



Guide to the International Child Abduction Procedure

Central Authority for International Child Abduction

This document provides a guide to the operation of the Dutch procedure for incoming international child abduction cases within the framework of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. This Guide is specifically intended for lawyers and describes the procedure to be followed by the cooperating organizations engaged in handling an international case of child abduction to the Netherlands.

For additional information about the operation of the procedure, please contact the Ministry of Security and Justice, the Central Authority International Children's Issues (telephone +31 (0)70 370 6252/fax +31 (0)70 370 7507; to be reached on working days from 10.00 a.m. until 12.30 p.m.), and the International Child Abduction Centre (telephone +31 (0)88 - 800 9000 to be reached on working days from 9.30 a.m. until 4.30 p.m., and outside business hours in case of emergency).

This Guide has been drafted by the Dutch Central Authority International Children's Issues (Ca) in consultation with the Dutch Office of the Liaison Judge International Child Protection (The Hague District Court), Dutch Association of International Child Abduction Lawyers, an independent lawyer, and the International Child Abduction Centre.

1. International Child Abduction

A situation of international child abduction exists if the child has been wrongfully removed from or does not return to the State in which the child was habitually resident. The removal is considered wrongful if it is in breach of the rights of custody of the State in which the child was habitually resident (Article 3 of the 1980

Hague Convention on the Civil Aspects of International Child Abduction. This Guide applies to cases in which a child has been removed to the Netherlands or is retained here (so-called 'incoming cases'), irrespective of whether the country of origin is a contracting state or a non-contracting state.¹ In such a case, the foreign central authority – in the case of contracting states – or the left-behind parent² – in the case of a non-contracting state – may request the Ca to take appropriate measures to secure the implementation of the objects of the Hague Convention on the Civil Aspects of International Child Abduction and the compliance with International Child Abduction (Implementation) Act. The basic principle of the Hague Convention on the Civil Aspects of International Child Abduction is to return the child to the State of his³ habitual residence, unless a ground for refusal exists. In order to prevent the effects of this Convention from eroding, this basic principle is enforced strictly in case law, whereby the grounds for refusal are interpreted restrictively.

The basic principle is that the order to return the child - i.e. a decision in which the Dutch court orders the return of a child to the State of his habitual residence - is a 'disciplinary measure'; the legal proceedings with regard to the custody of the child (the long-term situation) are conducted in the country of origin (the child's habitual residence).

¹ See Section 13 of the Implementation Act.

² The foreign parent whose child has been abducted to the Netherlands.

³ Where reference is made to the male gender, such reference also includes the female gender.

Experience shows that mediation may solve problems and that it may improve the relationship between the litigating parents. Much value is therefore attached to mediation, also in view of the interests of the child.

2. The organizations engaged in the procedure

Central Authority International Children's Issues (Ca)

- Legal profession
- International Child Abduction Centre / Mediation Bureau
- Legal Aid Board
- Judiciary
- Child Care and Protection Board
- Youth Care Agency
- Public Prosecution Service

3. Legal framework of international child abduction

- International Convention on the Rights of the Child
- 1980 Hague Convention on the Civil Aspects of International Child Abduction
- European Convention on Child Abduction (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
- Dutch Code of Civil Procedure
- Rules of Professional Conduct for the legal profession

4. Role and duties of the Ca

The Ca is not involved with the content of individual cases, except with regard to the intake (see below).

With reference to Article 7 of the Hague Convention on the Civil Aspects of International Child Abduction, and in the light of the role and duties of the Ca mentioned above (overall responsibility), the Ca broadly has the following duties:

- To conduct a limited review on the conditions of the Hague Convention on the Civil Aspects of International Child Abduction;
- To establish whether the abducting parent and the child are in the Netherlands;
 - to request an extract from the Municipal Personal Records Database of the abducting parent at the municipality of his presumptive place of residence
 - to engage the Public Prosecution Service in order to find out the child's whereabouts if the child's actual residence in the Netherlands is not known;
- To refer to the Mediation Bureau for the purpose of cross-border mediation (prior to the pre-trial review);
- To refer the requesting parent to the International Child Abduction Centre, the Legal Aid Board, or a professional association for finding a specialized lawyer;

- To provide general information about the operation of the Hague Convention on the Civil Aspects of International Child Abduction;
- To maintain contact with the foreign central authorities;
- To control the procedure.

A more detailed discussion of these duties is provided below.

5. The Ca as a gatekeeper to provide several services

Within the context of the procedure, the Ca may provide the following services to the left-behind parent and the abducting parent:

- To provide state-funded mediation when this is taking place prior to the pre-trial review or immediately after the pre-trial review;
- To conduct a search of the Municipal Personal Records Database in order to find the residence of the abducting parent and the child;
- To engage the Public Prosecution Service in order to locate the child;
- To pay the costs for the translation of the documents received during the intake phase from the foreign central authority or from the left-behind parent or this parent's lawyer;
- To establish and maintain contact with the foreign central authority in order to obtain information, for instance for the purpose of obtaining a decision or determination in accordance with Section 15 of the HCCH (see Section 8, under (g)) from the foreign central authority or, if possible, in order to obtain information about possible criminal prosecution abroad or about matters under immigration law.

In order to gain access to the services mentioned above, the left-behind parent must submit an application for intervention to the Ca (through the foreign central authority or the Dutch lawyer of the left-behind parent). If this condition/these conditions have not been satisfied, the Ca does not have the authority to act. The Ca bases its assessment on a limited review.

This implies that the CA:

- assesses the application for completeness and correctness;
- checks whether the child is younger than 16 years of age;
- assesses the custodial relationship;
- ascertains whether consent has been granted; and
- ascertains whether the abducting parent and the child are in the Netherlands.

The same review is used with regard to non-contracting states. If necessary, the Ca may request additional information/ documents from the foreign central authority or – in the case of non-contracting states – from the relevant authorities. The Ca explicitly does not deal with the assessment of whether a possible ground for refusal exists, as referred to in the Articles 12, 13, and 20 of the Hague Convention on the Civil Aspects of International Child Abduction. This assessment is up to the court to make, just as only the court can order the return.

The left-behind parent is free to initiate legal proceedings together with his lawyer without the intervention of the CA. This will result in the fact that – during the entire duration of the proceedings – the left-behind parent or this parent’s lawyer will not have access to the services described above, with the exception of the state funded mediation and the possibility of the Ca establishing and maintaining contact with the foreign central authority in order to obtain information, including the request for a decision or determination in accordance with Section 15 of the Hague Convention on the Civil Aspects of International Child Abduction (see Section 8, under (g)).

In summary: An application for return may be submitted to the Ca by a foreign central authority, the left-behind parent, or this parent’s lawyer. Prior to the legal proceedings, the left-behind parent may opt to have the Ca conduct an intake phase or to submit an application to the Hague District Court without the intervention of the CA.

If the latter option is chosen, the left-behind parent or this parent’s lawyer will not have access to the services provided by the CA, with the exception of state funded mediation and the possibility of the Ca establishing and maintaining contact with the foreign central authority in order to obtain information, including the request for a decision or determination in accordance with Section 15 of the afore mentioned Convention. The court will decide whether or not the child must be returned.

6. The procedure in brief

A left-behind parent with custody may apply to the central authority of the State in which the child was habitually resident if he is of the opinion that his child has been taken to the Netherlands without consent. Pursuant to the Hague Convention on the Civil Aspects of International Child Abduction, the foreign central authority may submit an application to secure the return of the child to the Ca on behalf of the left-behind parent.

The left-behind parent may also apply directly to the Dutch Ca or a lawyer, for instance if the foreign state is not a contracting state. Once the Dutch Ca has received an application for intervention, accompanied by the documents required (by means of a completed ‘application form’), from the foreign central authority or from the Dutch lawyer of the left-behind parent, the Ca will start the intake phase. The Ca will send the abducting parent a letter in which this parent is notified of the application, and in which the abducting parent is requested to co-operate in the voluntary return of the child. Both parents are notified of the outcome of the intake phase. Upon completion of the intake phase, the application (translated, if necessary) is handed over to the lawyer appointed by the left-behind parent. Both the left-behind parent and the abducting parent are notified of the costs of conducting legal proceedings. In view of the interest of the child in abduction proceedings, the lawyers of both the left-behind parent and the abducting parent may decide that it is in the interest of the child to point out to their clients the advantages of finding a solution through mediation prior to drafting an application. In the discussion about the possibilities

of mediation it is desirable that the emphasis is put, in particular, on bringing about an amicable solution to the dispute.

The Ministry of Security and Justice encourages mediation by refunding a large portion of the costs. Mediation is provided by the Mediation Bureau (linked to the International Child Abduction Centre). If the parties decide not to enter into mediation or if the mediation did not result in complete agreement, the lawyer will submit an application to the Hague District Court. In principle, a pre-trial review will be held by a single judge at the District Court within two weeks after submission of the application. The aim is to deal with the substance of the case, if necessary, during a second oral hearing before a panel of three judges within two weeks. The basic principle is that the final decision will be issued two weeks after this hearing. The parties have two weeks to appeal against this decision. The oral hearing of the appeal will, in principle, take place two weeks after having lodged the notice of appeal with the Court of Appeal. After this hearing, the aim is to render the decision on appeal within two weeks. It is not possible to lodge an appeal in cassation, except cassation in the interest of the law. The above is also referred to as the ‘accelerated procedure’, in this case 6 weeks for the intake phase by the CA, 6 weeks before the District Court, and 6 weeks before the Court of Appeal.

Once the court has issued a return order, the child or children must be returned to the country of origin in conformity with the decision. This generally occurs on a voluntary basis or on the basis of enforcement. In this context, please refer to the cooperation protocol for the enforcement of return decisions and international child abduction cases. The Ca is not involved in an individual voluntary or forced return, but it may, however, act as a referrer at the request of the lawyer.

7. Basic principles

The next section (Section 8) provides a detailed description of the course of child abduction proceedings. In this context, the following basic principles should be taken into consideration:

- The wrongful removal or retention of the child is assessed on the basis of the standards and criteria included in the Hague Convention on the Civil Aspects of International Child Abduction and other regulations.
- It is, in principle, in the interest of the child that the status quo, i.e. the situation in which the child was prior to the wrongful removal, is restored as quickly as possible (Article 1 of the afore mentioned Convention).
- The intake phase and the legal proceedings have been organized in such a way that they will proceed as quickly as possible.
- An amicable solution is preferred (Article 7(2)(c) of the said Convention and Rule 5 of the Rules of Professional Conduct for the Dutch legal profession). The Ca therefore refers the parents to the Mediation Bureau as early as in the intake phase. The lawyers of both the left-behind parent and the abducting parent may point out to their clients that cross-border mediation is a serious option.

8. Process description

a. Intake phase

- Once the Dutch Ca has received an application for intervention from the foreign central authority or from the left-behind parent or his Dutch lawyer, the Ca will start the intake phase. This is a limited review, which implies that the CA:
 - assesses the application for completeness and correctness;
 - checks whether the child is younger than 16 years of age;
 - assesses the custodial relationship;
 - ascertains whether consent has been granted; and
 - ascertains whether the abducting parent and the child are in the Netherlands.

The same review is used for non-contracting states.

If necessary, the Ca may request additional information/ documents from the foreign central authority or – in the case of non-contracting states – from the relevant authorities.

- The Ca has relevant documents translated for the purpose of the limited review.
- The Ca requests an extract from the Municipal Personal Records Database of the abducting parent and the child at the municipality of his presumptive place of residence.
- If the place of residence of the abducting parent and the child is not known, the Ca may, if necessary, call in the Public Prosecution Service in order to find out their whereabouts. For reasons of privacy and care, the Ca will not inform the left-behind parent (or his lawyer) of the place of residence of the child and the abducting parent.
- The Ca writes a letter to the abducting parent⁴. In this letter the abducting parent is notified of the application from the left-behind parent and is requested to co-operate in the voluntary return of the child. The letter also includes an explanation of the Hague Convention on the Civil Aspects of International Child Abduction and the procedure; it points to the possibility of mediation; it explains how to engage a lawyer or an assigned lawyer; and it states what the costs of the procedure will amount to. The period for the abducting parent to respond is two weeks.
- As soon as the letter has been sent to the abducting parent, the left-behind parent will be informed of this by letter through the foreign central authority or the lawyer of the left-behind parent. In this letter the left-behind parent is informed about the procedure in the Netherlands. It also points to the possibilities of mediation for an amicable solution, and to the possibility of applying for legal aid.
- The Ca refers the parents for mediation to the Mediation Bureau (see under 8(d)). Parents are well-advised to also apply to a lawyer for legal advice.
- The foreign central authority or the lawyer of the left behind parent will be informed by the Ca about the decision of the abducting parent whether he or she will co-operate in the voluntary return of the child.

- Both parents also receive more detailed information about the further course of the procedure and legal proceedings.
- Lawyers only receive information about a case if the Ca has received a form showing that a parent has authorized the lawyer to represent him in this case in and out of court. This form can be downloaded from the website of the Ca at <http://www.government.nl/issues/children-and-children-s-rights/international-child-abduction>
- In principle, the intake phase lasts six weeks. It should be noted in this context that the Ca depends for the provision of information on third parties, including the foreign central authority and the Public Prosecution Service.

b. Article 16 of the Hague Convention on the Civil Aspects of International Child Abduction

- If the Ca receives information during the intake phase or thereafter that an application has been submitted to a District Court in the Netherlands which may result in a change in the rights of custody, including a change in the minor's place of residence, the Ca will notify the District Court to which the application has been submitted – in conformity with Article 16 of the Hague Convention on the Civil Aspects of International Child Abduction in conjunction with Article 7(1) of the Hague Convention 1996 – of the current return application. The purpose of this notification is to put these proceedings 'on hold'.
- When the abducting parent applies for a change or establishment of the rights of custody, the judge will have to stay these proceedings until the Hague District Court and if an appeal has been lodged, the Hague Court of Appeal has rendered a decision or has ordered the return of the child in accordance with the Hague Convention on the Civil Aspects of International Child Abduction.
- If the Ca has not been notified of such proceedings, either party will have to notify the Dutch District Court to which the application has been submitted of the application for return.

c. Pre-trial review

- In principle, a pre-trial review will be held within two weeks after the submission of the application for return to the Hague District Court. The pre-trial review is an initial oral
- hearing of the case, in which the judge identifies the points of dispute and considers the possibilities of mediation. The aim is to hold the pre-trial review on a Thursday. If the judge considers the situation around the child serious and worrisome, he may decide to summon the Child Care and Protection Board to appear at the hearing.
- The judge may also propose contact arrangements for the period that the left-behind parent is in the Netherlands.
- The pre-trial review will furthermore be used to assess which additional documents must be submitted (e.g. a decision or determination in accordance with Section 15 of the Hague Convention on the Civil Aspects of International Child Abduction). If the pre-trial review does not result in mediation or if the mediation has not resulted in complete agreement,

⁴ This letter is not written though if it has been argued convincingly that a risk of flight exists.

a second hearing before a three-judge panel will be planned, in principle, two weeks after the pre-trial review. In principle, the District Court will render a decision on the application two weeks after this hearing.

- In principle, no record will be made of the pre-trial review.

d. Mediation

- Mediation in the context of international child abduction is referred to as “cross-border mediation”, whereby the mediation is conducted by two specialized cross-border mediators, namely a lawyer specialized in international child abduction cases, and a psychologist (“co-mediator”). Cross-border mediation may be conducted in Dutch, English, French or a different language (with the help of an interpreter). Mediation is organized by the Mediation Bureau, which is linked to the International Child Abduction Centre.
- Cross-border mediation is a voluntary mediation procedure that provides parents with the possibility of solving disputes in an international child abduction case in an informal and private environment and with the assistance of two experienced cross-border mediators. Both mediators assist the parents in identifying the points of dispute. The basic principle is to find solutions that take account of the interests of the child and are acceptable to both parents.
- In principle, the mediation takes 3x3 hours, divided over two to four consecutive days, including at least one weekend day. The lawyers of both the abducting parent and the left-behind parent are expected to be available for consultation by telephone and by e-mail (in order to be able to read the documents and to provide advice to their clients).
- In the correspondence of the Ca with the parents, the Ca strongly advises the parents to try and arrive at an amicable solution through mediation, even prior to the lawyer submitting an application. The Ca refers the parents therefore to the Mediation Bureau. Either the left-behind parent or the abducting parent may contact the Mediation Bureau.
- The cross-border mediation may take place prior to submission of an application or after the pre-trial review. The parents are given the opportunity to make use of the state-funded cross-border mediation only once; either prior to the submission of the application or after the pre-trial review.
- Prior to each cross-border mediation process, both parents have an informative interview with an employee of the Mediation Bureau. In this interview, the employee explains the mediation process and identifies the issues that the parents wish to bring forward. The informative interview also provides the parents the opportunity to ask relevant questions without committing themselves immediately to the mediation.
- During the pre-trial period, the parties may decide to enter into mediation. If this is the case, an employee of the Mediation Bureau (who is already present in the court building) will make agreements with the parties – immediately following the hearing – about when to start the mediation.
- When the parents decide to enter into mediation, the Mediation Bureau will see to all provisions that lead to mediation. The Mediation Bureau will engage two mediators. One of the mediators will hold consultations with both parents and determine whether the case is suitable for mediation. The Mediation Bureau subsequently sends a mediation agreement to both parents by which they commit themselves to the cross-border mediation. After that, the mediation will start as soon as possible.
- The employee of the Mediation Bureau will arrange the location where the mediation will take place and maintains contact with the parents and, if applicable, their lawyers about the location and the time schedule of the mediation sessions. The employee will be present during the mediation sessions and provide services where necessary.
- The Mediation Bureau is also responsible for finalizing the cross-border mediation. The documents will be archived by the cross-border Mediation Bureau according to a privacy protocol.
- If the parents fail to reach agreement, the court will have to make a decision in the return proceedings. If the parents succeed in reaching agreement, whether or not through mediation, this agreement may be included in the decision, provided that the application is adjusted accordingly and the Dutch court has international jurisdiction to take cognizance of the adjusted application. All statements made during the mediation will be confidential and cannot be submitted to the court.
- The cross-border mediation will be refunded entirely or to a large extent by the Ministry of Security and Justice, and in a legal-aid case also by the Legal Aid Board. Only those cross-border mediators who have passed the specialist International Child Abduction Master programme of the International Child Abduction Centre course may qualify for an assignment at the Legal Aid Board.⁵
- Participation in cross-border mediation costs money; the costs are stated on the website of the Mediation Bureau: www.mediationbureau.org.
- Lawyers are free to personally designate a mediator. In that case, the lawyer (on behalf of the parent) is not entitled to the state-funded cross-border mediation from the Ministry of Security and Justice. The court will not schedule additional time for going through such a mediation process; the maximum period of two weeks between the pre-trial review and the hearing before the three-judge panel will be strictly complied with.
- The lawyer is to inform his client prior to the pre-trial review of the possibility of the cross-border mediation taking place several days after the pre-trial review. This information is required in connection with travel itinerary and return data.

⁵ www.rvr.org.

e. Citizen service number and extract from the Municipal Personal Records Database

- During the intake phase, the Ca searches the Municipal Personal Records Database with regard to the abducting parent and the child (or children) in order to ascertain whether this parent and child actually reside in the Netherlands or obtains data about the actual place of residence of the abducting parent in another form of evidence (e.g. from the official report of a community police officer).
- Pursuant to the Personal Data Protection Act, the Ca is not permitted to inform the left-behind parent or this parent's lawyer of the place of residence of the child and the abducting parent.
- Inclusion of the citizen service number of the abducting parent and/or the child in the application or a copy of the identification document stating the citizen service number will be sufficient for the court. In that case, the court registry will request an online extract from the Municipal Personal Records Database itself. If the citizen service number stated is not immediately retrievable online, the court has the power of an extract from the Municipal Personal Records Database is also obliged if no citizen service number is mentioned/cannot be mentioned in the application.⁶
- If the address or citizen service number of the abducting parent is not known, the lawyer makes mention of this in the application. In such a situation, the lawyer of the left-behind parent must state in the application that the Ca has or possibly has information about the place of residence of the abducting parent.
- The Ca will send the extract from the Municipal Personal Records Database stating the place of residence of the abducting parent and the child to the court as soon as the lawyer has submitted an application to the Ca to this extent, stating the application number under which the case is registered at the District Court.⁷

f. Translations

Documents in a foreign language which are submitted in the course of the proceedings must be provided with a certified translation into the Dutch language, unless the documents concerned are easy to read, such as marriage or birth certificates written in the English, French or German language.⁸ The court will not accept an informal translation or the reading of a translation by an interpreter during the hearing.

⁶ Letter of 5 March 2012 of the National consultative Committee for the Chairmen of Family and Juvenile Law Sectors to the Netherlands Bar Association.

⁷ In this way, the Personal Data Protection Act is not violated.

⁸ Rules of Procedure for family law sectors, Other (Volume 1) matters.

If desired, the Ca will have the following documents translated at its expense for the purposes of the intake phase, with regard to the left-behind parent:

- The application (including any appendices received from the left-behind parent through the foreign central authority or – in the case of a non-contracting state – the lawyer of the left-behind parent, and used by the Ca for the purposes of the intake phase;
- The additional documents requested by the Ca during the intake phase from the left-behind parent through the foreign central authority or this parent's lawyer, for the purposes of intake phase at the CA.

g. Contacts with the foreign central authority / decision or determination in accordance with Article 15 of the Hague Convention on the Civil Aspects of International Child Abduction

- For the purposes of the legal proceedings, the lawyers may want to receive further documents from the foreign central authority. The Ca facilitates this. The lawyer will send a request to this end, written in English, to the CA, which will forward this request to the foreign central authority.
- In the return proceedings, the court may furthermore request the left-behind parent to submit a decision or determination as referred to in Article 15 of the afore mentioned Convention: this is a decision or other determination from to oblige the applicants to submit an extract from the Municipal Personal Records Database as yet. The submission the authorities of the child's country of origin that the removal or retention of the child was wrongful within the meaning of Article 3 of the Hague Convention on the Civil Aspects of International Child Abduction. The court may have the decision or determination requested tailored to the circumstances in the current case and, if necessary, request additional information about the rights of custody. In such a case, the Ca will formulate a more finely tuned question.
- The lawyer of the left-behind parent may request the Ca once to request such a decision or determination from the foreign central authority. The lawyer will send a request to this end, written in English, to the CA, which will forward this request to the foreign central authority.
- If necessary, the Ca will send a reminder to the foreign central authority in both cases mentioned above.

h. Hearing the child concerned⁹

- The Hague Convention on the Civil Aspects of International Child Abduction and the Implementation Act do not prescribe age limits for hearing minors. The court will consider in each individual case whether the minor concerned must be heard. If the minor must be heard, he will receive a letter from the court, in which it is explained that the minor has the right to express his opinion about the application to return him to the

⁹ Cf. Rules of Procedure for family law sectors, Other (Volume 1) matters; Rules of Procedure for application proceedings for family law cases in Courts of Appeal.

country where the left-behind parent has his place of residence and in which he is invited for an interview with the judge.

- If the child concerned writes a letter to the judge, the parents will not receive a copy of this letter.
- The child will be heard outside the oral hearing behind closed doors and, in principle, individually prior to the oral hearing by the three-judge panel of the District Court. No record will be made of this hearing. During the oral hearing of the case, the judge will concisely state what the minor has stated. This representation will be included in the record of the hearing.

i. Return

- When the court has issued a return order, the lawyer of the left-behind parent and the lawyer of the abducting parent will discuss the practical course of events regarding the enforcement of the decision.
- If the abducting parent does not wish to cooperate in the return of the child, the situation may arise that the return decision must be enforced with the aid of the judicial authorities and the police. In the enforcement of the return decision, the interest of the child should be a primary consideration. Return from the Netherlands with the strong arm of the law should proceed as adequately and carefully as possible, so as to ensure the interest of the child to a maximum extent. For this reason, a protocol has been drawn up in consultation with the organizations concerned (Public Prosecution Service, the police, the Child Care and Protection Board, the Youth Care Agency, the legal profession, and CA): Protocol on cooperation in the enforcement of return decisions in international child abduction cases. The forced return is performed in accordance with the provisions laid down in this protocol.¹⁰
- The Ca is not involved in an individual voluntary or forced return, but it may, however, act as a referrer at the request of the lawyer.

j. Concurrence with criminal law

- The Ca performs its duties as prescribed in the Hague Convention on the Civil Aspects of International Child Abduction. The basic principle in this Convention is that the parties concerned remedy the consequences of a wrongful removal of a child within the framework of civil law. The Convention entails after all private international law. The parents are, however, free to initiate criminal proceedings in addition to the civil proceedings pursuant to the said Convention with the aim of achieving the return, whether or not forced, of the child and possibly the abducting parent. The Ca is not involved in such criminal proceedings.
- The Ca may, in general, point to the possible advantages and disadvantages of initiating criminal proceedings and/or reporting the abducting partner to the police. In some cases,

a report in the country of origin and the criminal proceedings subsequently initiated in the country of origin (or in the Netherlands) may be an obstacle to the return of the minor(s) by the ensuing ground for refusal of Article 13(b) of the Hague Convention on the Civil Aspects of International Child Abduction. If a returning parent will almost certainly be apprehended upon arrival, this may suddenly result in the fact that the minor is unintentionally separated from the primary caregiver. This may be considered an unbearable situation for the child concerned.

- In many countries it is furthermore not possible to 'withdraw' a report once it has been communicated; the discretion of the public prosecution to decide whether to prosecute or not leaves the possibility open to still continue the prosecution. A parent and his lawyer should obtain information about this in advance.
- If a minor and the abducting parent cannot be traced or change their place of residence again and again, a so-called 'alert' (through Interpol or another network) may be helpful in locating the child and the parent. Such an alert requires, in principle, a report of an offence to the police by the lawyer or the left-behind parent in the country of origin. In such a situation, a report may consequently offer advantages, which may compensate any disadvantages later on. For a report and/or to have an alert issued, the lawyer must apply to the police and the Public Prosecution Service.

k. Provisional guardianship

- If there are reasons to assume that the child will be kept hidden or that the abducting parent will evade the return ordered, the lawyer may consider it opportune to request the court to grant provisional guardianship pursuant to Article 13(4) of the Implementation Act. The judge in the return proceedings may render such a decision upon request or on its own initiative.
- The decision will lose its effect if the application for return is dismissed.

l. Appeal

- The foregoing applies by analogy to the appeal proceedings before the Hague Court of Appeal.
- No pre-trial review is conducted in appeal. There will be one oral hearing before a three-judge panel.
- The notice of appeal states, if applicable, that mediation was conducted prior to or during the proceedings before the District Court.¹¹
- In principle, mediation – whether state-funded or not – is no longer possible in appeal proceedings.
- Cassation is possible only if this is in the interest of the law.

¹⁰ See <http://www.rijksoverheid.nl/contact/contactgids/centrale-autoriteit-internationale-kinderaangelegenheden> or www.kinderontvoering.org.

¹¹ Rules of Procedure for application proceedings for family law cases in Courts of Appeal.

9. International contact arrangements

Compliance of the right of access is governed by Article 21 of the Hague Convention on the Civil Aspects of International Child and is complete unrelated to the wrongful removal or retention by a parent. The procedure described above applies by analogy to the international contact arrangements with the following remarks:

- The Hague District Court does not have exclusive jurisdiction. The parties may, however, choose this court.
- No pre-trial review will be conducted, and the period to schedule a hearing is longer than in abduction cases. The District Court will, however, take maximum account of the urgent importance arising from the fact that it concerns an international situation, with the contact between the requesting parent and the child residing in the Netherlands having often been interrupted for a longer period of time.
- If necessary, the Child Care and Protection Board will be engaged in order to provide advice about or assistance in whether it is possible to resume the contact between the parent and the child.
- Sometimes it is necessary to restore the contact first and to allow a period for building a relationship, with or without trial visits.
- If a request for international contact arrangements is received, the Mediation Bureau will also facilitate cross-border mediation. This mediation is not, however, funded by the Ministry of Security and Justice, subject to the rules regarding state-funded legal aid (legal-aid cases).

Colophon

This publication was produced in cooperation with the following organizations:

- Central Authority for International Children's Issues (Ministry of Security and Justice)
- International Child Abduction Centre / Mediation Bureau
- Legal Aid Board
- Dutch Office of the Liaison Judge International Child Protection (The Hague District Court)
- Dutch Association of International Child Abduction Lawyer

©Rijksoverheid | Oktober 2016 | 96252
No rights can be derived from this Guide.