

International Child Abduction: The 1980 Hague Convention

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- Goal
- Rule
- Exceptions
- Getting to the goal
- Enforcement
- Hidden treasures



Goal

- Speedy return
 - > back to the status quo
- No forum shopping
 - > first talk then go
- Interests of children
 - > prevention



Poll

How long did your longest case of international child abduction take (# months)?

Poll

How long did your quickest case of international child abduction take (# months)?

Rule: child must be returned

Mechanism for return

- Through Central Authorities
 - Find child
 - Help with voluntary return
 - Help with legal proceedings
 - Help with enforcement

No permanent solution

- No judgment on merits
- No in-depth analysis

Rule: child must be returned

To habitual residence

- Factual concept
- Objective and subjective elements
- Newborn children
- Unborn children?

Rule: child must be returned

- <12 months: return
- <12 months: also return, unless settled
- Cusp of 12 months: interests of child

Exceptions to return

No actual exercise of custody / consent / acquiescence (Art 13 §1a)

- Difficulties of proof
- Issue of temporary consent

Exceptions to return

Grave risk for child: physical or psychological (Art 13 §1b)

- Idea: exceptional -> interests of child
- Practice: most often used
- Good practice: can risk be addressed in home country?

Exceptions to return

Grave risk for child: intolerable situation (Art 13 §1b)

- Different interpretations: how broad?
- Mechanism for finding equilibrium
- Swiss suggestion to amend

Exceptions to return

Child objects

(Art 13 §2)

- Opportunity to be heard?
 - Due weight
- > maturity of child

Exceptions to return

Contrary to Fundamental Rights (Art 20)

- For extreme situations

Poll

How many times have you seen the application of Art 20 Hague Child Abduction Convention?

Getting to the goal

- Through Central Authorities
- Directly to central authority of destination country
- Directly to court
- Voluntary
- Mediation

Poll

How many cases have you dealt with under
Art. 29 of the Hague Child Abduction
Convention
(direct access to foreign court)?

Enforcement

- National
- Problematic
 - No trauma
 - Respect for decision
- Time and timing

Hidden treasures

- Judicial notice of foreign law (Art 14)
- Information on parental responsibility in other country (Art 15)
- Bar on custody decisions (Art 16)
- Contact arrangements through central authorities (Art 21)

Thank you

Questions?

