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# **International child abduction**

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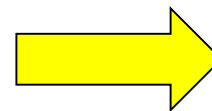
# Introduction

## **International Child abduction =**

- Wrongful removal or retention of child
- Wrongful = breaching custody rights of other parent if these rights are in effect exercised

## **Custody (broad) =**

- By operation of law
- Judicial or administrative decision
- Agreement with legal effect



Speedy return



# Contents

## A. Return obligation

1. Habitual residence
2. Speedy

## B. Exceptions

1. Strict interpretation
2. Best interests of the child



# A. Return: Legal texts

## Hague Convention 1980

- Goals =
  - Immediate return of the child
  - Jurisdiction remains in country of habitual residence
  
- 98 Contracting States (including all EU)
  - But see if accepted (by MS or EU)





# A. Return: legal texts

## Brussels IIa

- Broader than 1980 Convention: not only child abduction
- All EU Member States except Denmark
- Supplement to 1980 Convention
  - > Enhancing goal of return of child
  - > Restricting grounds for refusal even further
- Abduction may not change jurisdiction (Arts 8-10)





## A.1. Habitual residence

- Social and family integration
  - Duration, regularity, conditions & reasons for stay, nationality, school, language, social & family relationships
- Infant: integration of mother
- Unborn child: focus on factual residence



CJEU C-523/07 A  
CJEU C-497/10 *Mercredi*  
CJEU C-376/14 *C v M*  
CJEU C-111/17 *OL v PQ*



## A.2. Return: speedy

- Rule (Art 12 Hague Convention)
  - < 1 year between abduction and application:  
Child must return
  - > 1 year between abduction and application:  
Child must return unless child settled in new environment

- \* Court must decide in six weeks
- > Strict obligation under Brussels IIa (Art. 11(3))
- > Clarification under Brussels IIa Recast







## B. Exceptions: Legal texts

### **Hague Convention 1980**

- Applicant was not exercising custody or consented (Art 13)
- Grave risk for child of physical or psychological harm or intollerable situation (Art 13)
- Child objects + age and degree of maturity (Art 13)
- Fundamental principles: human rights and fundamental freedoms (Art 20)



## B. Exceptions: Legal texts

### **Brussel IIa**

- Convention's exceptions
- **Supplements (Art 11)**
  - Risk for child: may not be used if adequate arrangements in country of return
  - No refusal if applicant not heard



## B.1. Exceptions: strict

- Only where real risk
  - & risk cannot be addressed in country of hab res
- Risk for child
- What is intolerable situation?
- Fear of false allegations



## B.2. Best interests of the child

- Underlying Hague Convention
- ECtHR: best interests of individual child

**Abducting**

- Maumousseau & Washington (2007)
- Neulinger & Shuruk GC (2010)
- Sneersone & Kampanella
- X v Latvia GC

**Left-behind**

- Shaw v Hungary (2011)
- MA v Austria (2015)
- Aždić v Croatia (2015)
- RS v Poland (2015)
- KJ v Poland (2016)
- MK v Greece (2018)



## B.2. Best interests of the child

### Balancing Act

- Time <-> proper assessment
- Time right <-> to be heard
- Collective justice <-> individual justice
- Prevention <-> individual child
- EU integration <-> interests of the child



**THANK  
YOU**