

# GLOBALARRK'S NO NONSENSE GUIDE

## THE HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION<sup>1</sup>

This is a simplified introduction to this topic. For more detailed information contact GlobalARRK and speak to an expert international family lawyer. We may be able to recommend professionals to help you.

### What is The Hague Convention (HC)?

The Hague Convention (HC) is an international agreement which has been signed by nearly 100 countries<sup>2</sup>. It aims to prevent international child abduction, where one parent has wrongfully 'removed' or 'retained' their child in another country. The HC aims to return children to the country where they are classed as 'Habitually Resident' (HR). It believes that the courts in the country of HR are best placed to deal with any welfare issues including where and with whom the child should live.

### How can it affect Expat families?

After a relationship breakdown abroad, one parent sometimes wants to return to their home country. At least 75% of International Parental Child Abductions involve a primary carer (normally the mother) taking her child/ren back to her home country and the father applying to have the child/ren returned to the country where they are 'Habitually Resident'.

### Where is my child classed as 'Habitual Resident' (HR)?

The basic idea is that it's where your child is settled, but it's a grey area. It is NOT about where the child was born or what passport they hold. The HR of children is considered to update very quickly after both parents move to a new country to live however if one parent decides to move without the other parent's permission it can take a lot longer. Always seek local legal advice on where your child is classed as HR.

### What could happen if I take my child?

If the other parent is against the move and wishes to oppose it, depending on where they live and their parental rights, they may be able to make an application under the HC to get the child returned to their country of HR. The court will usually order that the child/ren must return unless the judge accepts your 'defences'.

### What are the defences to return?

There are five 'defences' that can be used to persuade a court against ordering the children to return to their Habitual Residence, however it is unusual that any defences will be successful because courts tend to be very strict on the interpretation of the five defences<sup>3</sup>. They believe the best placed court to make welfare decisions is the court where the children are HR.

### I'm in a Domestic abuse situation: Should I flee home?

Seek help in the country where you are living. Contact GlobalARRK: we offer contacts and support to help you to find a way through. If you were to flee, the HC court could just order the child/ren to return almost straight away and there could be serious legal consequences.

### What can be the consequences of being involved in a HC case?

After a HC case you can be labelled an 'Abducting' parent, so future courts can discriminate against you. If the other parent has initiated additional Kidnaping charges you can face criminal charges and potentially go to prison. Costs of defending yourself can be huge. It can also be emotionally and psychologically hard for child/ren depending on their circumstances.

### How can I legally go home with my child?

First consider specialist international family mediation and see if you can come to an agreement that is in the best interests of your child/ren. If the other parent will not give permission for you to leave with your child/ren and you need to leave, you will need to make an application to the local court for 'Leave to Remove' or 'Relocation'. We have a separate Guide about this – ask us!

<sup>1</sup> <https://assets.hcch.net/docs/e86d9f72-dc8d-46f3-b3bf-e102911c8532.pdf>

<sup>2</sup> <https://www.hcch.net/en/instruments/conventions/status-table/?cid=24>

<sup>3</sup> <https://www.iflg.uk.com/faqs/what-are-defences-hague>

Disclaimer: GlobalARRK does not provide legal advice. We can pass on general information which has been checked by lawyers but cannot give personalised advice. GlobalARRK and its volunteers will not be held responsible for the outcome of your case.



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Contact Us [www.globalarrk.org](http://www.globalarrk.org) [info@globalarrk.org](mailto:info@globalarrk.org)