



## INTERNATIONAL CHILD ABDUCTION

When a child is wrongfully removed to or retained in Denmark

## This leaflet

In this leaflet you can read about the rules that apply when a child living in a Hague Convention State is wrongfully removed to or retained in Denmark.

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## **The Hague Convention**

Like a number of other countries, Denmark has acceded to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

The object of the Hague Convention is to secure the prompt return of children wrongfully removed to or retained in any Contracting State. This means that the child must be returned to the country in which the child was habitually resident immediately before the removal or retention to resolve the disputes between the parents about custody and access there.

All the countries that have acceded to the Hague Convention have committed themselves to ensure an immediate return of a child to the State where the child was wrongfully removed from. When a child has been wrongfully removed to Denmark, the Danish authorities use the rules and proceedings in the Hague Convention and the Danish Child Abduction Act.

The rules in the Hague Convention and the Danish Child Abduction Act only apply if the child has not reached the age of 16 years.

## **What is an international child abduction?**

The Hague Convention and the Child Abduction Act contain a number of conditions, which must all be met in order for the removal to or the retention in Denmark to be considered wrongful.

- Before the wrongful removal the child must have had habitual residence in a Contracting State other than Denmark.
- The parent who wants the child to be returned must have (joint) custody of the child under the law of the State in which the child was habitually resident before the wrongful removal or retention.
- The removal of the child to Denmark must be in breach of rights of custody attributed to the parent, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention.
- The parent who wants the child to be returned must have exercised his or her rights of custody before the wrongful removal. However, this does not mean that the child necessarily must have lived with the parent who wants the child to be returned before the wrongful removal or retention.

A wrongful removal may, for example, be the case if the parents had originally agreed that the child was going to Denmark on holiday, and one of the parents refuses to let the child go back to his or her State after the end of the holiday.

## **If you consider moving to Denmark with your child**

If your child is living in a State that has acceded to the Hague Convention and you consider taking the child with you to Denmark, it is important to ensure that this can be done lawfully.

It is the rules in the State in which the child is habitually resident – and not the Danish rules – that determine whether it is lawful to take the child to Denmark.

It will therefore often be a good idea to consult the authorities in the State concerned or an attorney who knows the legislation in the State concerned before you take the child to Denmark.

If you are in doubt about which authorities that can inform you about the rules in the country where you live, you can contact the Danish embassy or The Ministry of Social Affairs and the Interior.

## How to bring child abduction proceedings

In all Convention States there is a Central Authority that receives and transmits requests from parents on the return of children who have been wrongfully removed. In Denmark, The Ministry of Social Affairs and the Interior has been designated as the Central Authority.

### Administrative procedures

- 1** | The parent who believes that the child has been wrongfully removed to Denmark usually institutes child abduction proceedings. This is done by applying the Central Authority in his or her own State of domicile for assistance in securing the return of the child. The foreign Central Authority transmits the application for return of the child to The Ministry of Social Affairs and the Interior.
- 2** | When The Ministry of Social Affairs and the Interior receives an application for return of a child, the application is sent to the enforcement court of the place where the child is staying in Denmark. If it is not possible to locate the child, The Ministry of Social Affairs and the Interior will ask for the police's assistance in finding the child.
- 3** | It is up to the enforcement court to decide whether it is a case of child abduction. The Ministry of Social Affairs and the Interior only handles the contact between the foreign Central Authority and the enforcement court. If the enforcement court decides that the child has been wrongfully removed, the child must be returned immediately to the State from which it was wrongfully removed.

## Proceedings in the enforcement court

1 | When the enforcement court receives the case an attorney will always be assigned to the parent who wants the child to be returned. The attorney's fee will be paid by the Danish State.

A wrongful removal will be dealt with urgently and shall be processed within six weeks as a rule.

2 | It is possible to use mediation if the parents desire.

The mediator will be a judge or an attorney, who has been nominated to be a mediator.

3 | If the enforcement court decides that the child has been wrongfully removed, the rules of the Hague Convention provide that the child shall be returned immediately to the State from which it was wrongfully removed.

However, the enforcement court may in certain exceptional circumstances decide that the child is after all not to be returned to the State in which it was living before the wrongful removal. This can, for example, be the case:

- If at the date of the lodging of the application for return more than one year has elapsed since the wrongful removal, and the child has settled down in its new environment.
- If there is a grave risk that the child's return would expose the child to harm mentally or physically, or in another way put the child in a situation he or she should not tolerate.
- If the child objects to being returned and has reached such an age and maturity that the child's opinion should be taken into consideration.
- If the return would not be permitted by the fundamental principles of Denmark in relation to the protection of human rights and fundamental freedoms.

The decision of the enforcement court in child abduction proceedings may be brought before the Danish High Court by both parents. The period allowed for appeal is four weeks.

The appeal will not act as a stay of the proceedings; however the High Court is not precluded from granting a stay of proceedings.

If the enforcement court decides that the child shall be returned to the State in which the child was habitually resident, the decision can be executed if the child is not returned voluntarily.

The execution can happen immediately, and be implemented/pushed through by the use of default fines or direct power/force.

## **Transfer of custody**

In child abduction proceedings **no** decision is made on who is to have the custody of the child in future. The idea behind the Hague Convention is to restore the actual condition so that any decision on who is to have custody in future is to be made in the State in which the child was habitually resident before the wrongful removal.

There is nothing to prevent the courts in the State in which the child was habitually resident before the wrongful removal from making a decision on the question of custody even though the child abduction proceedings have not yet been terminated.

## **Legal advice and free legal aid**

Parents involved in child abduction proceedings may obtain advice on the rules in the field from The Ministry of Social Affairs and the Interior.

A list of attorneys particularly suited to handle child abduction cases is available at [boernebortfoerelse.dk](http://boernebortfoerelse.dk).

When the enforcement court receives the case an attorney will always be assigned to the parent who wants the child to be returned. The attorney's fee will be paid by the Danish State.

The enforcement court can assign an attorney to the parent who took the child to Denmark. This parent must fulfill the financial requirements to obtain free legal aid, and it is the enforcement court that decides whether an attorney can be assigned.

## **More about the rules**

This folder contains only the principal aspects of the legislation that applies in the field. If you want to know more about the rules you can either call The Ministry of Social Affairs and the Interior or read more on our website:

[www.boernebortfoerelse.dk](http://www.boernebortfoerelse.dk)



## **The Child Abduction Unit**

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