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Test-the-Training Session No. 2

BRAGA (PORTUGAL)

DAY 2

27 November 2018

TRAINING PACKAGE

Programme
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Bibliography

Drafted by all Partners (UNIVR, UNIMIB, UMINHO, ELTE and TEISE)

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

Test the Training Session No. 2

Braga (Portugal)

26-27 November 2018

PROGRAMME

DAY 2

27 November 2018

09:30 – 10:40	**International Child Abduction: general overview** Anabela Gonçalves
10:40 – 11:00	*Coffee Break*
11:00 – 13:00	**Return Proceedings and Exceptions to Return** Agne Limante
13:00 – 14:30	*Lunch break*
14:30 – 16:00	**International Child Abduction in Brussels IIa Regulation (Articles 10 and 11)** Anabela Gonçalves
16:00 – 16:30	*Coffee break*
16:30 – 18:00	**Recognition and enforcement of decisions in international child abduction** Sara Bernasconi

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PRESENTATIONS

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Partnership

International Child Abduction: General Overview

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Test-the-Training Session No. 2
Braga (Portugal)
26-27 November 2018

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

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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 IIa Regulation).
- Convention of 25 October 1980 on the civil aspects of international child abduction (Hague Convention).

5

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 3rd State to theEU to an EU Member State, or from an EU Member State to a Hague Convention Contracting State 3rd 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».

8

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.

9

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

10

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://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.

17

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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Partnership

Università di Verona, Dipartimento di Scienze Giuridiche

Università degli Studi di Milano Bicocca

Universidade do Minho, Escola de Direito

ELTE Law, Faculty of Law

Lietuvos Teisės Institutas

Return Proceedings and Exceptions to Return

Dr. Agne Limante
Senior researcher
Law Institute of Lithuania

Test-the-Training Session No. 2
Braga (Portugal)
26-27 November 2018

Main contents

- Lawyer's checklist of questions in case of alleged abduction
- Legal instruments to be applied
- To what institutions to refer?
- Role of central authorities
- Return procedure
- Exceptions to return

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The new client Tomas

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?

Lawyer's checklist of questions in case of alleged child abduction

- 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?
- Why did the abduction happened?
- Has the client already applied to some institution?

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

RATHER RARE

1980 Hague Convention and Regulation Brussels IIa

- B2a builds upon 1980 HC, however, it strengtens 1980 HC rules amongs 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
- 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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Our client Tomas

Tomas claims that his child was abducted to another country. He has shared custody rights.

He wants the child back.

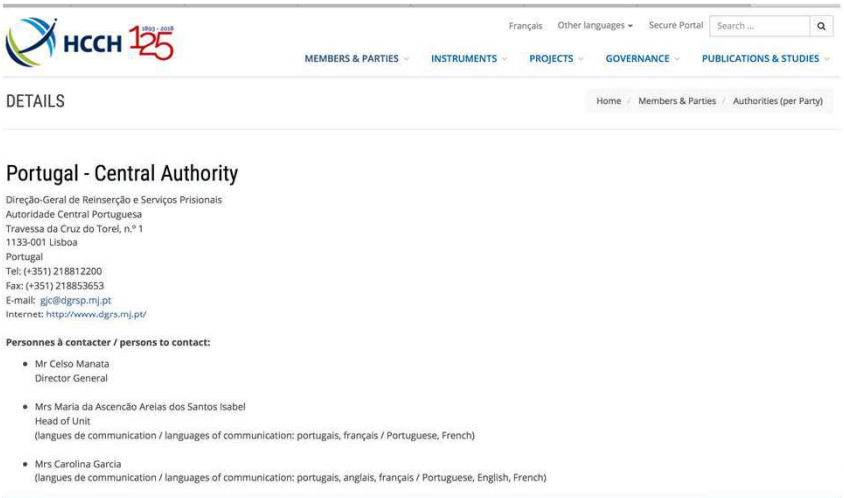
He is not even sure where the child is.

How to start the return proceedings?

9

Central authority

FINDING:
https://www.hcch.net/en/instruments/conventions/authorities1/?cid=24



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Role of the Central Authority

- Any person, institution, body claiming that a child has been removed or retained in breach of custody rights may apply
  - to the CA of the child's habitual residence, OR
  - to the CA of any other Contracting State (state of refuge).
- Application is **standardized**, available online
- Central Authority
  - engages with volunary return;
  - forwards the application to judicial / administrative body
  - Other help (advises as to legal aid, etc).

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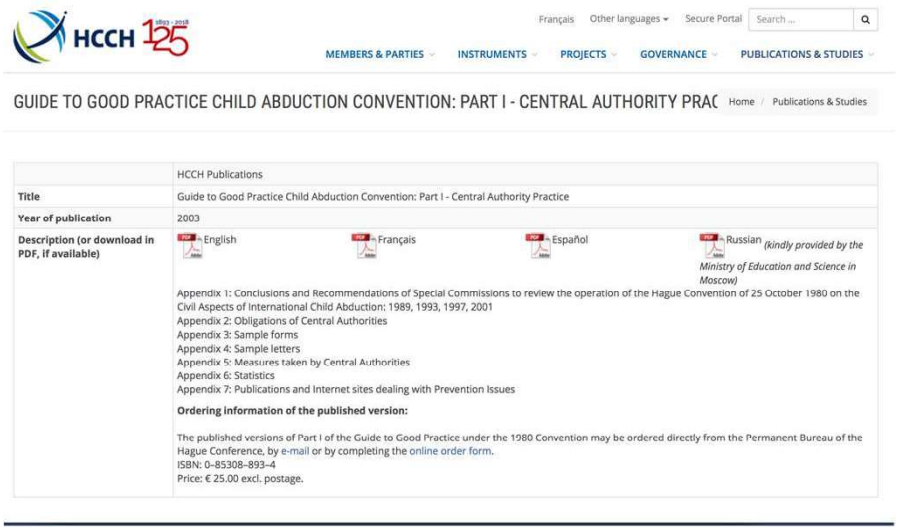
See: Guide to Good Practice under the 1980 HC PART I - CENTRAL AUTHORITY PRACTICE



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

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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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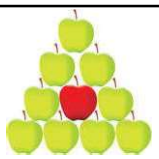
Exceptions to return



- 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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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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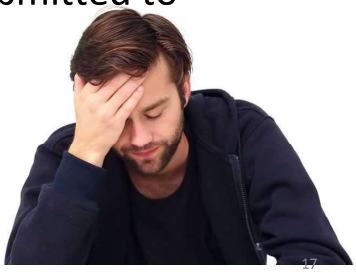
Tomas finds his child in Lithuania

Within 5 months from alleged abduction, with the help of Portuguese Central Authority and police, Tomas finds that his child is in Lithuania.

He hires Lithuanian lawyer Marius and in a month return application is submitted to Vilnius District court.

The mother argues child is already settled in Lithuania and return should be refused in the interest of the child.



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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 expresse 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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Tomas faces mother's arguments

Child's mother states that Tomas has never exercised his custody rights. He saw this child very rarely, never even changed diapers or bathed him.

Also, she has his message received via Viber where he writes: "I am tired of you. Go live with your lover and be happy".

- Does this amount to non-exercise of custody rights?
- Has Tomas allowed child's removal?

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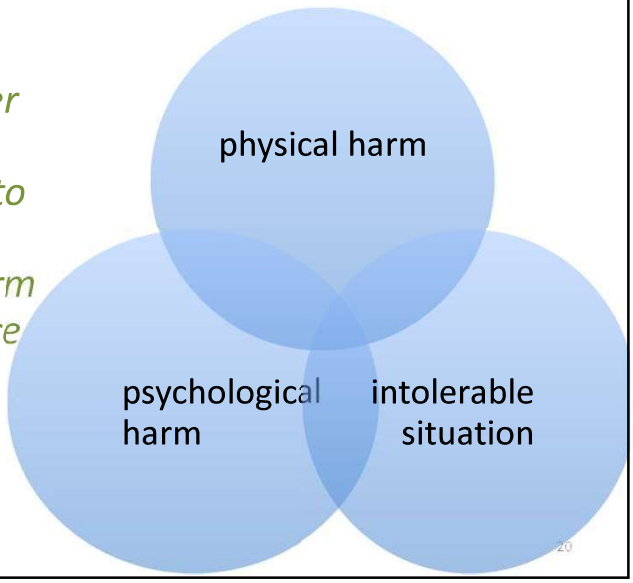
Grave risk exception – Art 13b

"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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Is Tomas a cause for a grave risk?

The mother claims that Tomas is a very bad person and she is afraid of him. He has criminal record (for burglary) and has a hunting weapon.

He often shouts at her saying bad things in front of the child. Plus she shows the child a bad example as is often drunk.

- Do you think there is a ground to refuse return on grave risk exception?
- What evidence could be given here?

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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

After the court's decision

Yes, child should be returned

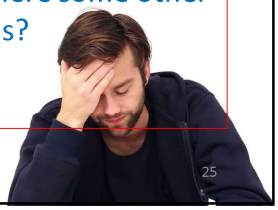
Lithuanian court finally rules on return of the child.

- What are the further steps?

No, return is refused

Lithuanian court refuses return of the child.

- What would you suggest Tomas? Is there some other legal options?



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Partnership

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LIETUVOS TEISĖS INSTITUTAS

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

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Test-the-Training Session No. 2
Braga (Portugal)
26-27 November 2018

Contents of this session

- 1. Justification for international child abduction in Brussels IIa Regulation
- 2. Legal notions
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- 3.2. Sub-paragraph (b)
- 3.2.1. Points (i) and (ii)
- 3.2.2. Point (iii)
- 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

3

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

4

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.

6

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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Partnership

Recognition and Enforcement of Judgments on International Child Abduction

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Post-doc Research Fellow in Private International Law
(University of Milano-Bicocca, Law School)

Test-the-Training Session No. 2
Braga (Portugal)
26-27 November 2018

Contents of this session

1) Preliminary remarks
2) The priority mechanism set forth by Art 11(6)-(8) Brussels IIa
   - How does it work?
   - Its *rationale*
   - Open issues
3) The Standard Track procedure
4) The "Fast track" procedure for "Art 11(8) return orders"
   - Judgements subject to the fast track
   - Abolition of exequatur
   - Certificate
5) Concluding remarks

2

PRELIMINARY REMARKS

3

Scope of presentation

- **1980 Hague Convention** →
  - centred on voluntary compliance
  - jurisdiction of the State of refuge to decide on abduction
  → **NO need for rules on recognition and enforcement**
- **Brussels II*a* regulation**: system based on 1980 Hague Conv. BUT integrated and modified → assisted with **rules on recognition and enforcement of judgments concerning cases of child abduction**

4

Art 11(6)-(8) Brussels IIa

THE PRIORITY MECHANISM

How does it work?

STATE OF REFUGE

i. issues a non-return order grounded on Art 13

ii. transmits *immediately* (max. 30 days) to court of State of HR, directly (preferred) or through CA: 1) copy of decision, 2) transcript of hearings, 3) all other relevant documents (social services, psychologist reports…)

STATE OF HR

i. The CA or the Court of State of HR notifies to parties and gives them 3 months to file submissions

ii. Parties' reaction

a) No submission: the case closes

b) Submission (from any of the parties): the court examines the "question of custody of the child"

- **IF** the court finds (custody should be given to the LBP OR to the abducting parent BUT) child should not be removed from HR → orders RETURN
- **IF** the court finds child should not return form State of refuge → REFUSES to order return

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 → **same objectives** but **different balance** from the 1980 HC betw. State of refuge **–** State of habitual residence

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

7

Open issues

i. Notification/communication to the parties → what does it happen after?

ii. Scope of competence of State of habitual residence
   a) a case on return only?
   b) a case on custody

8

Open issues

i. Hearing of the child → serious opportunity

ii. Hearing of the parties → abducting parent

iv. Consideration of the reasons and evidence used by the court of the State of refuge

v. Enforcement

- enforceability → always!
- certificate → only if certain conditions are met!

vi. TIME! → huge responsibiliy on HR court: child's best interest *v* general policy of preventing abduction

9

THE DOUBLE TRACK SYSTEM FOR RECOGNITION AND ENFORCEMENT IN CHILD ABDUCTION CASES

10

Brussels II*a* double track system

Brussels II*a* → judgments given by the courts of the child's habitual residence may be recognised and enforced either under

- Standard Track rules (Arts 21 + 28 ff)
- Fast Track rules Arts 11(8) and 42

11

THE "STANDARD TRACK" PROCEDURE FOR RECOGNITION

12

The standard track procedure

Stardard track procedure:

- Automatic recogntion
- Exequatur → declaration of enforceability!

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

(see 19 September 2018, *Hampshire County Council v C.E. and N.E.*)

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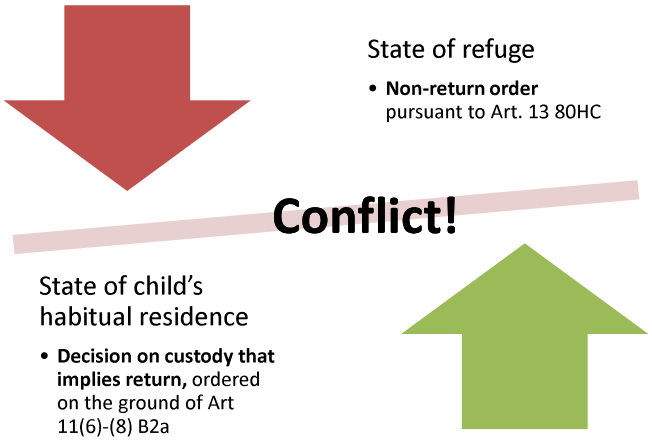
THE "FAST TRACK" PROCEDURE FOR "BRUSSELS RETURN ORDERS"

14

The scenario…



State of refuge

- **Non-return order** pursuant to Art. 13 80HC

Conflict!

State of child's habitual residence

- **Decision on custody that implies return,** ordered on the ground of Art 11(6)-(8) B2a

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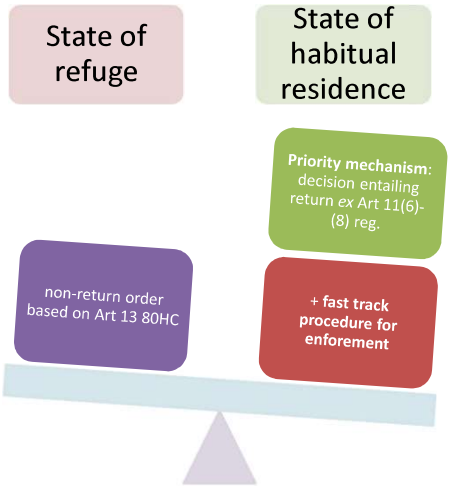
… and its solution



Primacy of the State of the child's habitual residence!

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Fast track procedure

1) **Abolition of *exequatur***
   i. no need for a declaration of enforceability
   ii. no possibility to contest (oppose) recognition and enforcement → see *Povse*

   \+ **Certification** by the MS of origin pursuant to Art 42(2) → the certificate **replaces** exequatur proceedings

2) **Enforceability** grounded on Reg. <u>even if not provided for by national law</u> and notwhitstanding any 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 the State of habitual residence, should not be rendered futile by lenghty court proceedings (exequatur)

→ **Time** is of essence!

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Conditions to issue a certificate

Conditions to be cumulatively met

1) conflict betw. 2 judgments 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!

→ NOT ALL decisions on custody are granted a certificate!

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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 under Art. 43 reg.

- **No** opposition possible even in case of violation of fundamental rights (see *Zarraga)*

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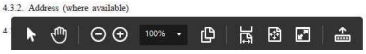
Contents: Standard form

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



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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 (3)
   - 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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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) 2nd 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*)

23

What if a certificate has been issued in violation of Art 42?

A return order issued under Article 11(8) must be enforced <u>even if it is rendered in violation of the requirements provided in Article 42</u>

The court in a MS where enforcement is sought:

- may neither examine the correctness of the decision
- nor may it refuse the enforcement even if the conditions in Art 42 have been clearly disregarded or incorrectly applied

(CJEU *Zarraga* 2010)

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Documents to be submitted for enforcement (Art 45)

The party seeking enforcement must submit

1) copy of the judgment
2) Art 42 certificate
3) certified translation into one of the official languages of the MS of enforcement of arrangements for implementing the measures taken to ensure the child's return (Article 42(1) point 14)

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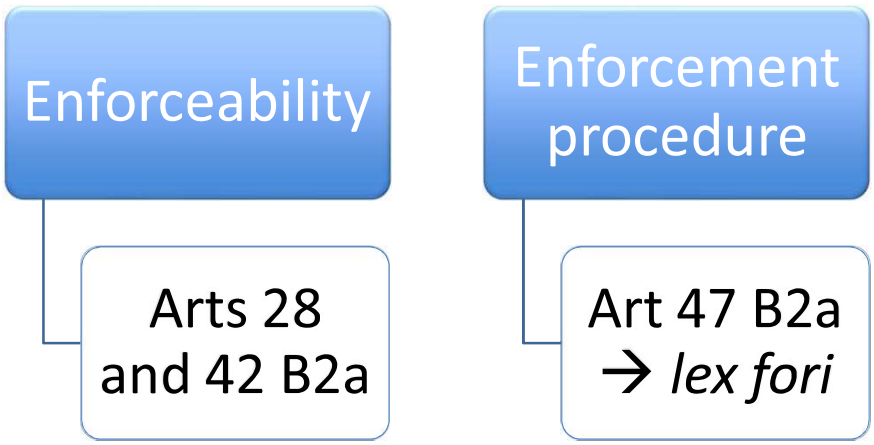
Enforceability *v* Enforcement



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Enforcement procedure

- Art 47: enforcement is governed by national law of the MS of enforcement but under the same conditions as a national decision
- Relevant principles set forth by the CJEU → *effet utile* reg.
- Some relevant principles emerging from the ECtHR case-law sanctioning States for 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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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 responsibiliy on HR court to balance child's best interest *v* general policy of preventing abduction
- System based on cooperation among courts
- MSs do not enforce judgments against the child
- need for more effective instruments → pressure on abducting parents to discourage non-compliance: e.g. monetary penalties

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- Recast COM(2016) 411 fin.
  - Art 11(6)-(8) → Art 26 recast
  - Extended abolition of exequatur → replaced by certification
  - Minimum procedural standards for enforcement
  - Uniform grounds for refusing enforcement → also for return orders!
  - Possibility to withdraw the certificate

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CJEU relevant case-law

- 11 July 2008, *Rinau*, Case C-195/08 PPU
- 1 July 2010, *Povse v Alpago*, 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

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Partnership

UNIVERSITÀ di VERONA Dipartimento di SCIENZE GIURIDICHE

UNIVERSITÀ DEGLI STUDI DI MILANO BICOCCA

Universidade do Minho Escola de Direito

ELTE LAW FACULTY OF LAW

LIETUVOS TEISĖS INSTITUTAS

Thank you!

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CASE STUDIES

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Case Study No. 6

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 Setember 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

1. What is the legal instrument applicable?
2. What can António do?

VARIATION No. 1

Consider that no amicable solution was found.

Related questions

3. What should be done?

LEGAL INSTRUMENT(S) TO BE APPLIED

Regulation No 2201/2003

1980 Hague Convention

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Case Study No. 7

MAIN TOPIC

Return Proceedings and Exceptions to Return

FACTS

Madalena, a Portuguese national, studied in Verona, Italy. There she met Giuseppe, a charming Italian, they dated a bit and in September 2002, their son Alessandro was born. However, relationship was complicated as the couple was young and child was not planned. Giuseppe pursued his career and several years he worked in Brussels. Madalena with the child returned back to Portugal where her parents helped to raise the child. Giuseppe was supporting the boy financially and meeting for holidays, he was nice and kind.

In spring 2016, Giuseppe took Madalena and Alessandro for holiday to Dubai. Love sparkled again and the couple decided to give a try to live as a family in Verona. After Alessandro's school year finished in June 2016, he and the mother moved to Verona. She was already pregnant and in January 2017 baby Carolina was born.

However, the things were already going wrong. Giuseppe was not used to family life, the teenager son and a baby at home started annoying him. He often spent weekends with his friends or at his parents' house. When Giuseppe lost job in spring 2017, they started fighting a lot. In the end of August 2017, Madalena made Portuguese passport to Carolina and on 30 August 2017 took both children to Portugal. They remained there since.

Giuseppe often calls and writes to Madalena asking to return. On 1 August 2018, seeing no other chances, Giuseppe approaches you asking about the possibilities to return children using legal ways.

Related questions

1. Can Giuseppe start abduction proceedings? How and where this should be done?
2. Did abduction of the children appear? What importance should be attached to the fact that the couple was not married? Were the custody rights exercised properly by the father?
3. If you were approached by Madalena before leaving Italy, what would you advise her?
4. Madalena claims that since Alessandro is back to school in Portugal and she started a part time job there, she and the boy simply cannot return back to Italy. Returning Carolina, who is still being breastfeed, alone would place her in 'intolerable situation'.
5. Would the situation change if Giuseppe would not start abduction proceedings until 1 November 2018? Under what conditions return could then be refused?

VARIATION No. 1

Consider the situation with such details changed. Couple's son Alessandro was born in September 2010. Madalena left Italy while pregnant and Caroline was born in September 2017 in Portugal.

Related questions

6. How this change the situation? Was there abduction of Alessandro and Carolina?

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

VARIATION No. 2

Couple's son Alessandro was born in September 2010, daughter in January 2017 in Italy.

Madalena claims that after the family started to live together in Verona and Giuseppe lost job, he started abusing her. Giuseppe never showed any aggression or rudeness towards Alessandro or a baby.

After one fight, Madalena moved to a friend. However, she has no job in Italy, baby on the hands and conflicts with partner. She relocates to Portugal with kids where she lives in her big parents' house. In two months, Giuseppe starts abduction proceedings.

Related questions

8. Are there exceptions to return that could be relied on?

9. Could poor economic situation of Giuseppe and Madalena in Italy and her much better financial situation in Portugal be linked with 'grave risk' exception? Would such return to poor conditions be in line with 'the best interests of the child'?

10. Madalena also asks the Article 13(b) exception to be invoked due to her psychological and emotional wellbeing. She states that she suffers from Post-Traumatic Stress Disorder as a result of her experiences during the latter stages of her relationship with the father. Return would negatively affect her mental health.

11. Giuseppe promises that he will start attending psychologist and will never be aggressive again. He also has found a job in a local company. Would this mean that adequate arrangements have been made to secure the protection of the children after the return?

LEGAL INSTRUMENT(S) TO BE APPLIED

Regulation No 2201/2003

1980 Hague Convention on Abduction

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Case Study No. 8

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

1. What can António do?

2. 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

3. 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).

4. 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.

LEGAL INSTRUMENT(S) TO BE APPLIED

Regulation No 2201/2003

1980 Hague Convention

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Case Study No. 9

MAIN TOPIC

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

FACTS

Marina, an Italian national, and Daniel, a Portuguese national, met in Italy in May 2010. They immediately fell in love and, three months later, he moved to live in her apartment in Milan (Italy). In December 2011 they got married on Lake Como 2012.

At the beginning of 2013 Daniel receives an incredible 5-year renewable job offer from an important company in Lisbon. Marina proves very supportive and agrees to move to Lisbon, also because she works as a freelance report for different Italian and European travel magazines and can easily manage to do her job everywhere.

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

However, soon Marina discovers the burden and fatigue of raising a child on her own. Daniel loves his wife and his son but he is also very committed to his job: he works more than 10 hours a day, often also during weekends, and travels a lot. He is absent from home and his son's life most of the time. For that reason, the spouses' relation begins to deteriorate.

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

Since 1 September Daniel repeatedly calls Marina asking her to return to Lisbon with Thomas. On 20 September, he flies to Italy in order to persuade her to give their family another chance. She promises to think over it and asked to stay until December.

On 1 December 2014 Daniel flies again to Italy to see his son and celebrate Thomas' first birthday together. Three days later, he flies back to, after having obtained from Marina the promise to meet in Lisbon before Christmas to find a way out of their matrimonial crisis. She never returns to Portugal and texts Daniel saying that "I and Thomas are settled here in Italy.

Coming back to Portugal would be extremely detrimental for both of us as we will be completely alone".

Daniel, completely mad, 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 Portugal, relying on 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 Lisbon seeking for divorce from Marina and the sole custody of their son Thomas.

On 1 February 2016 the Italian Court seised for child abduction hands down a decision refusing the return of the child. The decision is based on the following multiple 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 that the child (now 2 years old) talks Italian, has a close bond to his enlarged family, including grandparents, aunts, uncles and cousins; b) when in Portugal the father was not effectively exercising his parental rights; in fact the mother gave evidence that he gave no daily care to Thomas, while on the contrary she carried the burden of running all the activities; c) the child – who in the judge's opinion was too young to be heard directly – was anyway heard trough social services and the report says he proved happy and very well integrated in his mother's family network so that d) separating from the mother, his only point of reference, to return in Portugal to live with a father he does barely know and with whom has no strong emotional ties would risk to cause him serious psychological harm.

Desperate for the result, on 1 February 2016 Daniel lodges the Portuguese court already seised for divorce and parental responsibility with an application for overruling the Italian non-return order pursuant to Art 11(8) Brussels II*a*, overruling the Italian non-return order. 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. First of all, he did take care of his son when they lived together in Lisbon notwithstanding his very hard job-hours; second, he timely lodged an application for child abduction since he applied to the Italian Central Authority, far less than a year after his child's abduction; and, third, the child has not been heard in person and indirect hearing by the Italian social services was certainly biased.

Related questions

1. Should the Portuguese court review the Italian non-return order? On what grounds?

VARIATION No. 1

On 1 April 2016 the Portuguese court grants divorce and provisionally awards joint custody to both parents over Thomas, therefore commanding his immediate return to Portugal.

Related questions

2. Could such an order qualify as an overruling decision under Art 11(8) and prevail over the Italian non-return order?

3. Could the Portuguese return-order be certified under Art 42 Brussels II*a*?

VARIATION No. 2

On 1 May 2016 the Lisbon court gives a final decision on parental responsibility, confirming its previous provisional order by awarding joint custody over Thomas to both parents and, consequently, ordering his immediate return to Lisbon.

Related questions

4. How could such decision be enforced in Italy?

5. Could it be certified pursuant to Art 42?

VARIATION No. 3

The judgment of 1 May 2016 is accompanied by a certificate issued under Art 42 Brussels II*a* by the same court in Lisbon. Daniel seeks to enforce such decision in Italy, but Thomas does not return to Portugal, either alone or with her mother.

On 1 September 2016, Marina files an appeal against the first instance Portuguese judgment and the accompanying certificate, claiming that Portuguese courts have no jurisdiction on parental responsibility matters over Thomas, as he lived in Lisbon only for 8 months before leaving to Italy, where he has spent most of his life so far (2 year and 8 months old). Moreover, she maintains that she had no serious occasion to be heard within the Portuguese proceedings, and Thomas too was never heard, although indirectly, by the Lisbon court.

Related questions

6. Which are the effect of Art 42 certificate?

7. Which are the effect of an appeal against the judgment certified under Art 42 Brussels II*a* over its enforcement?

8. Is it possible to challenge the certificate in case of breach of Art 42 requirements, and especially the hearing of the child and the abducting parent?

VARIATION No. 4

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 Portuguese 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

9. Does the Italian provisional order concerning custody over the child have any effect over the Portuguese certified return order or on the appeal against such judgment? Could it affect its recognition and enforcement?

LEGAL INSTRUMENT(S) TO BE APPLIED

Regulation No 2201/2003

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LEGAL TERMINOLOGY

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Legal terminology

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	
Matrimonial matters	divorce, legal separation or marriage annulment
Parental responsibility matters	the attribution, exercise, delegation, restriction or termination of parental responsibility
court	all the authorities in the Member States with jurisdiction in the matters falling within the scope of this Regulation
judge	the judge or an official having powers equivalent to those of a judge in the matters falling within the scope of the Regulation
Member State	all Member States with the exception of Denmark
judgment	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
Member State of origin	the Member State where the judgment to be enforced was issued
Member State of enforcement	the Member State where enforcement of the judgment is sought
parental responsibility	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
holder of parental responsibility	any person having parental responsibility over a child
rights of custody	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
rights of access	the right to take a child to a place other than his or her habitual residence for a limited period of time
wrongful removal or retention	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.

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	
law applicable	the law to be applied, in situations involving a conflict of laws, to divorce and legal separation
participating Member State'	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
court	all the authorities in the participating Member States with jurisdiction in the matters falling within the scope of this Regulation

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	
maintenance obligations	maintenance obligations arising from a family relationship, parentage, marriage or affinity
decision	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
court settlement	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

authentic instrument	(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: (i) relates to the signature and the content of the instrument, and (ii) has been established by a public authority or other authority empowered for that purpose; or, (b) an arrangement relating to maintenance obligations concluded with administrative authorities of the Member State of origin or authenticated by them
Member State of origin	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
Member State of enforcement	the Member State in which the enforcement of the decision, the court settlement or the authentic instrument is sought
requesting Member State	the Member State whose Central Authority transmits an application pursuant to Chapter VII
requested Member State	the Member State whose Central Authority receives an application pursuant to Chapter VII
2007 Hague Convention Contracting State	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
court of origin	the court which has given the decision to be enforced
creditor	any individual to whom maintenance is owed or is alleged to be owed
debtor	any individual who owes or who is alleged to owe maintenance
court	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: (i) may be made the subject of an appeal to or review by a judicial authority; and (ii) have a similar force and effect as a decision of a judicial authority on the same matter. 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.
domicile	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.

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	
parental responsibility	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
measures directed to the protection of the person or property of the child	a) the attribution, exercise, termination or restriction of parental responsibility, as well as its delegation; 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; c) guardianship, curatorship and analogous institutions; d) the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child; 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; f) the supervision by a public authority of the care of a child by any person having charge of the child; g) the administration, conservation or disposal of the child's property.
wrongful removal or retention	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.

Hague Convention on the civil aspects of international child abduction of 25 October 1980	
wrongful removal or retention	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.
rights of custody	rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence
rights of access	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 the International Recovery of Child Support and Other Forms of Family Maintenance of 23 November 2007 and Hague Protocol on the Law Applicable to Maintenance Obligations	
creditor	an individual to whom maintenance is owed or is alleged to be owed
debtor	an individual who owes or who is alleged to owe maintenance
legal assistance	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
agreement in writing	an agreement recorded in any medium, the information contained in which is accessible so as to be usable for subsequent reference
maintenance arrangement	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
vulnerable person	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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Terminologia jurídica

Regulamento (CE) n.° 2201/2003 do Conselho, de 27 de Novembro de 2003, relativo à competência, ao reconhecimento e à execução de decisões em matéria matrimonial e em matéria de responsabilidade parental	
Matérias matrimoniais	Ao divórcio, à separação e à anulação do casamento.
Matérias de responsabilidade parental	Atribuição, exercício, delegação, limitação ou cessação da responsabilidade parental.
Tribunal	Todas as autoridades que nos Estados-Membros têm competência nas matérias abrangidas pelo âmbito de aplicação do regulamento.
Juiz	O juiz ou o titular de competências equivalentes às do juiz nas matérias abrangidas pelo âmbito de aplicação do regulamento.
Estado-Membro	Qualquer Estado-Membro, com exceção da Dinamarca.
Decisão	Qualquer decisão de divórcio, separação ou anulação do casamento, bem como qualquer decisão relativa à responsabilidade parental proferida por um tribunal de um Estado-Membro, independentemente da sua designação, tal como 'acórdão', 'sentença' ou 'despacho judicial'.
Estado-Membro de origem	O Estado-Membro no qual foi proferida a decisão a executar.
Estado-Membro de execução	O Estado-Membro no qual é requerida a execução da decisão.
Responsabilidade parental	O conjunto dos direitos e obrigações conferidos a uma pessoa singular ou coletiva por decisão judicial, por atribuição de pleno direito ou por acordo em vigor relativo à pessoa ou aos bens de uma criança. O termo compreende, nomeadamente, o direito de guarda e o direito de visita.
Titular da responsabilidade parental	Qualquer pessoa que exerça a responsabilidade parental em relação a uma criança.
Direito de guarda	Os direitos e as obrigações relativos aos cuidados devidos à criança e, em particular, o direito de decidir sobre o seu lugar de residência.
Direito de visita	O direito de levar uma criança, por um período limitado, para um lugar diferente do da sua residência habitual.

Deslocação ou retenção ilícitas de uma criança	A deslocação ou a retenção de uma criança, quando: a) Viole o direito de guarda conferido por decisão judicial, por atribuição de pleno direito ou por acordo em vigor por força da legislação do Estado-Membro onde a criança tinha a sua residência habitual imediatamente antes da deslocação ou retenção; e b) No momento da deslocação ou retenção, o direito de guarda estivesse a ser efetivamente exercido, quer conjunta, quer separadamente, ou devesse estar a sê-lo, caso não tivesse ocorrido a deslocação ou retenção. Considera-se que a guarda é exercida conjuntamente quando um dos titulares da responsabilidade parental não pode, por força de uma decisão ou por atribuição de pleno direito, decidir sobre local de residência da criança sem o consentimento do outro titular da responsabilidade parental.

Regulamento (UE) n. ° 1259/2010 do Conselho, de 20 de Dezembro de 2010 , que cria uma cooperação reforçada no domínio da lei aplicável em matéria de divórcio e separação judicial	
Lei aplicável	O regulamento é aplicável, nas situações que envolvem um conflito de leis, ao divórcio e à separação judicial.
Estado-Membro participante	Um Estado-Membro que participa na cooperação reforçada sobre a lei aplicável ao divórcio e à separação judicial por força da Decisão 2010/405/UE ou de uma decisão adotada em conformidade com o segundo ou com o terceiro parágrafo do n.º 1 do artigo 331.º do Tratado sobre o Funcionamento da União Europeia;
Tribunal	Todas as autoridades dos Estados-Membros participantes competentes nas matérias abrangidas pelo âmbito de aplicação do presente regulamento.

Regulamento (CE) n.º 4/2009 do Conselho, de 18 de Dezembro de 2008, relativo à competência, à lei aplicável, ao reconhecimento e à execução das decisões e à cooperação em matéria de obrigações alimentares	
Obrigações alimentares	Obrigações alimentares decorrentes das relações de família, de parentesco, de casamento ou de afinidade.
Decisão	Qualquer decisão em matéria de obrigações alimentares proferida por um tribunal de um Estado-Membro, independentemente da designação que lhe for dada, tal como acórdão, sentença, despacho judicial ou mandado de execução, bem como a fixação pelo secretário do tribunal do montante das custas ou despesas do processo. Para

	efeitos do disposto nos capítulos VII e VIII, entende-se igualmente por «decisão» qualquer decisão em matéria de obrigações alimentares proferida num Estado terceiro.
Transação judicial	Uma transação em matéria de obrigações alimentares homologada por um tribunal ou celebrada perante um tribunal no decurso de um processo.
Ato autêntico	a). Um documento em matéria de obrigações alimentares que tenha sido formalmente redigido ou registado como autêntico no Estado-Membro de origem e cuja autenticidade: i) esteja associada à assinatura e ao conteúdo do instrumento; e ii) tenha sido estabelecida por uma autoridade pública ou outra autoridade competente para o fazer; ou b) Um pacto em matéria de obrigações alimentares, celebrado perante autoridades administrativas do Estado-Membro de origem ou por elas autenticado.
Estado-Membro de origem	O Estado-Membro no qual foi proferida a decisão a executar, foi homologada ou celebrada a transação judicial e foi estabelecido o ato autêntico, conforme os casos.
Estado-Membro de execução	O Estado-Membro no qual é requerida a execução da decisão, da transação judicial ou do ato autêntico.
Estado-Membro requerente	O Estado-Membro cuja autoridade central transmite um pedido nos termos do capítulo VII.
Estado-Membro requerido	O Estado-Membro cuja autoridade central recebe um pedido nos termos do capítulo VII.
Estado parte contratante na Convenção da Haia de 2007	Um Estado parte contratante na Convenção da Haia de 23 de Novembro de 2007 sobre a Cobrança Internacional de Alimentos em benefício dos Filhos e de outros Membros da Família (a seguir designada «Convenção da Haia de 2007»), na medida em que a referida Convenção seja aplicável entre a Comunidade e esse Estado.
Tribunal de origem	O tribunal que proferiu a decisão a executar.
Credor	Qualquer pessoa singular à qual são devidos ou se alega serem devidos alimentos.
Devedor	Qualquer pessoa singular que deve ou à qual são reclamados alimentos.
Tribunal	Para efeitos do regulamento, a noção de «tribunal» inclui as autoridades administrativas dos Estados-Membros competentes em matéria de obrigações alimentares, desde que ofereçam garantias no que respeita à sua imparcialidade e ao direito das partes a serem

	ouvidas e desde que as suas decisões nos termos da lei do Estado-Membro onde estão estabelecidas: i) Possam ser objeto de recurso perante uma autoridade judiciária ou de controlo por essa autoridade, e ii) Tenham força e efeitos equivalentes a uma decisão de uma autoridade judiciária sobre a mesma matéria. Essas autoridades administrativas são enumeradas no anexo IX. Esse anexo é estabelecido e alterado pelo procedimento de gestão previsto no n.º 2 do artigo 73.º a pedido do Estado-Membro em que esteja estabelecida a autoridade administrativa em causa.
Domicílio	Para efeitos dos artigos 3.º, 4.º e 6.º, o conceito de «domicílio» substitui o conceito de «nacionalidade» nos Estados-Membros que utilizem este conceito como fator de conexão em matéria familiar. Para efeitos do artigo 6.o, as partes que tenham o seu «domicílio» em diferentes unidades territoriais de um mesmo Estado-Membro são consideradas como tendo o seu «domicílio» comum nesse Estado-Membro.

Convenção da Haia de 19 de Outubro de 1996, relativa à Competência, à Lei Aplicável, ao Reconhecimento, à Execução e à Cooperação em Matéria de Responsabilidade Parental e Medidas de Proteção das Crianças	
Responsabilidade parental	A autoridade parental, ou qualquer autoridade com relacionamento analógico determinando os direitos, poderes e responsabilidades dos pais, dos guardiões ou de outros representantes legais com relação à pessoa ou ao patrimônio da criança.
Medidas dirigidas à proteção da pessoa ou patrimônio da criança;	a) a atribuição, o exercício, a terminação ou a limitação da responsabilidade parental, assim como sua delegação; b) os direitos de custódia, incluindo direitos em relação ao cuidado da pessoa da criança e, em particular, do direito de determinar o lugar da residência da criança, assim como os direitos de adesão que incluem o direito de tomar uma criança por um período de tempo limitado de um lugar a outro lugar que não o de sua residência habitual; c) tutela, curatela e instituições análogas; d) a designação e as funções do qualquer pessoa que tenha responsabilidade sobre a criança ou patrimônio, representando ou assistindo à criança; e) a colocação da criança em uma família adotiva ou sob cuidado institucional, ou a provisão do cuidado pela *kafala* ou por uma instituição análoga;

	f) a supervisão por uma autoridade pública assistencial de uma criança por qualquer pessoa que tenha responsabilidade sobre a criança; g) a administração, a conservação ou a disposição do patrimônio da criança.
Remoção ou retenção errónea	Quando: a) ocorre uma rutura dos direitos de custódia atribuídos a uma pessoa, a uma instituição ou outra pessoa, conjuntamente ou sozinho, sob a lei do Estado em que a criança era habitualmente residente imediatamente antes da remoção ou a retenção; e b) no momento da remoção ou da retenção aqueles direitos foram realmente exercidos, conjuntamente ou sozinho, ou deveriam ter sido exercidos, mas para a remoção ou a retenção.

Convenção de Haia de 25 de Outubro de 1980 sobre os Aspetos Civis do Rapto Internacional de Crianças	
Deslocação ou retenção ilícita	Quando: a) Tenha sido efetivada em violação de um direito de custódia atribuído a uma pessoa ou a uma instituição ou a qualquer outro organismo, individual ou conjuntamente, pela lei do Estado onde a criança tenha a sua residência habitual imediatamente antes da sua transferência ou da sua retenção; e b) Este direito estiver a ser exercido de maneira efetiva, individualmente ou em conjunto, no momento da transferência ou da retenção, ou o devesse estar se tais acontecimentos não tivessem ocorrido.
Direito de custódia	O direito relativo aos cuidados devidos à criança como pessoa, e, em particular, o direito de decidir sobre o lugar da sua residência.
Direito de visita	O direito de levar uma criança, por um período limitado de tempo, para um lugar diferente daquele onde a criança habitualmente reside.

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