



UTILIZING THE HAGUE CONVENTION

CHILD ABDUCTION

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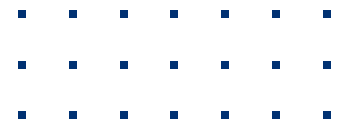
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Introduction

Unfortunately, and especially in light of the fact that Israel is a country of immigrants, there is a relatively high number of "parental kidnappings" (usually, the non-return of children from Israel to the home country) on a pro-rata basis as compared to most other Western countries.

Fortunately, Israel is a member of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (the "Hague Convention"). Via the Hague Convention and its enactment in Israel, there is a formal, quick, and efficient procedure to arrange for the return of children to their home countries[1].

These cases are generally very sensitive. When our office handles cases of this nature, due to our experience and success in returning children to their home countries in the past, we follow a standard procedure for the management, execution, and ultimate prosecution of such cases.

[1] This does not mean though, that every child is returned in every case, especially when the exceptions granted by law are applied, but you can learn more about that by continuing to read this booklet.

Our goals are both to assist the remaining parent[2] with tasks that should be done in their home country to help ensure ultimate success in having their children returned and on the Israel side to negotiate for an agreement or prosecute the case – whichever is needed for the ultimate return of children to their home countries.

We hope that this booklet gives you a better understanding of what will be involved if you elect to utilize the Hague Convention in your attempt to have your child returned.



[2]The parent who is "left behind" and has remained in or returned to the home country of the parent and the child(ren).

Question 1

When can the Hague Convention be utilized?

When children under the age of 16 are abducted from their habitual residence, the remaining (or "left behind") parent is able to utilize the Hague Convention to bring about the swift return of their children. Abducted children for purposes of the Hague Convention means wrongfully removed to or retained from their habitual residence (home country).



Question 2

What are the timelines in the Hague Convention?

As per the Hague Convention, the suit must be filed within a year. However, the longer people wait to file their suits, there is more chance the children will not be returned.

The percentage of children returned from Israel when the remaining parent files suit after six months is much lower than the percentage of children returned when filing has been swift. We recommend that people file within three months from the date of the "kidnapping" (whether wrongful removal or wrongful retention of the child(ren)).

Once a Hague Convention lawsuit has been filed in Israel, which is done in the Family Court that has jurisdiction where the child is living in Israel, the court is supposed to have an urgent first hearing which is to be set no more than fifteen days from the date of the filing of the suit.

The parent who has abducted the children is allowed to respond up to two days in advance of the initial urgent hearing date. At the initial urgent hearing, a timeline for the full (evidentiary) hearing of the Hague Convention application lawsuit is set.

At the full (evidentiary) hearing, the court may allow or refuse to hear witnesses; the court may hear the child depending on age or maturity; and the court may request psychological reports to be done on either or both parents and the child(ren). The court is supposed to issue its final decision within six weeks from the initial filing of the suit.

Appeals to Hague Convention final decisions may be made within seven days (to the Israeli District Court) and it is to be heard within ten days of filing of the appeal. The parties' legal arguments for the appeals are to be filed up to two days before the appeal hearing.

The ruling in appeals is to be given within thirty days from the date of filing.

In practice, including typical delays, etc. you should expect the whole process to take between forty five and ninety days from the date you initially file.



Question 3

In which situation will children not be returned?

Hague Convention case outcomes are highly dependent upon the factual situations involved in each case – they are what we call "fact-intensive." That is why it is very important to work hand in hand with your attorneys to ensure that they have all of the evidence to present your "story" to the court.

Pursuant to Article 13 of the Hague Convention, children will not be returned in the following situations:

- a. When the remaining parent was not actually exercising his or her custody rights^[3] at the time of the abduction.
- b. When the remaining parent either agreed to, consented or acquiesced to the child(ren)'s living in (i.e. changing the habitual residence to) Israel.
- c. When the child(ren) objects to being returned to the home country – and the court determines that they are old enough and mature enough for their wishes be taken into account.
- d. When there is a grave risk that the child will be harmed if they are returned.
- e. When the home country of the child does not follow certain fundamental principles of human rights and freedoms.

[3] This includes both visitation rights for non-custodial (generally divorced or separated) parents, and rights of parents that were living together in the same household as the child(ren).

Question 4

Will a Hague case determine child custody or divorce?

Although the results of a Hague Convention case may influence future custodial issues if subsequent litigation is pursued, the final ruling of the Hague Convention case is not connected to custody.

It is also not connected to divorce.

The main issue decided in the final rulings of Hague Convention cases is essentially which legal jurisdiction (the home country or Israel) is the proper legal jurisdiction over the child(ren) to decide issues regarding the child(ren). After the final ruling of the Hague Convention case, other issues can be addressed (such as divorce, custody, child support, etc.), if the parties elect to do so, in the country that has the jurisdiction over those issues.

For this reason, a Hague Convention case will not generally utilize the test used by most courts in determining other child -related litigated matters (i.e. "what is in the 'best interest' of the child"). Your attorneys should work with you to help you to stay focused on what issues and documentation is relevant for a proper Hague Convention case analysis by the judge.

Question 5

What type of evidence will I need for a Hague trial?

The good thing about Hague Convention cases is that, relative to other family law cases, they are very quick. The bad thing is that this means that you have one "bite at the apple" and you have to do it right from the get go. You have to help your attorneys by quickly getting them lots of evidence – you have to support your position and you can expect that your spouse or ex-spouse will lie, cheat, and distort facts in an effort to win the case.

In some instances, if you have enough evidence you may be able to get the other side to capitulate just by their reviewing (or their attorney's reviewing) of the strength of your case.

Many times Hague Convention cases turn into "he said/she said" arguments between the parties. This is the reason that you are best served if you are able to supply a lot of documentary evidence that can be supplied to the court. You should get hold of copies of any and all documents – visa applications, school and medical documentation, travel documentation, emails, text messages, voice mails, household bills, banking and employment records, etc. Anything that can show that there was never any mutual intent that your children remain permanently in Israel.



Thank you for downloading my guide. I hope it provided useful advice and helpful insights to support you through this tough time. With over 20 years of legal experience, licensed in both Israel and New York, and as a certified mediator, I bring personal insight

into the complexities of divorce, having gained custody of my three children through litigation in both the U.S. and Israel. For more on custody and Hague Convention cases to return children from Israel, feel free to reach out to Hait Law Offices. Explore more resources on my website and find hundreds of videos on my YouTube channel answering common questions to support you through this journey.



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