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Processing incoming return cases by courts

Has your child been taken to another EU country without your consent or in breach of a court decision? EU law establishes a system of judicial cooperation ensuring the prompt return of the child to the Member State of his or her habitual residence.

1 Which EU rules apply?

Where a child has been wrongfully removed to, or is being wrongfully retained in, a Member State other than the Member State where the child was habitually resident before the abduction, the [1980 Hague Convention](#) applies, as complemented by Chapters III and IV of the [Brussels IIb Regulation](#). The Regulation applies in all EU countries except Denmark.

The Practice Guide for the application of the Brussels IIb Regulation can be found on this page: [EJN's publications](#).

2 What is the procedure before the court and what does the court examine when deciding on the return of the child?

Return proceedings are brought before the court of the Member State where the child is currently located. They may be initiated directly by the parents seeking the return or with the assistance of a Central Authority.

The court shall act expeditiously in proceedings on the application. Except for exceptional circumstances, the decision should be given no later than six weeks from the date the application is received by the court.

The main task of the court seized with return proceedings is to determine whether an abduction (the child has been taken to or kept in a Member State other than the Member State where the child normally lived before the abduction and this breached custody rights of another person) has taken place and if so, to ensure the prompt return of the child to the Member State where he or she was habitually resident before the removal.

In particular, the court will verify if:

- the child has been removed or retained in a Member State other than the Member State of his or her habitual residence prior to the removal,
- the removal or retention is in breach of rights of custody and
- the rights of custody have been exercised, either jointly or separately, or would have been so exercised but for the removal or retention

If these conditions are met, the court must in principle order the return of the child, unless one of the limited grounds for refusal provided by the [1980 Hague Convention](#) applies.

The child must be given a genuine and effective opportunity to express his or her views, if he or she is capable of forming them. The person seeking the return of the child must also be given an opportunity to be heard. If this condition is not met, the court cannot refuse to return the child.

Where appropriate, the court may also take provisional or protective measures to ensure the child's safety or to facilitate contact with the parent seeking return. Such measures must not unduly delay the return proceedings.

Throughout the procedure, the court will encourage the parties to consider mediation or other forms of alternative dispute resolution, provided that this does not conflict with the best interests of the child. For more information on family mediation, you can visit the link at the bottom of this page.

The courts of the Member State of origin retain jurisdiction to determine matters of parental responsibility, including on the question of custody.

3 Can a court in the country where the child was abducted refuse the return of the child?

Where the child has found to have been abducted, the court in the country where the child was abducted can only refuse to return the child:

- if the left-behind parent was not actually exercising his/her rights of custody at the time of the abduction, or had consented to or subsequently accepted the removal or retention (Article 13(1)(a) of the [1980 Hague Convention](#));
- if there is a serious risk that the return would expose the child to physical or psychological harm (Article 13(1)(b) of the [1980 Hague Convention](#)). However, the return cannot be prevented if adequate arrangements have been made to protect the child (Article 27(3) of the [Brussels IIb Regulation](#));
- if the child objects to the return (Article 13(2) of the [1980 Hague Convention](#));
- if the return would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms (Article 20 of the [1980 Hague Convention](#)).

Even if the return of the child was refused, the courts of the Member State of the child's habitual residence can still decide on custody taking into account among others the reasons for refusal of return. Any decision requiring the return of the child will be enforceable in other Member States.

4 What happens when the court orders the return of the child?

If the court orders the return of the child, its decision is enforceable in the Member State where it was issued in accordance with that State's national law.

If the child is subsequently taken to another Member State, the return decision may be recognised and enforced there without the need to start new return proceedings under the 1980 Hague Convention.

The final ruling by the court in the Member State of origin is automatically recognised and enforceable in the other EU country without the need for a declaration of enforceability ("abolition of *exequatur*"), provided that the judge has issued a corresponding certificate provided for in the [Brussels IIb Regulation](#).

Please select the relevant country's flag to obtain detailed national information.

5 Related links

- [Processing incoming return cases by Central Authorities](#)
- [Find the Central Authority in your EU country and other relevant information](#)
- [Practice guide for the application of the Brussels IIb Regulation](#)
- [Cross-border parental child abduction leaflet](#)
- [Family mediation](#)
- [HCCH Child Abduction Section](#)

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