**Summary of the Basic Rules for the Granting of a Petition for Return of a Wrongfully Removed Child under the Hague Convention on the Civil Aspects of International Child Abduction**

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| **An action brought pursuant to the Hague Convention on the Civil Aspects of International Child Abduction (the "Convention") is an action which, if successful, results in the physical return of a child to his or her habitual residence. The International Child Abduction Remedies Act (" ICARA") sets forth the procedures applicable to handling Hague Convention cases in the United States. Pursuant to ICARA, both State and Federal courts have original concurrent jurisdiction to hear Hague Convention cases. 42 U.S.C. 11603(a). Congress implemented the Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11,670 ("Hague Convention") when it passed the International Child Abduction Remedies Act ("ICARA"). The United States ratified and implemented the treaty on July 1, 1988. The Hague Convention was enacted to "secure the prompt return of children wrongfully removed to or retained in any Contracting State" and to "ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States." Hague Convention, art. 1, T.I.A.S. No. 11,670, at 4. Under ICARA, a person may petition a court authorized to exercise jurisdiction in the place where a child is located for the return of the child to his or her habitual residence in another signatory country. 42 U.S.C. 11603; Hague Convention, art. 3(a), T.I.A.S. No. 11,670, at 4. The convention is intended as a rapid remedy for the left-behind parent to return to the status quo before the wrongful removal or retention. The court's inquiry is limited to the merits of the abduction claim and not the merits of the underlying custody battle. It may not consider the merits of the custody case. 42 U.S.C. 11601(b)(4).****The Convention provides for a return of a child less than sixteen years of age who has been (1) wrongfully removed or retained (2) from her or her habitual residence (3) in violation of the custody rights of a person or institution. Convention, Articles 1 and 3. A wrongful removal or retention requires a showing that rights of custody have been breached according to the law of the child’s habitual residence, and that those rights were actually being exercised, or would be exercised but for the wrongful removal or retention. The rights of custody 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. Convention, Article 3.****In order for the Convention to apply, the child must have been habitually resident in a Contracting State immediately before any breach of custody or access rights. If the child was not removed from a country which was the child’s habitual residence, there is no right of return to that country. Convention, Article 31.** **In order to determine whether a wrongful removal has occurred, it is necessary to establish whether the country from which the child has been removed or retained is the child’s habitual residence. The term habitual residence is not defined in the Convention.** **In a Hague case it is the Petitioners burden to prove that the child was wrongfully removed from his habitual residence by a preponderance of the evidence. 42 U.S.C. 11603(e)(1)(A). If the petitioner shows that the child was wrongfully removed, the court must order the child's return unless the respondent demonstrates that one of the four narrow exceptions apply." 42 U.S.C. 11601(a)(4)). Two of those exceptions, which must be established by "clear and convincing evidence," are either that "there is a grave risk that the child's return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation," Convention, Article 13(b), or that return of the child "would not be permitted by the fundamental principles . . . relating to the protection of human rights and fundamental freedoms." Convention, Article 20. 42 U.S.C. 11603(e)(2)(A). The other two exceptions to the presumption of repatriation, which must be established by a preponderance of the evidence, are either that judicial proceedings were not commenced within one year of the child's abduction and the child is well-settled in the new environment, Convention, Article 12, or that the Appellant was not actually exercising custody rights at the time of the removal, Convention, Article 13 (a). In addition to the four exceptions, the court may "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." Convention, Article 13.****The removal of a child from the country of his habitual residence cannot be 'wrongful' under the Convention unless the complaining parent was 'exercising lawful custody rights' to the child at the moment of removal. Whether a person was exercising 'lawful' custody rights at the time of the child's removal must be determined under the law of the child's habitual residence. Convention, Article 3.****The rights of custody may arise by operation of law or by reason of a judicial or administrative decision or agreement having legal effect under the law of the country of the child's habitual residence. Convention, Article 3.** **The reference to the 'law of the State in which the child was habitually resident' includes that country's or state's conflict of laws rules. Thus, on the question whether the retention/removal breached a persons 'lawful custody rights,' the court must look to the choice of law rules of the child's habitual residence to see if it would apply its own internal law or defer to another country's or state's law.** **The Convention does not define 'exercise.' However, it has been held that absent a ruling from a court in the country of habitual residence, courts must liberally find a parent is 'exercising' custody rights whenever a parent with de jure custody rights keeps, or seeks to keep, any sort of regular contact with the child. '[A]s a general rule, any attempt to maintain a somewhat regular relationship with the child should constitute 'exercise.' ... [I]f a person has valid custody rights to a child under the law of the country of the child's habitual residence, that person cannot fail to 'exercise' those custody rights under the Hague Convention short of acts that constitute clear and unequivocal abandonment of the child.'****The normal procedures for proving foreign law need not be followed in Hague Convention proceedings. The court may take direct judicial notice of the law of the habitual residence. Convention, Article 14. An attorney's declaration as to the application of another country's law generally will be acceptable.**  |