

#### 4.5 APPLICATION IN ISRAEL UNDER THE HAGUE CONVENTION FOR

#### RETURN OF A CHILD WHO HAS BEEN ABDUCTED

Child under 16 is abducted from his habitual residence

1. wrongfully removed or

2. wrongfully retained

'Left behind' parent applies under Hague Convention to Central Authority (CA) of his habitual residence (or to Central Authority of country to where child has been abducted or of any country)

Non-removing parent provides to CA details of child and abduction and believed location

CA transmits approved application to CA of state where child now is

CA initiates application to the appropriate local court in its state (in Israel the local Family Court or in Tel Aviv) for an "immediate return" of the child

Court must set an urgent first hearing not more than 15 days after the date of the application, and give notice to the abducting parent

Abducting parent must respond by affidavit to the application no less than 2 days before the date set for the first court hearing

First court hearing – sets timetable for hearing – any adjournment should not be for more than 7 days – court may make temporary orders

Full hearing of Hague Convention application:

1. court may allow or refuse to hear witnesses and
2. court may hear child, depending on his age and maturity

Court should make a final decision on the application within 6 weeks from filing the application

Court may make the following orders:

1. If the application was made less than 1 year after the abduction, the court MUST order the child's "immediate return" to his habitual residence
2. If the application was made later than 1 year after the abduction, the court
  - (i) SHOULD order the immediate return of the child; but
  - (ii) MAY refuse to order the return of the child because he has "now settled in his new environment"
3. In any case (whether one year has passed or not from the abduction), the court MAY refuse to order a return because one of the defences in Article 13 has been proved: that
  - a. the applying parent with care of the child was not actually exercising his custody rights at the time of the abduction
  - b. the applying parent consented or acquiesced,
  - c. the child objects, and is of an age and maturity to take into account his wishes
  - d. there is grave risk of harm if the child is returned, etc; or
  - e. fundamental principles of the requested state do not permit a return
4. The court MAY order the child's return on the basis of 'undertakings' received by the court from the applying parent which provide guarantees for when the child returns to his habitual residence
5. The court MAY approve an agreement for a voluntary return

The child is returned  
(in cases 1, 2(i), 4, or 5)

#### Appeals:

1. An appeal may be filed within 7 days of the court's final judgment
2. An appeal against the return of the child must be heard within 10 days after the appeal is filed
3. The parties' main arguments must be presented to the court within 2 days before the appeal hearing
4. The appeal court must give its decision within 30 days after the appeal is filed