

Checklist for Hague Convention Cases

Procedural Issues

Expedited Proceedings

- Goal is to complete case in six weeks

Case-Management Conference

- Safety of the child
- Obtain parties and children's passports
- Set timelines—determine how much time to allocate to trial
- Should a discovery plan be adopted?
- Narrow the issues to be tried
- Determine use of declarations or affidavits
- Will witnesses testify by telephone
- Are interpreters needed?
- Is the case appropriate for mediation?
 - Is there an allegation of a history of violence?
 - Can mediation take place without resulting in a significant delay of the trial?
- Legal representation
 - Is the petitioning parent represented by counsel?
 - If not, consider referring that parent to the State Dept. Office of Children's Issues to see if the parent can secure counsel

Parallel Jurisdiction Issues

- Are there any state custody cases pending?
 - If so, has the custody proceeding been stayed?
- Has the Hague Convention issue been litigated in state court or is it scheduled to be litigated there?

Case for Return—Burden of Proof—Preponderance of the Evidence

- Is the child under the age of 16?
- What country is alleged to be the child's habitual residence?
- Has the treaty "entered into force" between the U.S. and the other country as of the date of the wrongful removal or retention?
- On what date did the wrongful removal or retention occur?
- Was the child removed or retained in violation of the custody rights of the left-behind parent?
- Does the left-behind parent have rights of custody?
 - By operation of law
 - By court or administrative decision
 - By legally binding agreement
- Was the child removed from the habitual residence when a *ne exeat* clause or restraining order prohibited removal?
- Was the left-behind parent exercising his or her custody rights before the child was removed from the habitual residence?

Defenses—Burden of Proof—Preponderance of the Evidence

- Was the request for return filed within one year of the wrongful removal or retention?
- If it was not filed within one year, has the child become settled in his or her new environment?
- Did the left-behind parent consent or acquiesce in the removal or retention of the child?
- Does the child object to return?
 - If so, is the child of sufficient age and maturity for the court to take account of the child's objection?

Defenses—Burden of Proof—Clear and Convincing Evidence

- Would a return expose the child to a grave risk of physical or psychological harm or place the child in an intolerable situation?
- Would a return violate fundamental principles relating to the protection of human rights and fundamental freedoms?

Court May Order Return Even Though Defense Established

- Should the court order the child's return even if a defense has been established?
 - If so, consider undertakings, or mirror-image orders, or other measures to ensure the child's safe return

Making Return Orders

- Is the order for return specific as to time, manner, and date of return?
- Who is responsible for arranging the logistics of the child's return?

Attorneys' Fees and Costs

- Order only if petitioner prevails
- Is amount requested clearly inappropriate?