

International Child Abduction: Legal framework

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Overview

- Context
- Legal texts
 - Specific child abduction
 - Human rights
 - Related

Context: international child abduction

- Civil law
- Often intra-family
- Custody dispute
- Cross-border element



Legal texts

Specifically on child abduction

- Luxembourg Convention 1980
- Hague Convention 1980
- Brussels II bis Regulation

- (Bilateral conventions)

Human rights instruments

- Children's Rights Convention
- European Convention on Human Rights
- EU Charter of fundamental rights

Related instruments

- Hague Child Protection Convention 1996
- EU Regulation 606/2013 on Protection Measures

None = diplomatic solutions

Poll

How many conventions/other international instruments that govern international child abduction are in force in your country

Legal texts: Specifically child abduction

Luxembourg Convention 1980

- Recognition and Enforcement of custody decisions & restoration of custody
- Through Central Authorities
- Council of Europe
- 37 States Party (26 EU)

Poll

How often have you used the Luxembourg
Convention of 1980?

Legal texts: Specifically child abduction

Hague Convention 1980

- Return of children if custody rights breached
- Central Authorities
- Hague Conference on Private International Law
- 94 States Party (28 EU)
 - States that have ratified Luxembourg but not Hague Convention = Liechtenstein
- New Members: have to be accepted

Legal texts: Specifically child abduction

Brussels II bis Regulation 2201/2003

- Parental responsibility including child abduction (recognition of judgments and return)
- Reconfirmation of Hague Convention
- European Union
- 27 Member States (not Denmark)

Legal texts: Specifically child abduction

Brussels II bis: EU's involvement

- Debate between Member States
- Compromise: Convention + Regulation
- Consequences
 - Competence of CJEU
 - EU external competence: approval of new Members
- New Amendment underway

Interaction of legal texts

Consider origin and destination of abduction

- If from one EU MS to another:
 - Brussels II bis & Hague Convention
- If from EU MS to HC State
 - Hague Convention 1980
- If from HC State to EU MS
 - Hague Convention 1980

- For other States
 - Bilateral conventions
 - Diplomatic solutions



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Lawyers in Europe on Parental Child Abduction



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Legal texts: Human rights

Children' Rights Convention 1989

- Art 3: best interests of the child
- Art 9(1): right not to be separated from parents against their will
- Art 9(3): right to maintain contact with parents
- Art 12: right to be given opportunity to be heard
- United Nations
- 196 States Party (28 EU)

Poll

In how many of your child abduction cases has the court used the “best interests of the child” in its reasoning?

Legal texts: Human rights

European Convention on Human Rights (1950)

- Art 6: right to a fair trial
- Art 8: right to respect for family life
- Council of Europe
- 47 States Party (28 EU, but not EU as institution)

Legal texts: Human rights

EU Charter of Fundamental Rights (2000)

- Art 7: right to respect for family life
- Art 24: child's best interests, right of child to be heard, right to maintain contact with parents
- Art 47: right to a fair trial
- European Union
- 28 Member States

Legal texts: Related

Hague Child Protection Convention 1996

- All aspects of parental responsibility except abduction
- Jurisdiction, applicable law, recognition and enforcement, central authorities
 - Overlap with Brussels II bis
 - Only text on applicable law
- Hague Conference on Private International Law
- 44 States Party (28 EU)

Legal texts: Related

EU Regulation 606/2013 on Protection Measures

- Recognition and enforcement
- Protective measures in civil law
- No overlap with Brussels II bis
- European Union
- 27 Member States (not Denmark)

Thank you

Questions?

