

EVERY CHILD has the right
to communicate with **BOTH** of its parents!

**Ministry of Education and Science
of Russian Federation**

**Department of State policy
of children's rights protection**

Central Authority on the Hague Convention
of 25 October 1980
on the Civil Aspects of International
Child Abduction in Russia

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www.hague-conventions.ru

HAGUE CONVENTION **on the Civil Aspects** **of International Child Abduction** **and its application in Russia**

A Russian couple once moved to Poland. Eighteen months later the mother went with her child to visit her parents in Russia and later called her husband to say they would not be coming back.

* * *

A Russian woman got married to an American whose family lives in Germany. After their divorce and in accordance with parental agreement the daughter lives with her mother in Russia and spends summer holidays with her father in Germany. During one vacation her father decides that the child would stay with him.

* * *

A father seeks for help, since his son's mother plans to move to Italy and intends to take the child with her, without his permission.

The number of international families is growing steadily. As a result when family issues are to be solved one should not just take into account the interests of the concerned family members but also the legislation of their respective countries as this can vary significantly from case to case. That is why the development and the implementation of common procedures for international family disputes resolution is crucial.

Nowadays Russia is a signatory of a range of agreements regulating mixed-marriage disputes, notably "The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction" (hereinafter referred to as the "Convention") whereby any child wrongfully removed or retained outside the country of habitual residence is to be returned to his or her home immediately.

The department of State policy for children's rights protection at the Ministry of Education and Science of Russia functions as the Central Authority (hereinafter referred to as "CA") for the Convention 1980 in the Russian Federation.

CA professionals consult on the matters related to application of Convention 1980 and can help you to:

- Get the necessary information, support and assistance for applications;
- Understand the specificities of legal procedures in Russia;
- Attempt to negotiate terms for the voluntary return of the child.

This brochure is made to inform you more about CA and its work as well as to answer the most frequently asked questions we get from parents.

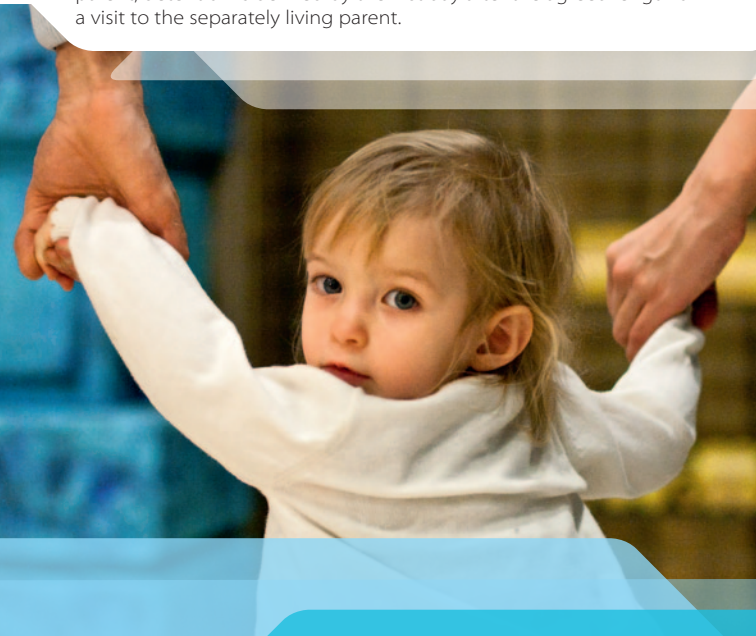
What is parental abduction?

Although in Russia children can be taken abroad by one parent without written permission from the other, it is considered as a crime in many signatory countries of the Convention.

According to the Convention one can talk about international parental abduction if:

- a) The child is under 16 years old;
- b) The child resides in Russia or other country signatory of the Convention (citizenship of the child and parents is of no significance and does not influence the decision regarding the child's return);
- c) The child is removed abroad or is being detained there without the permission of their legal guardian*

* Removal takes place at the moment of crossing the border of the country of habitual residence of the child by the child and abducting parent; detention is defined by the first day after the agreed length of a visit to the separately living parent.



My child was abducted, what can I do?

First of all try to find out where your child was taken to.

- A) In the case your child has been taken to a country signatory of the Convention

List of signatory countries of the Convention as well as contact information of all the Central Authorities can be found on the web site of the Hague Conference on Private International Law in the Child Abduction section: (http://www.hcch.net/index_en.php?act=text.display&tid=21).

Here you can also check whether your country's adherence to the Convention has been recognized by other signatories*. If the child was taken to/from the country that has recognized your country's status as signatory, then you can apply call upon the CA of the child habitual residence country or upon the CA of the country where you think your child is being detained. **Application form for Russian CA can be downloaded here <http://минобрнауки.рф/документы/2759>.**

The screenshot shows the HCCH website interface. At the top, it reads 'The World Organisation for Cross-Border Co-operation in Civil and Commercial Matters' and 'L'Organisation mondiale pour la coopération transfrontalière en matière civile et commerciale'. Below this is a navigation menu with links for 'Contact', 'About HCCH', 'FAQ', 'Help', 'Disclaimer', 'Français', and 'Other languages'. The main heading is 'Welcome to the Child Abduction Section'. A search bar is located on the left. The 'Introduction' section states: 'The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction is a multilateral treaty, which seeks to protect children from the harmful effects of abduction and retention across international boundaries by providing a procedure to bring about their prompt return. The "Child Abduction Section" provides information about the operation of the Convention and the work of the Hague Conference in monitoring its implementation and promoting international co-operation in the area of child abduction.' A red triangle icon highlights a note: 'Please note that the Permanent Bureau of the Hague Conference has no mandate to assist in individual abduction cases! If you have a question relating to international child abduction and your country is a Party to the 1980 Child Abduction Convention, please contact the Central Authority designated by your country.'

NB: Application should be made as soon as possible. Time is crucial. If the application is made later than 1 year after the abduction, chances of return are minimal.

B) Other countries

If the country where your child has been taken to or is being retained is not a signatory of the Convention 1980 or is a signatory but has not recognized Russian Federation as a signatory, you can seek for help from:

- Local police of the country where you assume your child is
- Russian Ministry of Foreign Affairs <http://www.kdmid.ru/>
- CA of the country where your child might be – as a source of information only

* After a country's ratification of the Convention, it must be recognized as a signatory by existing signatories of the Convention, to fully achieve signatory status. E.g., by the April 20th 2013 the following 19 countries recognized the Russian Federation: Croatia, Argentina, France, Estonia, Greece, New Zealand, China (Macau administrative region), Uzbekistan, Israel, Columbia, Czech, Ukraine, Finland, Slovenia, Spain, Slovakia as well as Serbia, Romania and Lithuania where recognition comes into effect from June 1st, 2013.

Does the Convention 1980 apply in my case?

You can refer to the Convention if your child has been abducted to\from Russia from\to a country member of the Convention and it happened after the countries had recognized each other as Convention signatories (full list of participants can be seen at www.hcch.net). For the Convention to apply, your child must have been under age 16 at the time of the abduction. You can double check with CA professionals on whether the Convention is applicable in your case by calling +7 (499)237-94-11 or e-mailing your query to: d07@mon.gov.ru



I'm not sure where my child was taken to. What to do?

If you are not sure about the exact address of the child but you know the country where your child might be located you can ask for assistance with the search:

- CA of your country that must then make a request to the relevant CA abroad to check potential addresses of the child and abducting parent
- Local police (also ask for the possibility to locate the child and abducting parent via credit cards, mobile phones, e-mail and any other traces of them such as medical or school records etc.)

NOTE: in case the search for the child is in Russia, the application to the police can be filed only by parents.

- Friends and family of the abducting parent – try to establish contact with them; they might help for the sake of the child's welfare.

Your **CHILD** needs **BOTH** parents!

What happens after the application is filed?

After the registration of the application the CA calls upon the CA of the respective country in order to confirm the location of the child and to try to achieve an amicable agreement between the parents. Sometimes an application on its own is enough to persuade the abducting parent to return with the child to avoid further legal procedures.

If parents cannot resolve the dispute by themselves, inviting third neutral party such as a mediator, to facilitate the negotiations could be good solution.



Advantages of mediation:

- Generally takes less time than court cases
- More options for discussion and agreements
- Mediation is private, court is not
- Professional mediators charge significantly less than lawyers
- More likely to be a lasting solution: parents who reached a compromise on a voluntary basis will be more likely to abide by their agreements
- Is often the best case scenario for the kids (shorter and less traumatic)
- Better understanding and perspective: mediators can help parents understand cultural differences as well as advise on what may be best for parents and children in the long run

Disadvantages of mediation:

- Mediation can be used as a delaying tactic in Hague return cases and thus must be strictly time-limited
- Usually mediation agreements are followed on a voluntary basis. However if one of the parties breaks this agreement, an application to the Court becomes necessary.
- Mediation might be not the best solution, if one of the parties is intimidated by the other, or when the case involves claims of abuse or neglect.

There are more advantages than drawbacks of the mediation, which is why this strategy for disputes resolution is so popular, especially when it comes to family issues.

If you need mediator, ask CA professionals for their recommendations.

If an amicable solution is not achieved, parents and their attorneys can file an application for return to the Court of the District where the child is assumed to be located*.

The Return Procedure of the child is a very complex legal process. Whether you call upon a Court or try to achieve an out of court solution, you will need all the possible help, so apart from consulting with CA, do find professional attorneys to advise you on related issues and represent your interests in Russia and abroad.

NB: the CA in Russia does not provide free legal aid to parents and does not cover any expenses, apart from cases that are subject to the Federal Law on Russia's accession to the Child Abduction Convention (May 31st, 2011).

To avoid mistakes consult on all the decisions and compiled documents with CA professionals.

* The Convention does not deal with custody issues; the Court only makes decision regarding the return of the child to the country of habitual residence. Other matters are considered by the Court of the child's country of habitual residence.

What to do if you suspect a potential abduction

A child's abduction usually happens unexpectedly. But those who have experienced such situation note that there can be some telling signs prior the abduction:

- Sudden change in the other parent's behavior, e.g. there are more and more quarrels over the upbringing of the child etc.;
- A difficult divorce with ongoing disagreements regarding the child's custody and access issues;
- The parent plans to move with the child to another country;
- The parent actually threatens to abduct the child.

Threats of abduction do not automatically mean that it will take place. But it is a clear signal for you to start thinking about possible preventative measures. Prevention however can be very difficult, since every abduction case is unique.

In case of divorce it is always better to sign the agreement regarding the terms of child upbringing defining rights and duties of both parents.

If you suspect that the other parent intends to abduct the child abroad you can submit an application to the migration service and issue a border crossing ban order for the child.

Exceptions

Under the Convention a child is to be returned to the country of habitual residence as promptly as possible. However, there can be some exceptional circumstances and the return of the child might be denied if the abducting parent proves anything from the following to the Court:

- Custody Rights were not actually being exercised by the legal guardian at the time of removal or retention (Article 13)
- There is a grave risk that the child is exposed to physical or psychological harm or otherwise placed in an intolerable situation in his or her country of habitual residence (Article 13b);
- The child objects to being returned and has reached an age and degree of maturity so that the Court can take account of the child's views (Article 13);*
- Over one year has passed since the date of the wrongful removal or retention and the child has adjusted to its new environment (Article 12);
- The return would violate the fundamental principles of human rights and freedoms (Article 20).

Note: Interpretation of each case and its circumstances may vary from country to country and the ultimate decision remains at the discretion of the Court.

* According to the Russian legislation the child has right to be heard during any court or administrative proceedings; the opinion of children of the age of 10 and above must be taken into account unless it is in conflict with their interests.

Re-abduction

Sometimes parents try to take matters into their own hands and go as far as re-abduction of the child from the abducting parent. However, experience has proven that it only worsens the situation and makes resolution of the dispute even more difficult for all the parties involved. Apart from being illegal in most countries, re-abduction might delay the ultimate return of the child. It endangers your child and others while hampering for any future judicial efforts you might wish to make. Moreover, there is no guarantee that the chain of abductions would culminate with the child remaining with you. A parent who has re-abducted a child may have to go to extraordinary lengths to conceal his or her whereabouts, living in permanent fear that the child may be re-abducted again. One must also keep the welfare of the child in mind, as parental disputes and abduction by one of the parents is a reason for serious distress and a re-abduction might turn an already difficult situation into an unbearable one.

Necessity of regular exchange of experiences and information as well as support to the new signatory states became the core of the "Application of the 1980 Hague Convention on Child Abduction and analysis of the possible Russia's accession to the 2007 Hague Convention on child support" project. The project is funded by the European Union and is being implemented with the support of the Presidential State-Legal Directorate of Russian Federation.

Project experts consult on the implementation of the Convention 1980 in Russia, participate in the creation of informative materials and conduct workshops on the Hague Conventions implementation for professionals in all the relevant authorities in close cooperation with the Central Authority in Russia.

The key competence of the Project's experts lays in decades of experience in international and national family law as well as deep knowledge of family-related Conventions developed under the Hague Conference on Private International Law. In case you have any questions regarding the Convention and its application, do not hesitate to contact us by e-mail: info@hague-conventions.ru.

