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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 municipal court (*općinski sud*) at first instance, with the county court (*županijski sud*) ruling on appeals.

The court with competence to hear a request for the return of a child is the Municipal Civil Court in Zagreb (*Općinski građanski sud u Zagrebu*) at first instance and the County Court in Zagreb (*Županijski sud u Zagrebu*) at second instance.

The Act on the Implementation of the Convention on the Civil Aspects of International Child Abduction (*Zakon o provedbi Konvencije o građanskopravnim vidovima međunarodne otmice djece*) (*Narodne novine* (NN; Official Gazette of the Republic of Croatia) No 99/2018) governs the competence and powers of the authority and the procedure for requests submitted in the Republic of Croatia on the basis of the Convention on the Civil Aspects of International Child Abduction, The Hague, 1980.

The authorities that are competent to implement the Convention in Croatia are: the Central Authority, the courts, the ministry responsible for internal affairs, the social welfare centres (*centri za socijalni skrb*) and other bodies whose assistance is needed.

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, the jurisdiction to hear requests for the return of a child lies with specialist courts:

the Municipal Civil Court in Zagreb at first instance, comprising 13 judges (all the judges of the family division (*obiteljski odjel*)). the County Court in Zagreb at second instance.

The proceedings before the competent court are launched by a party submitting a request for the return of a wrongfully removed or retained child, either in person or through a proxy or the Central Authority. The Municipal Civil Court in Zagreb rules on requests for the return of a wrongfully removed or retained child.

Appeals against decisions of the Municipal Civil Court in Zagreb are ruled on by the County Court in Zagreb.

The court of second instance rules on appeals against a first-instance decision in a chamber consisting of three judges (Article 14 of the Act).

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

By rotation.

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?

Specialist training is organised mainly by the Judicial Academy (Pravosudna akademija), for the whole of Croatia. The Judicial Academy also organises international training in cooperation with the EJTN and ERA.

Judges may apply for international conferences directly (where possible) or through the Judicial Academy (in which case, the application is made through the Judicial Academy's system or through the court administration responsible for the training of judges).

All 13 judges have the opportunity to take part in national and international training events.

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 Act on the implementation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

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

The procedure is centralised, and any judge who receives such a file should give it priority over all others.

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 court takes all the steps for issuing a decision, regardless of mediation or family mediation. The court examines the need to ensure contact in accordance with Article 27(2) of the Brussels IIb Regulation by means of questions to the parties, through the special guardian that it assigns to the child and by asking the competent regional office of the Croatian Institute for Social Work (Hrvatski zavod za socijalni rad, HZSR) for information on contacts.

The court may also order personal contacts of its own motion on the basis of the Family Act (*Obiteljski zakon*, OBZ).

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

The child is given the opportunity to express their views, based on their age and level of maturity. In most cases, these views are confirmed by a psychologist on the HZSR's team of specialists from which the court commissions a report on the child's situation.

The conversation with the child may also be conducted by the child's special guardian, either independently or together with the psychologist, and the child may also express their views before the court in a conversation with a court expert who is a psychologist by profession; the judge and the child's special guardian may be

present at that conversation, depending on the psychologist's assessment of the child's age and level of maturity and the most appropriate way of establishing the views of the child in question.

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 subject to judicial discretion.

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

Under Croatian family law, parents must always be given the opportunity to make submissions. This is done by gathering evidence in oral questioning of the parties as part of the hearing.

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

The applicant should take part in the hearing. If they fail to do so, the court will assess their absence in the light of their written submission.

In family cases, and particularly in cases under the 1980 Hague Convention, there is no stay of proceedings or presumption of withdrawal on account of absence from 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?

The Municipal Civil Court in Zagreb and the County Court in Zagreb have video equipment.

The legal framework consists of the 1980 Hague Convention, the Act on the Implementation of the 1980 Hague Convention, the Brussels II-ter Regulation, the Act on the Implementation of the Brussels II-ter Regulation (*Zakon o provedbi Uredbe B II-ter*), the Decree on evidence-taking (*Uredba o izvođenju dokaza*) and the Civil Procedure Act (*Zakon o parničnom postupku*).

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

Both types can be used.

3 Appeals

3.1 Is there an appeal from the first instance court?

There is, and the time limit is eight days on the basis of the Act on the Implementation of the 1980 Hague Convention.

In proceedings on a request for the return of a wrongfully removed or retained child, the court adopts decisions in the form of a resolution (*rješenje*) or declaration (*zaključak*).

The parties may appeal against a resolution within eight days of the date on which a copy of the decision was served (Article 25(1) of the Act on the implementation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction).

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 is required.

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

It may be enforced before a ruling is adopted on the appeal (but, in practice, this does not happen).

The resolution ordering the return of a child to another Contracting State has legal effect once it is final (Article 25(2) of the Act on the implementation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction).

If an appeal is lodged in due time, the part of the court resolution on the request for the return of a child that is challenged in the appeal cannot become final (Article 25(3) of the Act on the implementation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction).

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

Under the Act on the Implementation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, a review of – or a proposal to repeat – proceedings relating to a request for the return of a wrongfully removed or retained child is not permissible.

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

The only appellate court is the County Court in Zagreb (there is no specialisation of the courts).

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?

Under the Brussels II-ter Regulation, the county court has six weeks to process an appeal, whereas it has 30 days under the Act on the Implementation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

The court of second instance will adopt a decision on an appeal lodged against a resolution of the court of first instance within 30 days of the date on which it receives the appeal (Article 25(4) of the Act on the Implementation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction).

Court proceedings on the return of a wrongfully removed or retained child are urgent (Article 16(1) of the Act on the Implementation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction).

Cases are assigned to a judge in accordance with the provisions of the Rules on work in the eSpis system (*Pravilnik o radu u sustavu eSpis*).

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?

The procedural steps are set out in the Civil Procedure Act.

4 Enforcement of the return order delivered by the court

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

Municipal courts.

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?

Provisional execution (enforcement) does not exist under the Family Act (*Obiteljski zakon*) or the Enforcement Act (*Ovršni zakon*).

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?

Under the Act on the Implementation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, Articles 512-519 of the Family Act (enforcement for the return of a child) apply, together with the provisions of the Enforcement Act as a *lex specialis*. The applicant (*ovrhovoditelj*) lodges an application for enforcement against the defendant (*ovršnik*), the defendant submits observations on the application for enforcement, the special guardian and the Croatian Institute for Social Work (Hrvatski zavod za socijalni rad) are asked to submit their observations on the application and on whether it is worth conducting proceedings, normally the parties are heard and, depending on the circumstances of the case, a discussion is held with the minor child.

Under Article 514 of the Family Act, enforcement for the return of a child is ordered by imposing a fine, a term of imprisonment or forcible removal and return of the child.

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

A request for suspension of enforcement proceedings concerning the return of a child may be submitted during those proceedings by the parties, the Croatian Institute for Social Work or a minor child's special guardian, in the light of the circumstances of the case; there is no special procedure for this.

A request for enforcement with a view to the return of a child may be refused through the procedure set out in point 4.3, depending on the circumstances of the case, in the light of the results of the proceedings as a whole.

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 municipal court with general territorial jurisdiction for the child would be competent.

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)?

Officially, only to the International Hague Network of Judges; unofficially, the same judge also communicates with their colleagues in the EJN.

A judge at the County Court in Zagreb has been nominated to the International Hague Network of Judges. The nomination is official.

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

Two judges have been officially nominated to the IHNJ:

The primary judge, who is at the Family Department of the Municipal Civil Court in Zagreb, works on cases under the 1980 Hague Convention.

The alternate judge is at the County Court in Zagreb. A judge at the County Court in Zagreb has been nominated to the International Hague Network of Judges. The nomination is official.

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