



Guide for International Cases of Child Abduction to Foreign Countries

Central Authority for International Children's Issues

Introduction

This document contains a guide in which the workings are explained of the system set up by the Netherlands for international cases of child abduction to a foreign country under the framework of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. This guide is intended in particular for parents (and their attorneys-at-law), whose child has been abducted from the Netherlands or who has been retained in a foreign country. The guide gives a description of the working methods of the Central Authority and its partners in the chain of handling international cases of child abduction.

If you would like further information about the possibilities offered by the Hague Convention on the Civil Aspects of Child Abduction regarding international cases of child abduction, you may contact the Central Authority for International Children's Issues at the Ministry of Security and Justice via telephone number +31 (0)70 370 6252 or fax number +31 (0)70 370 7507. You can contact the Central Authority by telephone from Monday to Friday, 10:00 a.m. to 12:30 p.m. You can also contact the International Child Abduction Centre via telephone number +31 (0)88 800 9000. This telephone number is available from Monday to Friday, 9:30 a.m. to 4:30 p.m., but is also available outside office hours in case of emergency.

Further information is available about the work carried out by the Central Authority for International Children's Issues and the workings of the Hague Convention on Child Abduction via the webpage www.rijksoverheid.nl/contact/contactgids/centrale-autoriteit-internationale-kinderaangelegenheden

(in Dutch) or via the webpage

www.government.nl/documents and publications (in English). You can also find the Guide to the International Child Abduction Procedure via this webpage. This document sets out in greater detail the working methods regarding incoming cases, whereby children are abducted from a foreign country to the Netherlands. The Guide for International Cases of Child Abduction to Foreign Countries has been compiled by the Central Authority for International Children's Issues in consultation with the International Child Abduction Centre, the Ministry of Foreign Affairs and the Public Prosecution Office.

International Child Abduction

International child abduction involves the wrongful removal of a child from his/her country of habitual residence, or when he/she is not returned to that country without authorization. The removal (or retention) is wrongful when it occurs without the permission of one or both of the parents who have custody of the child. The removal or retention is then contrary to the rights of custody of the country of his/her habitual residence (Article 3 of the Hague Convention on the Civil Aspects of International Child Abduction 1980, also mentioned). This guide applies to cases involving the wrongful removal of a child from the Netherlands to a foreign country, or his/her wrongful retention outside the Netherlands. This involves an outgoing case of international abduction (also known as 'outgoing cases'), irrespective of whether that country is a contracting State or a non-contracting State¹.

¹ See Article 13 of the International Child Abduction (Implementation) Act

Hague Convention on the Civil Aspects of Child Abduction in contracting States

The principle of the Hague Convention on the Civil Aspects of Child Abduction is to support the interests of the child. These interests involve bringing the child back as soon as possible to the country of his/ her habitual residence. The left-behind parent² can approach the Dutch Central Authority independently or through an attorney-at-law with the request to inform the foreign (central) authority or authorities of the wrongful removal or retention of the child and to bring about the return of the child. The Dutch Central Authority will then assess by means of an intake process whether this involves a case of an international child abduction (is the child younger than 16 years old, who has custody of the child, has permission been given to the other parent to take the child abroad and was the Netherlands the country of habitual residence of the child?). If there is a case of child abduction under the terms of the Hague Convention on the Civil Aspects of Child Abduction and the country in question is a contracting State of this Convention, then the Dutch Central Authority will submit an application for return of the child on behalf of the left-behind parent to the Central Authority in the foreign country. The latter authority will start the procedure appropriate in that country in order to bring about that the child is returned. The left-behind parent is responsible for instructing an attorney-at-law in the foreign country for this purpose.

Legal proceedings regarding custody of the child are conducted in the country of origin (the child's habitual country of residence). This principle is upheld strictly in case law. On the basis of a number of grounds for refusal, a foreign court may decide that the child will not be returned. However, the grounds for refusal are interpreted restrictively, in order to counteract erosion of the workings of the Convention. One of the grounds for refusal may be that the child has already been staying abroad for more than a year before the left-behind parent starts the procedure for return, and the fact that the child has become settled will be assumed in those proceedings. It is important in such cases that the left-behind parent is aware of the child's place of residence. A left-behind parent in the Netherlands, whose child has been taken to another contracting State, is able to gain access quickly to the foreign judicial system through the Dutch Central Authority. In the interests of the child, the Hague Convention on the Civil Aspects of Child Abduction includes the obligation for contracting States to pursue the voluntary return of the child. This entails the foreign Central Authority of the country where the child is staying making the effort to bring about that the parents reach an agreement together regarding the child's place of residence. Experience with incoming and outgoing child abduction cases has taught the Dutch Central Authority that problems can be solved through mediation

² Besides a left-behind parent, a person or a body may also be charged with the custody of the child. If a custodial placement has been authorised, then no custody or guardianship exists, but a person or a body does have control over the child. If this is the case, then this person or body is permitted to submit an application for the return of the child.

and that this can lead to an improvement in the relationship between the parents. Therefore, taking the interests of the child into account, great value is placed in mediation.

Hague Convention on the Civil Aspects of Child Abduction in non-contracting States

When a child is taken to, or retained in a non-contracting State of the Hague Convention on the Civil Aspects of Child Abduction, the Central Authority assumes the basic principle that the Central Authority will fulfil the same role as if the country was a contracting State of this Convention. The Central Authority will accept the application and test this against the Hague Convention on the Civil Aspects of Child Abduction (the intake). The country which is a non-contracting State of the Convention has no Central Authority. The Central Authority sends the application for return of the child to the Dutch Ministry of Foreign Affairs. In turn, the Ministry makes contact via the Dutch diplomatic representative with the competent authority or authorities in that country with the aim of bringing the case to the attention of that authority or those authorities, and to motivate that authority or those authorities to return the child to the Netherlands. The Ministry of Foreign Affairs will keep the Central Authority informed about the progress in the case and, in turn, the Central Authority will keep the left-behind parent or his/her attorney-at-law informed.

Organizations involved in outgoing child abduction

- The Central Authority
- The legal profession
- International Child Abduction Centre
- Legal Aid Council
- National Police Force
- Royal Netherlands Marechaussee
- Ministry of Foreign Affairs

Legislation involved by international child abduction

- United Nations Convention on the Rights of the Child
- 1980 Hague Convention on the Civil Aspects of Child Abduction
- European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (Luxembourg Convention)
- International Child Abduction (Implementation) Act
- Brussels II bis Regulation
- 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children
- International Child Protection (Implementation) Act
- Rules of Professional Conduct for the legal profession

Role and tasks of the Central Authority

The Central Authority is not involved with the content of individual cases, except with regard to the intake (see below). It holds responsibility within the system, whereby facilitating, referring and providing information are key pointers in its work.

In reference to Article 7 of the Hague Convention on the Civil Aspects of Child Abduction and in light of the aforementioned role, the main features of the tasks carried out by the Central Authority in relation to the left-behind parent are:

- providing general information about the workings of the Hague Convention on the Civil Aspects of Child Abduction;
- requesting information via the foreign Central Authorities about the workings of the judicial system of the relevant country;
- in the case of an outgoing child abduction case, preparing the application for return at the request of the left-behind parent;
- on the basis of the documents provided by the left-behind parent (by means of an application form), carrying out a test for reasonableness (whether there is a case of child abduction in the meaning of the Hague Convention on Child Abduction);
- submitting an application for return (including translated documents) to the foreign Central Authority of the country where the child is staying;
- maintaining contact with the foreign Central Authority while the application for return is being handled by the foreign Central Authority and during the legal proceedings at a foreign court (when a child has been taken to, or is being retained in a contracting State of the Convention), or otherwise with the Ministry of Foreign Affairs (when the child has been taken to, or is being retained in a non-contracting State of the Hague Convention on Child Abduction).

The Central Authority as gatekeeper for a number of facilities

If the left-behind parent submits an application for return to the foreign Central Authority via the Central Authority, then the left-behind parent can make use of a number of facilities, namely:

- localizing the abducting parent and the child abroad through the foreign Central Authority. Every Central Authority has an obligation of means to localize the abducting parent and the child;
- the Dutch Central Authority pays for translations of the relevant documents that are received during the intake phase and which are necessary for making an application for return to a foreign Central Authority from the left-behind parent or his/her attorney-at-law and/or the abducting parent or his/her attorney-at-law;
- the Central Authority makes contact with the foreign Central Authority for the purpose of gaining or giving information, for example for the benefit of an Article 15 Hague Convention on Child Abduction declaration. This is a declaration in which the custodial relationship is set out, and which also states where the habitual residence of the child is;

- the Central Authority refers the left-behind parent to the International Child Abduction Centre or to the foreign Central Authority for a list of specialized foreign child abduction attorneys-at-law;
- in the case of a return of the child, the Central Authority offers support in collaboration with the foreign Central Authority.

In order to gain access to the aforementioned facilities, the left-behind parent or his/her attorney-at-law is required to submit an application to the Dutch Central Authority (by completing an application form). Access to these facilities will only be given if the Dutch Central Authority has judged that there is possibly a case of wrongful removal or retention as defined in the Convention. If the conditions set out in the Convention are not fulfilled, then a Central Authority is not obliged to handle such an application. If the following conditions are not fulfilled, then the Central Authority has no authority to handle an application. The assessment carried out by the Central Authority takes place on grounds of a test for reasonableness. This entails:

- checking whether the child is younger than 16 years old;
- assessing the custodial relationship;
- checking whether the habitual residence is in the Netherlands;
- testing whether no permission has been given.

The Central Authority explicitly does not become involved in the assessment of grounds for refusal, referred to Articles 12, 13 and 20 of the Hague Convention on the Civil Aspects of Child Abduction. That assessment is made by the foreign court, just as only the foreign court can order the return of the child.

When proceedings are not conducted via the Central Authority

The left-behind parent is free to submit an application for return to the foreign Central Authority of the country to which a child has been removed or is being retained, with the assistance of a foreign or local attorney-at-law, without the intervention of the Central Authority. The left-behind parent can also start legal proceedings independently (with the assistance of an attorney-at-law) in the relevant country. The applicant is also not obliged to base his/her application on the rules of the Convention. This means that the applicant can choose the most favorable regulation, whereby he/she does not need to rely on the assistance of the foreign Central Authority. The assessment what the most favorable regulation is in the relevant country, is not up to the Central Authority to be made on behalf of the left-behind parent. However, the Central Authority does prefer to follow the Hague Convention on Child Abduction procedure. The consequence of starting legal proceedings in a foreign country independently is that the left-behind parent will be unable to make any use of the aforementioned facilities, such as the translation of the relevant documents. Starting legal proceedings independently can therefore be extremely costly. It is not always possible to claim legal aid in the Netherlands or abroad (further details about this are given under the title 'Legal aid').

Rejection of application

If the Dutch Central Authority decides not to handle an application for the return of a child, the Central Authority will inform the parent making that application as soon as possible. The applicant will receive a decision stating the grounds from the Central Authority. After receipt of this letter, the applicant may lodge an objection with The Hague District Court on grounds of Article 6 of the International Child Abduction (Implementation) Act. The objection must be lodged by a qualified attorney-at-law. The court will then decide whether the conditions of the Convention have been fulfilled³. As previously stated, despite being given a decision of rejection by the Dutch Central Authority, an application can be submitted directly to the Central Authority of the relevant country or legal proceedings can be started independently there. A rejection from a Central Authority to handle an application does not represent a binding decision for a court in the contracting States of the Convention.

Short description of the procedure

A left-behind parent with sole or joint custody, if he/she is of the opinion that his/her child (whose habitual residence is in the Netherlands) has been removed to, or is being retained in another country without his/her permission, can approach the Dutch Central Authority in order to gain access to the foreign judicial system. Once the Dutch Central Authority has received a completed application form (as well as the accompanying documents) from the left-behind parent (or through his/her attorney-at-law), the Central Authority will start the intake procedure. If the Dutch Central Authority cannot exclude the fact of a possible child abduction on the basis of the intake, then the Central Authority will translate the application form and all the relevant documents and compose a letter for the benefit of the foreign Central Authority in which, on the basis of the Hague Convention on the Civil Aspects of Child Abduction, the speedy return of the child will be urged. The left-behind parent will be informed by letter from the Central Authority about the outcome of the intake and the dispatch of the application to the Central Authority of the country to which the child has been removed or where he/she has been retained. A copy of the application sent to the foreign Central Authority will also be sent to the left-behind parent together with this letter.

Once the foreign Central Authority has received the application for return from the Dutch Central Authority, the foreign Central Authority will also assess the Dutch application. When the foreign Central Authority also comes to the conclusion that a possible child abduction cannot be excluded, then this Central Authority will make efforts to localize, or have localized, the abducting parent and the child (if no address is known). Having localized the abducting parent (and the child), the foreign Central Authority will first try to motivate the abducting parent to collaborate voluntarily with the return of the child. If an

extrajudicial solution cannot be reached, then the only remaining alternative is to enter legal proceedings in the relevant country. If the foreign Central Authority itself cannot start legal proceedings, then the left-behind parent will need to instruct an attorney-at-law in that foreign country for the legal proceedings. The left-behind parent will either have to pay for this attorney-at-law him/herself, or via foreign legal aid. While the application is being handled abroad, the Dutch Central Authority will keep itself informed through the foreign Central Authority about the status of the application for return and will also keep the left-behind parent up-to-date in this matter and will support the latter through available facilities.

Under the scope of the legal proceedings, the foreign court may request that the left-behind parent or the Dutch Central Authority hands over an Article 15 Hague Convention on Child Abduction declaration. This is a declaration from the authorities of the child's country of origin in which it is stated that the situation involves the wrongful removal or retention of the child as referred to in Article 3 of the Hague Convention on the Child Abduction. The court can request that the declaration focuses on the circumstances in the case in hand and, if necessary, request supplementary information about the custodial rights.

The Dutch Central Authority fulfils a referential, facilitating and coordinating function in outgoing child abduction cases. It is the task of the foreign Central Authority to localize the abducting parent and the child, and to take responsibility for the judicial system functioning in such a way that the return procedure can be carried out speedily. If the Central Authorities of the different contracting States are compared with each other, then it may be observed that there are differences in the speed with which an abducting parent (and the child in question) can be localized and legislative proceedings completed.

The procedure described above applies mainly to contracting States. The procedure in non-contracting States differs from this and also varies from one country to another.

International Child Abduction Centre

The International Child Abduction Centre is an independent national centre that was established in January 2006 by Stichting De Ombudsman in collaboration with Defense for Children International - the Netherlands, Stichting Lawine and Stichting Gestolen Kinderen. The Centre provides support together with legal advice, information and supervision for parents, professionals and other parties who are involved with international child abduction, or the threat of such. Information about the International Child Abduction Centre can be found via the website <http://www.kinderontvoering.org>.

³ It is not possible to lodge an objection after the foreign Central Authority has rejected the application.

In the case of outgoing child abduction cases, the International Child Abduction Centre provides information and advise to parents, institutions or attorneys-at-law about the possibilities of the Hague Convention on the Civil Aspects of Child Abduction. The International Child Abduction Centre also supports parents in the completion of the application form for the Dutch Central Authority. However, under the framework of an application for return, the Dutch Central Authority is responsible for assessing (test for reasonableness), passing on and monitoring the handling of the application for return of the child to the foreign Central Authority.

Parents are supported in cross-border mediation by the Mediation Bureau under the scope of voluntary return of the child following an international child abduction to the Netherlands. Further information about this aspect can be found via the webpage <http://www.kinderontvoering.org/mediation>

Grounds for refusal

The court in the country to which a child has been removed or is being retained is not bound to order the return of the child when there is a ground for refusal. The grounds for refusal are set out in Articles 12, 13 and 20 of the Hague Convention on the Civil Aspects of Child Abduction (relevant texts can be found via the website of the Permanent Bureau of the Hague Conference on Private International Law, www.hcch.net). Only the court in the country to which the child has been removed or is being retained is permitted to judge whether a ground for refusal exists in any particular case.

Duration of handling the application in a foreign country

It should be pointed out that, with regard to the duration of the return procedure, this can vary between the different contracting countries and from one procedure to another. The reasons for this include:

- not every foreign Central Authority is set up in a comparable manner in terms of staff capacity and authority;
- the speed with which the abducting parent (and the child) can be localized varies from one country to another;
- legal procedures vary between different countries.

The Dutch Central Authority aims to submit an application for return to the foreign Central Authority within a period of four weeks after receipt of an application from a left-behind parent. Within this period the application is tested for reasonableness and translations are made of the application and accompanying relevant documents. While the application is being handled by the foreign Central Authority, the Dutch Central Authority will continue to monitor the handling of the application and will urge that the application is dealt with speedily in the interests of the child. The foreign Central Authority is responsible for handling the application in the relevant contracting State.

The Dutch Central Authority has no authority in another contracting State to force the return of a child.

Hague Convention on the Civil Aspects of Child Abduction and criminal proceedings

The Central Authority carries out the tasks as required under the Hague Convention on the Civil Aspects of Child Abduction. The basic principle of this Convention is that the parties involved reverse the consequences of the wrongful removal or retention of children under the framework of civil law. After all, international private law is incorporated into the Hague Convention on the Civil Aspects of Child Abduction. Besides the civil procedure, however, under the Hague Convention on the Civil Aspects of Child Abduction parents are also free to file an official report with the police, the possible result of which may be the forced return of the child and even the abducting parent as well. The Central Authority does not become involved in the substantive aspects of any criminal proceedings. However, the Central Authority is able to point out in general terms the advantages and disadvantages of criminal proceedings.

If the left-behind parent suspects that the child will be taken abroad without permission, or as soon as the abduction has taken place or it is clear that the child is being retained, the parent can report this to the police. Such report (sometimes known as a notification) can be made in the police system of a child abduction (or the threat of such) or of the child's retention, or an official report can be filed. On the basis of an official report or a notification, an abducting parent can be stopped if subjected to a control, for example, at Schiphol airport, which can possibly prevent the child's removal to another country. It is important to note, however, that a notification or an official report does not automatically lead to an arrest. Such a decision is up to the Public Prosecution Office. The Public Prosecution Office may decide to issue an international arrest warrant. Whether the Public Prosecution Office issues the order for an arrest or an international arrest warrant is decided in each case individually, and this depends on the circumstances of the case and any possible consequences of the alert and subsequent arrest of the abducting parent abroad. Furthermore, many countries exclude the possibility of extradition of their own nationals. It is important to note that criminal proceedings may have a serious impact on the continued relationship between both parents of the child, and also on the relationship between the child and the abducting parent.

International parental contact arrangement

Compliance with parental rights of access is controlled under Article 21 of the Hague Convention on the Civil Aspects of Child Abduction and is in principle completely separate from the wrongful removal or retention of a child. The working method described above applies equally to the international parental contact arrangement, subject to the following comments:

At the outset of a parental contact arrangement there sometimes first needs to be a form of recovery in the contact, as well as a period in which the contact is gradually built up, whether or not this is arranged with trial contact appointments. When the application for the return of the child does not lead to the desired result for the left-behind parent, the choice may still be made for a parental contact arrangement with the child. However, this cannot be arranged through a conversion of the application into an application for a parental contact arrangement. Instead, this will involve submitting a new application to the Central Authority.

Legal aid

Parents in cases of outgoing child abduction can gain advice from a Dutch attorney-at-law. A left-behind parent can submit an application for legal aid for this purpose. Further information about legal aid can be found via the webpage <http://www.rvr.org/binaries/about-rvr/legal-aid-in-the-netherlands-2011-05-23-ilag.pdf>. You can also receive information about this subject from the International Child Abduction Centre.

What else does the Dutch Central Authority do? Besides offering support in international cases of child abduction, the Central Authority also provides support involving cases in the area of international child protection arising under the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (in short: Hague Convention on Child Protection). This involves international applications for taking over child protection measures (such as family supervision orders, custodial placements, etc) and individual youth care measures (such as a stay in foster care and international provision of care) in the situation whereby a child comes to the Netherlands from a foreign country or in the situation whereby a Dutch child goes abroad. You can find further information about the 1996 Hague Convention on Child Protection via the webpage <http://www.rijksoverheid.nl/centrale-autoriteit-internationale-kinderaangelegenheden>. Besides this, the Central Authority also implements the Hague Convention of 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption. You can find further information about this Convention via the webpage mentioned before.

Convention does not apply in Curaçao, Aruba and St. Maarten

Because Curaçao, Aruba and St. Maarten are independent countries within the Kingdom of the Netherlands, they can decide for themselves whether or not to be party to the Convention. Up to the present time they have chosen not to do so. This means that the Convention does not apply to these countries. When a child is removed to one of these countries, or is retained there, then an application for return submitted to the Central Authority will be passed on via the Ministry of Foreign Affairs to the Guardianship Council of the relevant country.

With regard to Bonaire, St. Eustatius and Saba, these are considered to be special municipalities of the Kingdom of the

Netherlands in Europe. This means that removing a child to or retaining a child in one of these special municipalities does not count as an international abduction. When a child from one of these special municipalities is removed from one of these special municipalities to another country, or is retained in another country, then the Convention does apply and the left-behind parent is able to submit an application to the Central Authority to bring to the attention of the foreign Central Authority, Central Authorities or other relevant authorities the wrongful removal or retention of the child and to bring about the return of the child.

Colophon

- The Guide for International Cases of Child Abduction to Foreign Countries has been compiled by the Central Authority for International Children's Issues in collaboration with:
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- Ministry of Foreign Affairs
- Public Prosecution Office

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