such decision in Italy but Thomas does not return to Hungary, either alone or with her mother.

### Related questions

1. Under which respect is this decision different from the previous? What should its content be, in order to be consistent with the Regulation?
2. Can an Article 42 certificate be issued? What are the effects thereof?
3. Can the decision be challenged? Where? On what grounds?
4. Can the certificate be challenged? Where? On what grounds?
5. What is the procedure that Daniel should follow to enforce this decision? How can Daniel be sure that the child will effectively be returned?

### VARIATION No. 2

Some days later, on 20 September 2016, Marina lodges an application with the Court in Florence, the court of Thomas' habitual residence since July 2014, seeking sole custody over her son and, consequently, asking the court to refuse recognition and enforcement of the Hungarian judgment of 1 May 2016.

On 20 November 2016, the Florence court issues a provisional order awarding the mother exclusive custody over Thomas and granting the father access rights to his son.

### Related questions

1. Can the Italian provisional order concerning custody over the child affect the recognition and enforcement of the Hungarian certified judgment entailing the return of the child?

### LEGAL INSTRUMENT(S) TO BE APPLIED

Regulation No 2201/2003



## **LEGAL TERMINOLOGY**

(other language versions are available at this link  
[www.univr.it/class4eu/index.php/materials](http://www.univr.it/class4eu/index.php/materials))

## Glossary of legal terminology

<b>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</b>	
<b>Matrimonial matters</b>	divorce, legal separation or marriage annulment
<b>Parental responsibility matters</b>	the attribution, exercise, delegation, restriction or termination of parental responsibility
<b>court</b>	all the authorities in the Member States with jurisdiction in the matters falling within the scope of this Regulation
<b>judge</b>	the judge or an official having powers equivalent to those of a judge in the matters falling within the scope of the Regulation
<b>Member State</b>	all Member States with the exception of Denmark
<b>judgment</b>	a divorce, legal separation or marriage annulment, as well as a judgment relating to parental responsibility, pronounced by a court of a Member State, whatever the judgment may be called, including a decree, order or decision
<b>Member State of origin</b>	the Member State where the judgment to be enforced was issued
<b>Member State of enforcement</b>	the Member State where enforcement of the judgment is sought
<b>parental responsibility</b>	all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and rights of access
<b>holder of parental responsibility</b>	any person having parental responsibility over a child
<b>rights of custody</b>	rights and duties relating to the care of the person of a child, and in particular the right to determine the child's place of residence
<b>rights of access</b>	the right to take a child to a place other than his or her habitual residence for a limited period of time
<b>wrongful removal or retention</b>	a child's removal or retention where:

	<p>(a) it is in breach of rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention; and</p> <p>(b) provided that, at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. Custody shall be considered to be exercised jointly when, pursuant to a judgment or by operation of law, one holder of parental responsibility cannot decide on the child's place of residence without the consent of another holder of parental responsibility.</p>
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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	
<b>maintenance obligations</b>	maintenance obligations arising from a family relationship, parentage, marriage or affinity
<b>decision</b>	a decision in matters relating to maintenance obligations given by a court of a Member State, whatever the decision may be called, including a decree, order, judgment or writ of execution, as well as a decision by an officer of the court determining the costs or expenses. For the purposes of Chapters VII and VIII, the term 'decision' shall also mean a decision in matters relating to maintenance obligations given in a third State
<b>court settlement</b>	a settlement in matters relating to maintenance obligations which has been approved by a court or concluded before a court in the course of proceedings
<b>authentic instrument</b>	<p>(a) a document in matters relating to maintenance obligations which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:</p> <p>(i) relates to the signature and the content of the instrument, and</p> <p>(ii) has been established by a public authority or other authority empowered for that purpose; or,</p> <p>(b) an arrangement relating to maintenance obligations concluded with administrative authorities of the Member State of origin or authenticated by them</p>
<b>Member State of origin</b>	the Member State in which, as the case may be, the decision has been given, the court settlement has been approved or concluded, or the authentic instrument has been established
<b>Member State of enforcement</b>	the Member State in which the enforcement of the decision, the court settlement or the authentic instrument is sought

<b>requesting Member State</b>	the Member State whose Central Authority transmits an application pursuant to Chapter VII
<b>requested Member State</b>	the Member State whose Central Authority receives an application pursuant to Chapter VII
<b>2007 Hague Convention Contracting State</b>	a State which is a contracting party to The Hague Convention of 23 November 2007 on the International Recovery of Child Support and other Forms of Family Maintenance (hereinafter referred to as the 2007 Hague Convention) to the extent that the said Convention applies between the Community and that State
<b>court of origin</b>	the court which has given the decision to be enforced
<b>creditor</b>	any individual to whom maintenance is owed or is alleged to be owed
<b>debtor</b>	any individual who owes or who is alleged to owe maintenance
<b>court</b>	<p>Includes administrative authorities of the Member States with competence in matters relating to maintenance obligations provided that such authorities offer guarantees with regard to impartiality and the right of all parties to be heard and provided that their decisions under the law of the Member State where they are established:</p> <p>(i) may be made the subject of an appeal to or review by a judicial authority; and</p> <p>(ii) have a similar force and effect as a decision of a judicial authority on the same matter.</p> <p>These administrative authorities shall be listed in Annex X. That Annex shall be established and amended in accordance with the management procedure referred to in Article 73(2) at the request of the Member State in which the administrative authority concerned is established.</p>
<b>domicile</b>	For the purposes of Articles 3, 4 and 6, it replaces the concept of 'nationality' in those Member States which use this concept as a connecting factor in family matters. For the purposes of Article 6, parties which have their 'domicile' in different territorial units of the same Member State shall be deemed to have their common 'domicile' in that Member State.

**Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation**

<b>scope</b>	This Regulation shall apply, in situations involving a conflict of laws, to divorce and legal separation
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<b>participating Member State'</b>	a Member State which participates in enhanced cooperation on the law applicable to divorce and legal separation by virtue of Decision 2010/405/EU, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) TFEU
<b>court</b>	all the authorities in the participating Member States with jurisdiction in the matters falling within the scope of this Regulation

<p><b>Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, and</b></p> <p><b>Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships</b></p>	
<b>matrimonial property regime</b>	a set of rules concerning the property relationships between the spouses and in their relations with third parties, as a result of marriage or its dissolution.
<b>matrimonial property agreement</b>	any agreement between spouses or future spouses by which they organise their matrimonial property regime.
<b>authentic instrument</b>	<p>a document in a matter of a matrimonial property regime which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which</p> <p>(i) relates to the signature and the content of the authentic instrument; and</p> <p>(ii) has been established by a public authority or other authority empowered for that purpose by the Member State of origin.</p>
<b>registered partnership</b>	the regime governing the shared life of two people which is provided for in law, the registration of which is mandatory under that law and which fulfils the legal formalities required by that law for its creation.
<b>property consequences of a registered partnership</b>	the set of rules concerning the property relationships of the partners, between themselves and in their relations with third parties, as a result of the legal relationship created by the registration of the partnership or its dissolution.
<b>partnership property agreement</b>	any agreement between partners or future partners by which they organise the property consequences of their registered partnership.

Hague Convention on the civil aspects of international child abduction of 25 October 1980	
<b>wrongful removal or retention</b>	<p>where</p> <p>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</p> <p>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.</p>
<b>rights of custody</b>	rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence
<b>rights of access</b>	the right to take a child for a limited period of time to a place other than the child's habitual residence

Hague Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children of 19 October 1996	
<b>parental responsibility</b>	parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child
<b>measures directed to the protection of the person or property of the child</b>	<p>a) the attribution, exercise, termination or restriction of parental responsibility, as well as its delegation;</p> <p>b) rights of custody, including rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence;</p> <p>c) guardianship, curatorship and analogous institutions;</p> <p>d) the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;</p> <p>e) the placement of the child in a foster family or in institutional care, or the provision of care by kafala or an analogous institution;</p> <p>f) the supervision by a public authority of the care of a child by any person having charge of the child;</p> <p>g) the administration, conservation or disposal of the child's property.</p>

<b>wrongful removal or retention</b>	<p>where:</p> <p>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</p> <p>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.</p>
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<b>Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and Hague Protocol on the Law Applicable to Maintenance Obligations of 23 November 2007</b>	
<b>creditor</b>	an individual to whom maintenance is owed or is alleged to be owed
<b>debtor</b>	an individual who owes or who is alleged to owe maintenance
<b>legal assistance</b>	the assistance necessary to enable applicants to know and assert their rights and to ensure that applications are fully and effectively dealt with in the requested State. The means of providing such assistance may include as necessary legal advice, assistance in bringing a case before an authority, legal representation and exemption from costs of proceedings
<b>agreement in writing</b>	an agreement recorded in any medium, the information contained in which is accessible so as to be usable for subsequent reference
<b>maintenance arrangement</b>	an agreement in writing relating to the payment of maintenance which i) has been formally drawn up or registered as an authentic instrument by a competent authority; or ii) has been authenticated by, or concluded, registered or filed with a competent authority, and may be the subject of review and modification by a competent authority
<b>vulnerable person</b>	a person who, by reason of an impairment or insufficiency of his or her personal faculties, is not able to support him or herself

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