

Child identity in the context of parental child abduction

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International parental child abduction

- Wrongful removal / wrongful retention
- Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction
- Art 12(1): if less than 12 months have elapsed, the child should be returned immediately to the country of his/her habitual residence
- Art 12(2): even if more than 12 months have elapsed, the child should still be returned, unless it is demonstrated that he/she is now settled in its new environment
- A return order should be made unless one of the limited exceptions applies

1980 Hague Convention: underlying philosophy

1. Except in exceptional circumstances, the wrongful removal or retention of a child across international boundaries is not in the best interests of the child
2. The principle of prompt return serves as a deterrent to potential child abductions, which is in the interests of children generally
3. **The return of the child to the State of habitual residence will promote his or her interests**
 - **By asserting the right of the child to have contact with both parents;**
 - **By supporting continuity in the child's life; and**
 - By ensuring that any determination of the issue of custody or access is made by the most appropriate court having regard to the likely availability of relevant evidence.

Presentation outline

1. Relevant elements of identity
2. In what circumstances identity issues may arise in child abduction cases
3. Recommendations to preserve and restore child's identity in cases of parental child abduction

Relevant elements of identity and corresponding UN CRC articles

- Child's right to identity, including nationality, name and family relations: Art 8(1) UNCRC
- Child's right to know and be cared for by his or her parents: Art 7(1) UNCRC
- Child's right to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests: Art 9(3) UNCRC

Possible identity issues in child abduction cases

1. Alteration and/or falsification of the child's identity by the abducting parent during the abduction (concealment of the child)

"The most pervasive scenario is that the abducting parent goes into hiding [...]" (Hoff)

"These kidnappings are very cleverly plotted and planned [...]. The target parent has no forwarding address or telephone numbers."

(Clawar & Rivlin)

2. Court order not to return the child to the State of his/her habitual residence
3. Court order to return the child to the State of his/her habitual residence

Recommendations on how to preserve and restore a child's identity in cases of parental child abduction

1. To prevent parental child abduction
2. Courts to take identity issues into account in return proceedings (Art 13(2) 1980 Convention: 'child's objections' + Art 12 UNCRC)
3. Upon return, or non-return of the child, to facilitate contact with the other parent and extended family members
4. To support abducted children in restoring their identity
5. To decriminalize parental child abduction
6. To provide training to judges on the child's rights to identity in parental child abductions

Thank you for your
attention.