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Processing incoming return cases by courts



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European Judicial Network
(in civil and commercial
matters)

1 Concentration of jurisdiction

1.1 Which authority is competent to hear requests for return under the 1980 Hague Convention/Article 22 of the Brussels IIb Regulation ("requests for return")?

The family-law team of the District Court of The Hague (and on appeal: the family-law team of the Court of Appeal of The Hague).

1.2 Is the jurisdiction to hear requests for return confined to specialist courts? - If yes, to what courts is it restricted? How many judges within the specialist court exercise the jurisdiction? - If no, are the judges hearing return requests specialised?

Yes, see the response to 1.1: the family-law team of the District Court of The Hague (and on appeal: the family-law team of the Court of Appeal of The Hague). Within these teams are a number of specialised family-law judges who deal with international child abduction cases.

1.3 By which method are the requests for return allocated to a judge?

Dates and time slots for scheduling international child abduction cases are set in advance (by the team chair). The specialised judges are then assigned to that session and this ensures that these cases are assigned to the judge by the team chair.

1.4 What specialist training is provided for the specialist judges? In particular do they have the opportunity to attend multi-national conferences specialising on International Family Law? Is there a regular conference within your jurisdiction to which all judges dealing with requests for return are invited?

The Dutch Study Centre for the Judiciary (*Studiecentrum Rechtspleging -SSR*) offers a course in international child abduction. In addition, knowledge on the handling of international child abduction cases is frequently shared at internal meetings within the District Court of The Hague. There are also meetings of professionals held at national level to discuss the handling of international child abduction cases.

Two liaison judges for international child protection also work within the family-law team at the District Court of The Hague. They regularly attend international conferences on international family law. They share the knowledge gained there with colleagues in the family-law team.

2 Practice and procedure for requests for return in first instance court

2.1 Are there special rules of practice and procedure for requests for return? If yes, please provide a brief summary of the procedure and if relevant, provide a link

The procedure is a standard procedure for cases initiated by the filing of a petition (*verzoekschriftprocedure*) but with a number of specific features. In return proceedings, within two weeks of lodging the application for return, a preparatory session (*regiezitting*) is scheduled to discuss participation in cross-border mediation and contact between the left-behind parent and the child. Two weeks later, the substance of the case is heard by a three-judge panel. The judgment is delivered two weeks after that, in writing. The time limit for bringing an appeal is shortened to two weeks. The Court of Appeal considers the case and decides within four weeks of the appeal being lodged. An appeal on a point of law is not possible in return proceedings. For the specific rules of procedure of the court, see: [het procesreglement IKO](#).

2.2 What steps are taken to meet the 6 weeks target described in Article 24(2) of the Brussels IIb Regulation?

See the response to 2.1 on specific procedural rules, and time limits.

2.3 If mediation is used, what steps are taken to ensure that the referral to mediation does not risk a breach of the 6 weeks target? How does the court examine whether contact should be ensured, in accordance with Article 27(2) of the Brussels IIb Regulation? Does the court examine whether contact should be ensured only on the basis of a request from one of the parties or can do so on its own motion?

The District Court of The Hague cooperates closely with the Mediation Office of the International Child Abduction Centre (Centrum IKO). The Mediation Office oversees all aspects of the process of specialised cross-border mediation for parents involved in an international child abduction case. The understanding is that parents will enter cross-border mediation within a period of usually just a few days after the court's preparatory session (*regiezitting*). The 'pressure cooker' method is applied: three one-and-a-half hour sessions over three days. If the parents fail to reach an agreement, the court is immediately alerted to the need to rule on the substance of the case. The court will already have kept a time slot free in its schedule for dealing with the case.

The possibility of contact between the left-behind parent and the child is always discussed at the court preparatory session (which is held within two weeks of the application for return being made). The judge hearing the preparatory session actively presses for this contact to be established; if necessary someone from the Child Protection Board (Raad voor de Kinderbescherming) can be present. At the court preparatory session, a member of the Child Protection Board is also always present to inform or advise parents and the judge on these issues.

2.4 How is the child given an opportunity to express his or her views in return proceedings? Please describe who hears the child's views and at which stage of the proceedings are their views heard

In the context of cross-border mediation, a conversation between the child and a behavioural expert always takes place first. The behavioural expert draws up a report of their conversation and this report is read out to the parents at the beginning of the mediation. If the parents do not reach an agreement and the court has to rule on the substance of the case, the court immediately appoints a children's guardian for children from the age of three. The children's guardian conducts two interviews with the child within a short period of time (and before the case comes before the court sitting as a bench) and makes a written record of them. That report becomes part of the case file. The court invites children from the age of six to talk to the judge before the hearing. This takes place in a child-friendly space. The children's guardian may be present at that interview if the child so wishes.

2.5 Is the number of court hearings for requests for return subject to judicial discretion, or does your legal system establish a minimum/maximum number? If so, please indicate

It is for the court to determine the number of court hearings.

2.6 Is oral evidence admitted at the hearing? If it is, are oral submissions admitted to supplement written argument?

No.

2.7 Is the applicant required to attend the hearing? Are there any procedural consequences if the applicant does not attend the hearing?

No, there is no obligation to attend the hearing, nor are there any procedural consequences if the applicant does not attend the hearing.

2.8 Are the courts equipped with videoconferencing facilities to allow for remote participation through videoconferencing? What is the legal framework for using videoconferencing at the hearing? Is there a specific legal framework for hearings in return proceedings?

Yes, the court is equipped with videoconferencing facilities. The legal framework is the law (a video hearing is possible). The judge decides whether one party or both may participate in a video call. More detailed rules are laid down in the rules of procedure governing international child abduction cases, as follows:

4.3 Participation via video calls:

4.3.1 Requests to participate in the preparatory hearing or the substantive oral hearing via video call shall be submitted no later than three working days before the hearing, stating the reasons for the request.

4.3.2. The court shall assess the request to participate via video calls on a case-by-case basis. Participation via video calls shall be permitted only where there are compelling reasons why the participant in the proceedings cannot be expected to attend the hearing in person.

4.3.3. If a participant in the proceedings attends the hearing by means of a video call and uses an interpreter, the lawyer of that participant shall ensure that the interpreter is also present at the (preparatory) hearing via video call and that the interpreter interprets directly for the participant via a telephone connection.

2.9 What type of measures, including provisional or protective measures (safeguards), can be taken to ensure the safe return of the child?

Under Dutch law there is no measure relating to 'safe return orders'.

3 Appeals

3.1 Is there an appeal from the first instance court?

Yes.

3.2 If there is a right of appeal, is it absolute or is permission to appeal required? Or is it on points of law alone?

No permission to appeal is required. There is also no limitation to points of law.

3.3 In the event of an appeal is the return order automatically suspended or may it nevertheless be enforced?

It is automatically suspended. In very exceptional cases, the return may be declared provisionally enforceable so that an appeal does not suspend enforcement. However, this is hardly ever applied in international child abduction cases.

3.4 Is there a second appeal? If yes, is permission required?

No, one appeal may be brought, no further appeal or appeal on points of law is possible.

3.5 What specialist experience and expertise is there in the appellate courts?

The same as judges at first instance; specialist judges with experience and knowledge of international child abduction cases.

3.6 What is the time scale for the determination of an appeal and, if applicable, a second appeal? If expedited, is priority given by statute, rules of court or practice?

See also the response to question 2.1. The time limit for bringing an appeal is shortened to two weeks. The Court of Appeal considers and decides within four weeks of the notice of appeal being submitted.

3.7 In accordance with Article 24(3) of the Brussels IIb Regulation, what are the procedural steps that need to have been taken for the 6-week target to start running for the higher instance court to be able to examine the appeal?

See the responses to 2.1 and 3.6.

4 Enforcement of the return order delivered by the court

4.1 Which authority is competent for the enforcement of return orders?

The Public Prosecutor's Office and the police. A special return protocol is in place, involving cooperation with the Child Protection Board, among others.

4.2 Are return orders provisionally enforceable? If so, is it decided automatically by the court or does the applicant have to request it? When a return order is challenged, how is the provisional enforceability affected?

No. The applicant may request that the return be declared provisionally enforceable, but the court may also do so of its own motion. However, the court will declare the return provisionally enforceable only in very exceptional cases (of its own motion or on application) because it is in the child's best interests to await the appeal proceedings before the child is returned.

4.3 What is the procedure of the enforcement of return orders? Are there any legal measures (for example, some penalties) that may help to ensure the enforcement of the return order?

See the response to question 4.1. A special protocol with working arrangements has been drawn up for this purpose. There are no specific legal measures or penalties in this context.

4.4 Please describe the procedure for requesting suspension and refusal of enforcement of return orders?

A parent may apply for a stay of enforcement by way of interlocutory proceedings (this is a general urgent procedure for all types of cases). This is granted only in very exceptional cases. The principle is that a judicial decision must be enforced.

5 Enforcement of the privileged decision delivered by a foreign court

5.1 Which authority would be responsible for the enforcement of a foreign so-called overriding decision i.e. return order mentioned in Article 11(8) of the Brussels IIa Regulation or a foreign privileged decision pursuant to Article 29(6) of the Brussels IIb Regulation entailing the return of a child following a refusal in the requested state under Article 13(1)(b) or 13(2) of the 1980 Hague Convention

The competent authority for enforcement in the Netherlands is the police and the Public Prosecutor's Office.

6 Judicial Liaison

6.1 Has your jurisdiction officially/unofficially nominated a specialist judge to the European Judicial Network in civil and commercial matters (EJN-civil) / International Hague Network of Judges (IHNJ)?

Yes, the Netherlands has appointed two liaison judges who are affiliated to both the European Judicial Network (civil) and the IHNJ. Both judges play a very active role in these networks.

6.2 If yes, is the judge nominated a sitting judge? Was the nomination official or unofficial?

They are two sitting judges who have been officially appointed for this purpose (in their capacity as team leader of the family-law team of the District Court of The Hague and senior judge in international family law).

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