

Court decisions on international child abductions across Europe

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Structure of presentation

Section I: Article 3 of the Convention of The Hague on the Civil Aspects of International Child Abduction 1980

1. Definition of the rights of custody
2. Notion of habitual residence
3. Abduction of the newborn child

Section II: Article 13 of the Convention of the Hague on the Civil Aspects of International Child Abduction 1980

1. Consent and acquiescence
2. Grave risk of harm and best interest of the child
3. Objection of the child

Poll question 1

Is there a specialized court for international child abduction cases in your country?

- a) Yes
- b) No

Section I

Article 3 of the Convention of The Hague on the Civil Aspects of International Child Abduction 1980

I. Article 3 of the Convention of The Hague (1)

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.

I. Article 3 of the Convention of The Hague (2)

1. Definition of the rights of custody

- French Cour de cassation Civ. 1^{re}, 10th July 2007 n° 07-10190
<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000017908399&fastReqId=1928523376&fastPos=1>
- French Cour de cassation Civ. 1^{re}, 14th March 2012 n° 11-17011
<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000025529917&fastReqId=1495942601&fastPos=1>
- UK Supreme Court 15th May 2014
https://www.supremecourt.uk/decided-cases/docs/UKSC_2014_0093_Judgment.pdf

I. Article 3 of the Convention of The Hague (3)

- Article 5 of the Convention of The Hague

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.*

I. Article 3 of the Convention of The Hague (4)

2. Notion of habitual residence

- French Cour de cassation Civ. 1^{re}, 4th March 2015 - n° 14-19015
<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000030324519&fastReqId=625530810&fastPos=1>
- UK Supreme Court 3rd February 2016
<https://www.supremecourt.uk/cases/docs/uksc-2015-0214-judgment.pdf>
- Belgian Tribunal of First Instance Brussels 31st May 2012 (*not published*)

I. Article 3 of the Convention of The Hague (5)

3. Abduction of the newborn child

a. Based on the habitual residence

- UK Supreme Court 9th September 2013

<https://www.supremecourt.uk/cases/docs/uksc-2013-0106-judgment.pdf>

- Swiss Federal Tribunal 12th June 2012

<http://www.incadat.com/index.cfm?act=search.detail&cid=1293&lng=1&sl=2#>

I. Article 3 of the Convention of The Hague (6)

3. Abduction of the newborn child

b. Based on the parental authority and the parents' wishes

- French Cour de cassation 26th October 2011 n° 10-19905
<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000024729189&fastReqId=253382498&fastPos=1>
- French Tribunal de Grande Instance Besançon, 15th June 2015 (*not published*)
- Irish High Court 26th July 2013 (*not published*)

Poll question 2

Until what age is a child subject to a return proceeding in application of the Convention of The Hague?

- a) 16
- b) 18
- c) The age of majority in the country of his or her habitual residence

Section II

Article 13 of the Convention of The Hague on the Civil Aspects of International Child Abduction 1980

II. Article 13 of the Convention of The Hague (1)

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -

- a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or*
- b) 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.*

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Poll question 3

Can you appeal in your country against a non return order based on article 13 of the Convention of The Hague?

- a) Yes
- b) No

II. Article 13 of the Convention of The Hague (2)

1. Consent and acquiescence

a. Consent

- Danish Superior Appellate Court 3rd May 2010
<http://www.incadat.com/index.cfm?act=search.detail&cid=1100&lng=1&sl=2>
- Belgian Tribunal of First Instance Brussels 16th November 2011 (*not published*)
 - Belgian Court of Appeal Brussels 5th June 2012 (*not published*)
 - Belgian Court of Cassation 7th June 2013 (*not published*)

II. Article 13 of the Convention of The Hague (3)

1. Consent and acquiescence

b. Acquiescence

- French Court of Appeal Agen 1st December 2011 (*not published*)
- Belgian Court of Appeal Antwerp 18th September 2013 (*not published*)
- Belgian Court of Appeal Antwerp 24th October 2014 (*not published*)

II. Article 13 of the Convention of The Hague (4)

2. Grave risk of harm and best interest of the child

- French Cour de cassation 13th February 2013 n° 11-28.424
<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000027072708&fastReqId=723069491&fastPos=1>
- French Cour de cassation Civ. 1^{ère} 14th November 2014 - n° 14-17493
<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000029789382&fastReqId=870640155&fastPos=1>
- Dutch Court of Appeal The Hague 15th June 2016
<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHDHA:2016:1714>

II. Article 13 of the Convention of The Hague (5)

2. Grave risk of harm and best interest of the child

- Irish High Court 26th July 2013 (*not published*)
- UK High Court 7th December 2010
<http://www.familylawweek.co.uk/site.aspx?i=ed74087>
- Belgian Tribunal of First Instance Antwerp 27th July 2011 (*not published*)

Poll question 4

Is the opinion of the child taken into consideration?

- a) Yes
- b) No

II. Article 13 of the Convention of The Hague (6)

3. Objection of the child

- Court of appeal of England and Wales 27th January 2015
<http://www.familylawweek.co.uk/site.aspx?i=ed142938>
- French Court de cassation Civ. 1^{re}, 14th February 2006
<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000007051832&fastReqId=1608929958&fastPos=1>
- French Court of Appeal Lyon 12th September 2011 (*not published*)
- Dutch Tribunal of First Instance The Hague 14th June 2016
<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2016:6583>
- Belgian Tribunal of First Instance Antwerp 15th July 2014 (*not published*)
- Belgian Tribunal of First Instance Antwerp 23rd October 2013 (*not published*)

Poll question 5

Can a left behind parent file a petition for return directly in court?

- a) Yes
- b) No

List of discussed court decisions

Article 3 of the Convention of The Hague

1. Definition of the rights of custody

- French Cour de cassation Civ. 1^{re}, 10th July 2007 n° 07-10190
- French Cour de cassation Civ. 1^{re}, 14th March 2012 n° 11-17011
- UK Supreme Court 15th May 2014

2. Notion of habitual residence

- French Cour de cassation Civ. 1^{re}, 4th March 2015 - n° 14-19015
- UK Supreme Court 3rd February 2016
- Belgian Tribunal of First Instance Brussels 31st May 2012 (*not published*)

3. Abduction of the newborn child

- UK Supreme Court 9th September 2013
- Swiss Federal Tribunal 12th June 2012
- Irish High Court 26th July 2013
- French Cour de cassation 26th October 2011 n° 10-19905
- French Tribunal de Grande Instance Besançon 15th June 2015

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Article 13 of the Convention of the Hague

1. Consent and acquiescence

- Danish Superior Appellate Court 3rd May 2010
- Belgian Tribunal of First Instance Brussels 16th November 2011
- Belgian Court of Appeal Brussels 5th June 2012
- Belgian Court of Cassation 7th June 2013
- French Court of Appeal Agen 1st December 2011
- Belgian Court of Appeal Antwerp 18th September 2013
- Belgian Court of Appeal Antwerp 24th October 2014

2. Grave risk of harm and best interest of the child

- French Cour de cassation 13th February 2013 n° 11-28
- French Cour de cassation Civ. 1^{ère} 14th November 2014 - n° 14-17493
- Dutch Court of Appeal The Hague 15th June 2016
- Irish High Court 26th July 2013

- UK High Court 7th December 2010
- Belgian Tribunal of First Instance Antwerp 27th July 2011

3. Objection of the child

- Court of appeal of England and Wales 27th January 2015
- French Court de cassation Civ. 1^{re}, 14th February 2006
- French Court of Appeal Lyon 12th September 2011
- Dutch Tribunal of First Instance The Hague 14th June 2016
- Belgian Tribunal of First Instance Antwerp 15th July 2014
- Belgian Tribunal of First Instance Antwerp 23rd October 2013

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Invitation to Blended Training Conference Advanced Training for International Child Abduction Lawyers

For Whom:

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On What:

Interactive event with talks, panel discussions and interactive workshops

When:

Thursday, January 26, 2017 from 12.00 – 18.00 CET

Friday, January 27, 2017 from 09.00 – 16.00 CET

Where:

Historic Harnack-Haus, Berlin

Please find the provisional programme on the website www.lepca.eu
Registration will open next week!

Contact-details LEPCA-organisation: info@lepca.eu / 0031 –(0) 88 – 800 9000

We are looking forward to welcome you in Berlin at the Conference

