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CIRCULAR ON INTERNATIONAL CHILD ABDUCTION

FOREWORD

International child abduction includes cases where a child is unlawfully removed from a country in contravention of the parental responsibility of the remaining parent. A child may also be unlawfully retained following a lawful stay abroad, for example for a holiday or access stay. Cases where children are taken abroad by one or both parents when the child welfare service has the right to decide where the child shall reside also fall within the definition. The relocation of a child from one place to another within the country's national borders is not covered. Nor are cases where the child is kidnapped by strangers.

This circular is intended for lawyers and judges working on international child abduction cases, but also contains information and guidance of use to other public authorities that may become involved in this type of case. The circular also contains relevant information for parents whose children are abducted.

The white paper Prop. 143 L (2014–2015) on changes to the Child Abduction Act, Child Welfare Act, Penal Code 2005 and Legal Aid Act relating to international child abduction contains a number of proposed statutory amendments that were adopted by the Storting (the Norwegian parliament) on 11 December 2015 and that enter into force on 1 January 2016.

The circular enters into force on 1 January 2016 and replaces Ministry of Justice and Public Security circular G-136/91, which will be repealed as of the same date.

The Ministry of Justice and Public Security, 18 December 2015.

Wenche L. Kverneland
Deputy Director General

Lene Smith Walaas
Senior Adviser

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1 INTRODUCTION

Protecting the child and finding solutions in the best interests of the child are key in the handling of a child abduction case. The best interests of the child will often be that the parents agree on a voluntary solution and both the authorities and the courts should facilitate this. Rapid resolution of international child abduction cases is crucial, since this will help to reduce the burden on children subjected to abduction.

Child abduction incorporates aspects of both civil and criminal law. This circular deals with both aspects of child abduction cases; see for example chapters 4, 5 and 6.

Chapter 2 explains key terms used in the circular. Chapter 3 provides an overview of the applicable law, including the main rules in relevant conventions and a further description of the criminal law aspects of international child abduction. Chapters 4 and 5 contain information on the processing of cases involving child abduction from Norway to another country, while chapters 6 and 7 contain corresponding information on the handling of cases involving child abduction from foreign countries to Norway. Chapter 8 describes applications for access under the 1980 Hague Convention. Chapter 9 contains information on the handling of applications for recognition and enforcement of decisions under the 1980 Council of Europe Convention. Chapter 10 contains an overview of the rules on coverage of legal aid expenses for the different types of cases. Finally, chapter 11 lists useful sources of further information on this topic and chapter 12 contains links to relevant forms.

The Ministry maintains a special website on international child abduction that provides practical information and relevant updates on the topic. The address of the website is: www.government.no/child-abduction.

2 KEY TERMS

This circular uses the term *child abduction* to describe international child abduction. International child abduction includes both cases where a child is removed from the country contrary to parental responsibility rights and cases where a child is unlawfully retained abroad, for example following a lawful holiday or access stay. The term *child abduction* is used as a common descriptor for both instances.

The term *abductor* is used for the person who unlawfully removes a child from the child's country of habitual residence or unlawfully retains the child abroad. The abductor will generally be one of the parents. Abductors may also be others, for example a grandparent. The *remaining guardian* is the one who is left in the country of habitual residence and whose parental responsibility rights are violated through the child abduction, and who applies for the return of the child. The remaining guardian is most often one of the child's parents, but may also be the child welfare service. The text employs *remaining parent* throughout. Where special circumstances apply in connection with the role of the child welfare service as the remaining guardian, these are specified in the text.

The *country of habitual residence* is the country in which the child was resident prior to the abduction. The *recipient country* is the country to which the child has been abducted and from which the child's return is requested.

Central authority refers to the authority which has been appointed under the 1980 Hague Convention and the 1980 Council of Europe Convention and which is mandated to meet the obligations imposed on it by the conventions. The central authority must generally harmonise and coordinate contact between national and foreign authorities and between authorities and private persons. The central authority also has overall responsibility for ensuring that its country meets its convention obligations. In Norway, the Ministry of Justice and Public Security is the central authority under the two conventions; see section 5(2) of the Child Abduction Act.

For further explanations of terms, see section 1.4 of the white paper [Prop. 143 L \(2014–2015\)](#) and the website

www.government.no/child-abduction.

3 APPLICABLE LAW

This chapter contains an overview of the rules that regulate what constitutes an unlawful child abduction under Norwegian law, including the international rules by which Norway is bound.

Norway is a signatory to two key conventions on international child abduction. These are the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (the 1980 Hague Convention) and the European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (the 1980 Council of Europe Convention). Both conventions have been incorporated into Norwegian law through the Act of 8 July 1988 No. 72 relating to recognition and enforcement of foreign decisions on custody, etc. and the return of children (the Child Abduction Act).

Almost all European states are signatories to both conventions. In addition, various non-European countries have signed up to the 1980 Hague Convention. The following websites provide an overview of the states which have signed up to the two conventions:

1980 Hague Convention: website of the [Hague Conference on Private International Law/ratifications and accessions](#).

1980 Council of Europe Convention: website of the [Council of Europe/ratifications and accessions](#).

For an overview of countries in which Norway engages in convention cooperation under the two conventions, see the Ministry's website: www.government.no/child-abduction/list-of-countries.

3.1 1980 Hague Convention

The Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (the 1980 Hague Convention) is not a traditional international private law convention that contains rules on recognition and enforcement of formal decisions. It is limited to regulate the situation when a parent or grandparent or other relative unlawfully abducts a child.

The rules in the convention apply only to children under the age of 16; see Article 4 of the 1980 Hague Convention and section 4 of the Child Abduction Act.

3.1.1 Unlawful international child abduction

The general rule in the 1980 Hague Convention is that a child who is unlawfully abducted or retained shall be returned promptly if the child – immediately prior to the abduction or retention – was habitually resident in a state that has signed up to the 1980 Hague Convention; see Article 1(a) of the Hague Convention and Article 12, first paragraph. See also section 11(1) of the Child Abduction Act.

Abduction or retention is unlawful within the meaning of the convention if it is contrary to parental responsibility rights pursuant to the law of the state in which the child was residing immediately prior to the abduction or retention and the parental responsibility was in fact being exercised in accordance with such law; see Article 3, first paragraph, subparagraphs a and b, of the Hague Convention. See also section 11(2)(a) and (b) of the Child Abduction Act.

Two key conditions must be met in order for a child abduction to be unlawful under the 1980 Hague Convention: parental responsibility and habitual residence.

3.1.1.1 Parental responsibility

The 1980 Hague Convention employs the term “rights of custody”, which in the Child Abduction Act has been translated as “rett til foreldresvar” (literally *right of parental responsibility*); see section 11(2)(a).

Article 1(c) and Article 5(a) of the 1980 Hague Convention define the term “rights of custody”. It is clear that the term encompasses “the care of the person of the child and, in particular, the right to determine the child’s place of habitual residence”.

The term “rights of custody” must be interpreted identically in all convention states. It is the international definition of the term that is decisive, not how the term is defined in the domestic law of each individual state. The term “rights of custody” is therefore interpreted more broadly than the corresponding parental authority term in the Act of 8 April 1981 No. 7 relating to children and parents (the Children Act).

For children resident in Norway, parental responsibility follows either directly from the rules in the Children Act or the Child Welfare Act, or from an agreement between the parents or a decision of the court. Sections 40 and 41 of the Children Act regulate when parents must agree/consent to the residence or relocation of the child to another state. For further details in this regard, see section 3.2.1 of the white paper [Prop. 143 L \(2014–2015\)](#) on international child abduction.

Rights regarding parental responsibility may be awarded to a person, an institution or some other body, either jointly or alone, pursuant to the law of the state in which the child was habitually resident immediately prior to the abduction; see Article 3, first paragraph, subparagraph a, of the 1980 Hague Convention and section 11(2)(a) of the Child Abduction Act. Accordingly, abductions from the child welfare service are covered by the 1980 Hague Convention; see section 4.3.

When dealing with a child abduction case, the court must assess whether the remaining parent has a share in the parental responsibility under the law of the child’s country of habitual residence. If this is unclear, a declaration concerning the relevant legislation of the country may be requested; see Article 8, third paragraph, subparagraph f, of the 1980 Hague Convention. The court may also require a declaration that the abduction was unlawful to be obtained; see Article 15 of the convention.

It is insufficient for the remaining parent to have had a share in the parental responsibility in formal terms; such parental responsibility must also have been exercised in practice; see Article 3, first paragraph, subparagraph b, of the 1980 Hague Convention and section 11(2)(b) of the Child Abduction Act. The requirement that parental responsibility must have been exercised does not apply if it is precisely the abduction or retention that prevents the exercise of parental responsibility. In the assessment of the condition in Article 3 of the convention, it is the remaining parent that must substantiate that he or she did in fact exercise parental responsibility. This condition is unproblematic in most cases, and the evidential requirements are not very onerous. The condition is discussed further in section 10.1.4.1 of the white paper [Prop. 143 L \(2014–2015\)](#) on international child abduction.

3.1.1.2 Habitual residence

The 1980 Hague Convention employs the term “habitual residence”, which in the Child Abduction Act has been translated as “bosted” (literally *place of residence*). The term is not defined further in either the convention or the act, but is much discussed in international case law.

The 1980 Hague Convention is based on the premise that parental disputes should be resolved in the child’s country of habitual residence. In the assessment of whether the child has been unlawfully abducted or retained, the legislation of the state in which the child was habitually resident immediately prior to the abduction or retention

must be applied.

It is not decisive where the child is registered as resident or of which country the child is a national. The habitual residence of the child must be evaluated on the basis of the factual circumstances of the child's situation. The decisive factor is what the parents agreed on. If there was no agreement between the parents prior to the abduction, it may be necessary to assess the actual and intended duration of the stay abroad. Useful documentation of the child's habitual residence includes confirmation that the child is attending school or daycare, the employment circumstances of the parents, etc. However, the assessment of the child's habitual residence prior to the abduction is rarely a problem in such cases.

3.1.2 Exceptions to the rule on return

The general rule that an abducted child should be returned immediately is not absolute, and the 1980 Hague Convention contains several exceptions. The exceptions must be interpreted restrictively to avoid undermining the purpose of the convention.

The convention contains the following exceptions, which are listed in section 12(a) to (e) of the Child Abduction Act:

- a. At least one year has passed since the unlawful abduction and the child has settled in its new environment.
- b. Serious risk that return would expose the child to physical or psychological harm.
- c. The child opposes return and has reached an age and a degree of maturity that makes it natural to take the child's opinion into account.
- d. The remaining parent did not exercise parental responsibility at the time of the abduction, or had consented to or subsequently accepted the abduction.
- e. Return is inconsistent with fundamental human rights.

The exception in section 12(a) of the act, that at least one year has passed since the abduction and the child has settled in its new environment, raises the question of what is required in order to interrupt this one-year period. Pursuant to the convention, the period is interrupted "at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is". In the case of applications due to be heard in Norway, section 12(1)(a) of the Child Abduction Act states the period is interrupted "when an application for return was submitted to the court", i.e. when the application is submitted to Oslo District Court.

3.2 The 1980 Council of Europe Convention

The European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (the 1980 Council of Europe Convention) is a traditional international private law Convention on mutual recognition and enforcement of decisions across national borders.

In practice, it is the 1980 Hague Convention that is used in child abduction cases, presumably because it contains simpler and more practical solutions than the 1980 Council of Europe Convention. However, it may be appropriate to use the Council of Europe Convention for the recognition and enforcement of foreign access decisions. For further discussion of this topic, see chapter 9.

3.3 The Child Abduction Act

When a child is abducted *to Norway* from a state that has signed up to the 1980 Hague Convention and the 1980 Council of Europe Convention, the rules in the Act of 8 July 1988 No. 72 relating to recognition and enforcement of foreign decisions on custody, etc. and on the return of children (the Child Abduction Act) apply. The procedural rules are reviewed in chapter 6.

3.4 Other international obligations

3.4.1 Human rights

Norway has ratified the European Convention on Human Rights of 4 November 1950 (ECHR) and the UN Convention on the Rights of the Child of 20 November 1989 (UNCRC), the two most important conventions in this area.

The relationship between the ECHR and the 1980 Hague Convention has been considered by the European Court of Human Rights (ECtHR) in several decisions, particularly relating to Article 8 ECHR.

Article 11 UNCRC emphasises the prevention of international child abductions and contains several provisions of relevance in child adoption cases. See section 3.3.1.3 of the white paper [Prop. 143 L \(2014–2015\)](#) on international child abduction.

3.4.2 The Nordic rules

Norway is also bound by the convention of 6 February 1931 between Norway, Denmark, Finland, Iceland and Sweden (the Nordic Family Law Convention). The convention regulates recognition, and has been implemented in Norwegian law through the Act of 6 February 1931. Enforcement is regulated by the convention of 1932 between Norway, Sweden, Denmark, Iceland and Finland. Today, this applies only in relation to Iceland.

Enforcement of decisions made in Denmark, Finland and Sweden is regulated by the Act of 10 June 1977 No. 71 relating to recognition and enforcement of Nordic judgments in the field of private law (the Nordic Enforcement Act).

The Nordic rules take precedence over the 1980 Council of Europe Convention in cases involving the Nordic countries; see section 1(1), final sentence, of the Child Abduction Act and Article 20(2) of the 1980 Council of Europe Convention. This is also clear from Norway's declaration relating to the latter. The Nordic rules are subordinate to the 1980 Hague Convention; see section 1(2) of the Child Abduction Act.

3.4.3 The 1996 Hague Convention

The Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (the 1996 Hague Convention) has a broad area of application; see Article 1 of the convention. The convention is not intended to replace or amend the 1980 Hague Convention, but rather to supplement the rules in the latter by allowing the remaining parent to apply for enforcement of a decision concerning custody or access.

The 1996 Hague Convention applies to children until they reach the age of 18.

On 11 June 2015, the Storting (the Norwegian parliament) approved ratification of the 1996 Hague Convention and on 15 June 2015 adopted the Act relating to the implementation of the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (the 1996 Hague Convention Act). Norway has not yet ratified the convention, and the 1996 Hague Convention Act has not yet entered into force.

As regards the relationship between the 1980 Hague Convention and the 1996 Hague Convention, see the white paper [Prop. 102 LS \(2014–2015\)](#), and sections 3.2.1, 3.2.4 and 3.3.5 in particular.

For further information on applicable law, including other international obligations by which Norway is bound, see chapter 3 of the white paper [Prop. 143 L \(2014–2015\)](#) on international child abduction.

3.5 Criminal international child abduction

Neither the 1980 Hague Convention nor the 1980 Council of Europe Convention contains criminal-law provisions. However, international child abduction is a criminal act under Norwegian law.

3.5.1 Section 261 of the Penal Code

International child abduction is regulated by section 261(1)(2) of the Act of 20 May 2005 No. 28 relating to criminal penalties (the Penal Code), which applies to children under the age of 18.

In the case of children aged 16 to 18, child abduction may therefore be covered by the Penal Code even though it cannot be pursued under civil law pursuant to the 1980 Hague Convention.

The term “unlawful” in section 261 of the Penal Code means that the abduction to another country must be unlawful pursuant to underlying civil law, i.e. the rules in the Children Act and Child Welfare Act.

Abduction from a person with parental responsibility of a child (whether shared or sole) is punishable under Norwegian law. The same applies when a child is unlawfully retained abroad, for example after access stay or a lawful holiday stay. It is also punishable to abduct a child from the child welfare service; see section 3.5.2 below.

For further discussion of the content of section 261 of the Penal Code, see

- Section 16.5, on page 422, of the white paper Ot.prp. nr. 22 (2008–2009) on the Act relating to amendment of the Penal Code of 20 May 2005 No. 28
- The white paper Prop. 46 L (2011–2012) on changes to the Penal Code, etc. (international child abduction etc.)
- Chapter 7 of the white paper Prop. 143 L (2014–2015) on international child abduction.

3.5.2 Regarding abduction from the child welfare service and section 261 of the Penal Code

When it is unlawful to take a child out of the country without the consent of the child welfare service, this will also be punishable; see section 261 of the Penal Code.

Pursuant to section 261 of the Penal Code, is punishable to abduct a child from the child welfare service when

- a care order, ban on removal or order for placement in an institution has been issued pursuant to sections 4-8, 4-12, 4-24 or 4-29, first or second paragraph, of the Child Welfare Act, or
- an application for such measures has been made to the county child and social welfare board pursuant to section 7-11 of the Child Welfare Act, or
- an interim order has been issued in an emergency pursuant to sections 4-6, second paragraph, 4-9, first paragraph, 4-25, second paragraph, second sentence, or 4-29, fourth paragraph, of the Child Welfare Act.

4 ABDUCTION FROM NORWAY TO ANOTHER STATE THAT IS A SIGNATORY TO THE 1980 HAGUE CONVENTION

4.1 The role of the Ministry of Justice and Public Security

4.1.1 General

As stated above, the Ministry of Justice and Public Security is the central authority in Norway with respect to the 1980 Hague Convention; see section 5 of the Child Abduction Act.

Section 5 of the Child Abduction Act defines the tasks of the central authority, while Article 7 of the convention contains a detailed list of these. The Ministry is mandated to harmonise and coordinate contact between Norwegian and foreign authorities and between authorities and private persons. The tasks include providing guidance on the 1980 Hague Convention to, inter alia, lawyers, judges, private individuals and the child welfare service. Further, the Ministry receives and forwards enquiries, cooperates with the central authorities in other convention states and performs the tasks otherwise allocated to the central authority by the convention. This work is often undertaken in close cooperation with other public bodies in Norway, including the police, the Ministry of Foreign Affairs and Norwegian foreign service missions, other ministries, the courts, the child welfare service, etc.

4.1.2 Application for the return of a child – requirements as to content and enclosures

The Ministry of Justice and Public Security is responsible for receiving and forwarding applications for the return of children who have been abducted from Norway to another convention state.

The Child Abduction Act contains few rules on the administrative handling of an application for return sent from Norway to another convention state. Article 8 of the 1980 Hague Convention lists the requirements as to the information and documentation such an application must contain. See further in this regard below.

The Ministry has prepared a standard application form which it recommends be used to apply for the return of children abducted from Norway. The form can be filled out in Norwegian or English. The form also includes a declaration authorising the central authority of the recipient state to act on behalf of the applicant in the case; see Article 28 of the 1980 Hague Convention. The form (Norwegian and English version) is available on the Ministry's website: www.government.no/child-abduction/forms .

When the Ministry of Justice and Public Security receives an application for return, the application is reviewed to ensure that it contains information required pursuant to the convention and that the necessary enclosures have been provided. If there are deficiencies or unclear matters in the application, the Ministry will ask the remaining parent or the parent's lawyer to clarify these before the application is sent abroad. It is recommended that an application is thoroughly documented, since lack of documentation may delay the case.

Original or authenticated copy of all agreements, official or other decisions must be provided; see Article 8, third paragraph, subparagraph e), of the convention. Other documents should be originals or stamped authenticated copies, although there is no requirement for original documents in the convention. If some of the documents required under the convention cannot be obtained by the remaining parent, it is important that the remaining parent provide a comprehensive explanation of the situation. The explanation must include sufficient information to allow assessment of whether an unlawful child abduction contrary to custody rights has been committed.

The Ministry of Justice and Public Security can assist with the practical steps involved in obtaining necessary translations of documents relevant to the application. Both the application and the enclosures must generally be translated into the language of the recipient country. Article 24, first paragraph, of the convention provides that all documents must be sent to the central authority of the recipient country in the original language, along with a

translation into the language of the recipient country, or if this is difficult to achieve, a translation into French or English. Convention states may make a reservation of either the French or the English option.

Once the application is complete and the documents have been translated, the Ministry of Justice and Public Security will send the application to the central authority of the recipient country. The Ministry may only refuse to forward the application if it is obvious that the conditions laid down in the convention are not met or if the application is not well founded; see Article 27 of the 1980 Hague Convention. Examples of such instances are where the child is over the age of 16 or where it is clear that the remaining parent has not had a share in the parental responsibility.

Pursuant to the 1980 Hague Convention, there is nothing to prevent an application for return of a child from being sent directly to the central authority of the recipient country; see Article 8, first paragraph, of the 1980 Hague Convention. However, most cases are sent via the central authority in the child's country of habitual residence, which assists with guidance and undertakes the necessary preparation of the case before it is forwarded to the foreign central authority.

According to Article 8, second paragraph, of the 1980 Hague Convention, the application must contain:

- Information on the identity of the remaining parent (or the child welfare service), the abductor and the child/children, including the date(s) of birth of the child/children.
- The reasons relied on to secure the return of the child.
- All available information about the child's likely place of residence abroad and about the identity of the person assumed to be accompanying the child.

Pursuant to Article 8, third paragraph, of the Hague Convention, the application should be supplemented with documents to support and add detail to the application. The Ministry of Justice and Public Security would therefore request that the following also be enclosed with the application:

- Documentation evidencing parental responsibility, for example printouts from the national population register or a judgment/in-court settlement.
- Certified copy of all relevant official decisions, agreements or other decisions.
- Documentation evidencing the child's habitual residence, for example a certificate of residence from the national population register or documentation showing that the child attends a school or daycare centre in Norway.
- Pictures of the child/children and the abductor.

It is recommended that all documents are submitted as originals or authenticated copies.

Further, Article 28 of the convention provides that a central authority may require an application to be accompanied by a power of attorney. This should be an original and is integrated into the Norwegian application form.

Both the application and the enclosures must generally be translated into the language of the recipient country; see Article 24 of the Hague Convention.

4.1.3 Declaration of unlawfulness

Before the legal or administrative authorities of a convention state orders the return of a child, they may require the remaining parent – pursuant to Article 15 of the Hague Convention – to procure a decision or other declaration from the authorities of the country of habitual residence that states that the abduction or retention is unlawful; see Article 3. This is only requested in a minority of cases.

It may be sufficient for a declaration of unlawfulness to be provided in the form of a written declaration by the Ministry of Justice and Public Security. This may be practical in cases where there is no particular doubt as to whether the abduction was unlawful, but must be evaluated specifically in each individual case. However, some countries require such declarations to be made by a court.

Section 20 of the Child Abduction Act states that if a child that is habitually resident in Norway is abducted to another country or retained in another country, the district court at the place where the child most recently was resident may, if the party with parental responsibility makes a request, issue a ruling stating that the action was unlawful..

The provision in section 20 of the Child Abduction Act is directly related to the provision in Article 12 of the 1980 Council of Europe Convention. The list in section 1(1) of the Child Abduction Act shows that the provision in section 20 applies in relation to states that are signatories to the 1980 Council of Europe Convention. Section 20 of the act has not been included in the corresponding list in section 1(1) of the act, which applies in relation to states that are signatories to the 1980 Hague Convention. However, case law in this area has clearly established that Norwegian courts may also issue declarations pursuant to section 20 in connection with return applications made under the 1980 Hague Convention; see for example Supreme Court Reports (Rt.) 1992, page 1526.

4.1.4 Initial meeting

The Ministry of Justice and Public Security offers the remaining parent (or the child welfare service) and/or appointed lawyers an initial meeting. The purpose of the meeting is to give guidance and information on the processing of applications under the 1980 Hague Convention.

4.1.5 Notification to the Norwegian Labour and Welfare Administration (NAV) and Husbanken

When the Ministry of Justice and Public Security deals with a child abduction case under the 1980 Hague Convention, the Ministry is required to notify the Norwegian Labour and Welfare Administration (NAV) and Husbanken that the child abduction has occurred. This follows from section 4 of the [Act of 6 June 2014 No. 19 relating to the stoppage of public benefits and child support when one parent has abducted a child to another country](#). The purpose of the act is to promote rapid return of children abducted to foreign countries and prevent such abduction; see section 1 of the act.

If the abductor receives, personally or on behalf of the child, benefits that may not be received abroad, NAV and Husbanken must *stop* such benefits; see section 5 of the act.

The required content of a notice pursuant to section 4 of the act is regulated by section 2 of the [Regulations relating to the stoppage of public benefits and child support when one parent has abducted a child to another country](#).

The notice to NAV has to be more comprehensive than the one to Husbanken. It must provide NAV with a basis for conducting a specific assessment of whether payments of public benefits and child benefit to the abductor should be *held back*; see section 7 of the act. The notice must also include all information listed in section 8 of the act in addition to factual information listed in section 2 of the regulations.

If the Ministry of Justice and Public Security acquires further information that falls within the scope of section 8 of the act, the Ministry must send this information to NAV in the form of a supplementary notice.

The notices to NAV and Husbanken are exempted from the Ministry's duty of confidentiality; see section 4, third paragraph, and section 8, fourth paragraph, of the act.

The remaining parent, or the Norwegian lawyer representing the remaining parent, will receive a copy of the Ministry's letter to NAV and Husbanken.

Once the child abduction case has been closed, the Ministry will notify NAV and Husbanken of this.

As regards child abduction cases falling outside the convention system, it will be the local police district that has a duty to send a notice when "it has registered a child as missing or a criminal case concerning child abduction is opened"; see section 4, first paragraph, second sentence, of the act.

Further questions concerning the processing of cases under the act can be directed to [NAV Forvaltning Troms](#). All enquiries must be made to NAV on telephone number +47 55 55 33 33.

4.1.6 Commission of a social report

When a child is abducted from Norway, the central authority or courts of the relevant country may request a social report or welfare check by the Norwegian authorities in connection with the processing of a child abduction case under the 1980 Hague Convention. This is not regulated directly in the 1980 Hague Convention, and will only become relevant in a minority of cases.

The purpose of a social report is to obtain information the authorities or courts in the recipient country deem

necessary in order to process the child abduction case.

When the Ministry of Justice and Public Security receives such a request from the central authority of another convention state, the Ministry contacts the local child welfare service where the child, or the remaining parent, lives in order to request assistance with the preparation of a social report and/or the conduct of a welfare check. However, the child welfare service has no statutory duty to prepare social reports or to conduct welfare checks in response to requests from the Ministry for assistance in child abduction cases. Nonetheless, the child welfare service is urged to provide such assistance, since this may help to safeguard the best interests of the child in child abduction cases.

A request for a social report will detail the information requested by the recipient state for use in the legal proceeding of the application for return. Relevant topics may include a neutral assessment of the remaining parent's financial circumstances, living circumstances and capacity to provide care, as well as more general information regarding public services available to the child in Norway, such as schooling and health care. In the event of such a request, it may be necessary for the child welfare service to visit the remaining parent in Norway.

In the interests of the legal proceeding of the child abduction case in the recipient country, short deadlines may be given to the Norwegian authorities to prepare such a report.

The power to obtain a social report is not directly regulated in the 1980 Hague Convention or the Child Abduction Act. Consideration was given to regulation in section 10.3 of the white paper [Prop. 143 L \(2014–2015\)](#) on international child abduction, but it was concluded that there was no need for statutory regulation. The reasons for this included that when the 1996 Hague Convention is ratified and the Act relating to the 1996 Hague Convention enters into force, municipalities will become subject to a duty to assist with the collection of information pursuant to Articles 32, 34 and 35 of the convention; see section 4, second paragraph, of the act relating to the Hague Convention 1996. When both the 1980 Hague Convention and the 1996 Hague Convention can be applied in a case, a request for a social report may be made in accordance with the provisions in the 1996 Hague Convention and the act relating to the 1996 Hague Convention. This is likely to apply to the majority of cases in which this issue arises.

The Ministry of Justice and Public Security and the Ministry of Children, Equality and Social Inclusion have developed a procedure for the processing of requests for the preparation of social reports in cases relating to the abduction of children from Norway, when the request is made by reference to the 1980 Hague Convention.

Procedure in connection with a request for a social report and/or welfare check in Norway:

1. The Ministry of Justice and Public Security receives the request for a social report from the central authority in the state that has received an application for return of a child in Norway.
2. The Ministry evaluates the request and whether the Norwegian authorities can comply with it.
3. The request is forwarded to the municipal child welfare service at the place where the child, or the remaining parent, is habitually resident.
4. It is up to the child welfare service to assess whether the request will be met. The child welfare service has no statutory duty to prepare a social report, but is urged to assist in the child abduction case.
5. A request for a social report should be processed as quickly as possible, in the interests of the processing of the child abduction case in the recipient country. A deadline for feedback will often be specified in the request from the central authority of the recipient country.
6. If the child welfare service has questions about the content or form of the social report, it may contact the Ministry.
7. The child welfare service sends the social report to the Ministry of Justice and Public Security, which can assist with the practicalities involved in translation and dispatch of the report to the central authority of the recipient country.

4.1.7 The Ministry's role once the application has been sent to the recipient country

Once an application has been sent to the central authority of the recipient country, the Ministry of Justice and Public Security's main task is to coordinate contact between the central authority and the remaining parent regarding the further handling of the case there.

The Ministry cannot influence the administrative proceedings or the outcome of the child abduction case with regard to the authorities or courts of the recipient country. Nor will the Ministry play any role in the court's consideration of the child abduction case.

The Ministry will, among other things, send a reminder to the foreign central authority if long time passes without a decision being made. In addition, the Ministry will reply to any supplementary questions. The Ministry will monitor the case until a final decision is made and, if relevant, return has been effected.

4.1.8 Notification of the child welfare service upon return to Norway

The Ministry of Justice and Public Security has an unconditional duty under section 19a(1) of the Child Abduction Act to inform the child welfare service in the municipality in which the child is habitually resident when a child is returned to Norway after having been abducted. Such notification must be dealt with by the child welfare service as a notification of concern pursuant to section 4-2 of the Child Welfare Act.

The purpose of the duty to notify is to ensure that children who return to Norway following an abduction and who require help in order to avoid longer term harm are noticed and receive timely assistance. Where required, the child welfare service can assist parents in contacting other services or offer remedial measures.

4.1.9 Conclusion of the case

The Ministry closes the case once it receives confirmation from the remaining parent or his/her lawyer that

- the child has been voluntarily returned to Norway, or
- the child has been returned pursuant to court decision, or
- the parents have reached an amicable agreement that the child should not be returned, or
- a legally binding decision has been issued that the child should not be returned to Norway.

The Ministry will inform the central authority of the recipient country once the case has been closed.

Summary of the role and assistance provided by the Ministry of Justice and Public Security:

- Main task: harmonise and coordinate contact between Norwegian and foreign authorities and between authorities and private persons to achieve a rapid resolution of child abduction cases.
- Provide information and guidance on the 1980 Hague Convention, including by offering an initial meeting to affected parents or the child welfare service that initiates a child abduction case.
- Receive and forward applications for return to the central authority of the recipient country.
- Receive and forward information required to process applications.
- Send notification of child abduction cases to the Norwegian Labour and Welfare Administration (NAV) and Husbanken
- Notify the child welfare service once an abducted child has been returned to Norway.

4.2 The role of the remaining parent

4.2.1 General

It is the remaining parent who initiates a child abduction case pursuant to the 1980 Hague Convention, by submitting an application for return of the child to the Ministry of Justice and Public Security. Further, it is the remaining parent who, with the exception of certain countries, is a party to the court proceedings in the recipient country concerning the child abduction. It is also the remaining parent who may decide to conclude or withdraw a child abduction case while it is still ongoing, for example if the remaining parent and the abductor have reached an amicable agreement as to where the child should reside, etc.

The remaining parent must personally decide whether he/she wishes to report the abductor for the unlawful abduction. A report may be followed by an international search for the abductor with the aim of arrest and extradition. See also section 4.4 on the assistance provided by the police with missing person reports and reporting of the abductor, as well as assistance with an international search for a child or abductor.

4.2.2 The role of the remaining parent during the proceedings in the recipient country

As stated above, subject to certain exceptions, the remaining parent will be party to the child abduction case when it is heard by the courts of the recipient country. Exceptions may apply in certain countries in which the authorities of the recipient state act as party representative in the case against the abductor.

When the child abduction case is due to be heard by a court in the recipient country, it will be clarified prior to the court hearings whether the remaining parent has a duty to attend. In countries in which the remaining parent has no duty to attend, it may nevertheless be an advantage if the remaining parent is present during the legal hearing on the case, but that this is up to the remaining parent to decide. The remaining parent may also be represented by a local lawyer during the legal processing of the case.

When a decision has been made by the court in the recipient country, the remaining parent will be informed by his/her lawyer or the Ministry of Justice and Public Security. If the application for return is rejected, the remaining parent will be provided with information on appeal options. The remaining parent must personally decide, if relevant with the assistance of a lawyer, whether to appeal, and on the specific framing of the appeal. The Ministry can assist with the forwarding of any appeal.

4.2.3 Legal assistance

The remaining parent will receive general information and guidance from the Ministry of Justice and Public Security and the central authority in the recipient country in connection with the case, but if specific legal advice and assistance is required during the case, the remaining parent must engage a lawyer directly.

Some countries require the remaining parent to be represented by a local lawyer when the child abduction case is due to be heard by the court. In such cases, a lawyer authorised to practice in the country in which the case is to be heard must be engaged.

The remaining parent may also wish to engage a local lawyer to assist during the processing of the child abduction case in situations where there is no requirement to do so.

Some countries have prepared a list of lawyers with specialist experience in child abduction cases. If the remaining parent requires information about lawyers in the recipient country, the central authority can assist with obtaining such information. Norwegian foreign service missions can also provide information on local lawyers.

If the remaining parent wishes to engage a lawyer in Norway, a list of lawyers with particular knowledge of child abduction has been prepared. The list is available on the Ministry's child abduction website: www.government.no/child-abduction/list-of-lawyers. The remaining parent is also free to choose a lawyer who is not on the list.

For information on the coverage of the legal expenses, see chapter 10 on coverage of legal assistance expenses in child abduction cases.

4.2.4 Collection of information and documentation

As a rule, the remaining parent is responsible for obtaining the information needed to process an application under the 1980 Hague Convention.

The Ministry of Justice and Public Security cannot ask other public authorities for information that includes personal information about the child, the abductor or the remaining parent, including the Norwegian Labour and Welfare Administration (NAV), the Norwegian Directorate of Immigration (UDI) or the Directorate of Taxes. The remaining parent must personally, or with the assistance of a lawyer, obtain documents from different public authorities and bodies if this is requested by the central authority of the recipient country or the court that is due to hear the child abduction case.

The Ministry can assist with general information on public services and the Norwegian rules if this is requested by the central authority of the recipient country.

Further, the Ministry can assist with the forwarding of documents as mentioned in this section to the central authority of the recipient country.

4.2.5 Implementation of return of a child to Norway

A return decision can be implemented through the abductor's voluntary return to Norway with the child, or through the taking of steps by the recipient country's authorities to ensure that return does in fact occur. Article 1, paragraph a), and Article 7, paragraph h), of the 1980 Hague Convention provide that the recipient country has an obligation to ensure that a return decision is effected. The remaining parent will often play a role in ensuring a safe and effective return trip for the child to Norway, including by making practical arrangements for the child's trip.

As regards the coverage of expenses related to the child's travel home, Article 26, second paragraph of the 1980 Hague Convention envisages that the state to which the child has been abducted (the recipient state) is not responsible for expenses connected to the child's travel home. If the abductor has not been ordered to pay the cost of the child's travel home, or does not comply with a court decision or other order to pay these expenses, the remaining parent is in practice required to cover these personally.

4.2.6 Unlawful recovery of children from another country

The Ministry is aware that so-called security specialists advertise services offering assistance with the location and return of abducted children to Norway. The Ministry strongly advises against the purchase of such services. Removal from a country by strangers can be traumatic for a child. It may also constitute a criminal act in the country in question, and may entail prosecution not only of the "specialists", but also of the parent who has initiated the assignment. Such unlawful acts can block or complicate return pursuant to the 1980 Hague Convention. Prosecution may also result in an international search for the parent and possible arrest and extradition to the country from which the child has been recovered. Unsuccessful attempts at such recovery (return abduction) may also be punishable.

4.3 Abduction from the custody of the child welfare service

As stated above, the 1980 Hague Convention provides that custody rights may be awarded to an institution or some other body; see Article 3, first paragraph, subparagraph a), of the 1980 Hague Convention and section 11(2)(a) of the Child Abduction Act. Custody rights may follow from a legal or administrative decision; see Article 3, second paragraph, of the 1980 Hague Convention. The Hague Convention defines “custody” as including the right to care for the person of the child and, in particular, the right to determine the child’s place of habitual residence; see Article 5, paragraph c), of the 1980 Hague Convention. The child welfare service may thus have “custody” within the meaning of the 1980 Hague Convention and the Child Abduction Act, even though parents normally retain residual parental responsibility under Norwegian law.

It is unlawful to take a child abroad without the consent of the child welfare service in the following instances:

- Where a care order, ban on removal or order for placement in an institution has been issued pursuant to sections 4-8, 4-12, 4-24 or 4-29, first or second paragraph, of the Child Welfare Act.
- Where an application for such measures has been made to the county child and social welfare board pursuant to section 7-11 of the Child Welfare Act.
- Where an interim order has been issued in an emergency pursuant to sections 4-6, second paragraph, 4-9, first paragraph, 4-25, second paragraph, second sentence, or 4-29, fourth paragraph, of the Child Welfare Act.

There is no requirement for the decision to be final or legally binding.

It is also punishable to take a child out of the country without the consent of the child welfare service when this is unlawful pursuant to the 1980 Hague Convention; see section 261 of the Penal Code.

The general rule is that a care order lapses unless it has been implemented within six weeks; see section 4-13, first paragraph, of the Child Welfare Act. However, section 4-13, second paragraph, states that when the child welfare service has opened a child abduction case an order remains valid for one year. The one-year deadline follows directly from the act. However, there is a requirement that the child welfare service must have initiated a child abduction case within six weeks of issuing the order. A child abduction case is opened when the child welfare service sends a written application for return to the Ministry of Justice and Public Security pursuant to the 1980 Hague Convention. If the child has been abducted to a state that is not a signatory to the 1980 Hague Convention, the child abduction case is deemed initiated when the child is registered as missing with the police or when a criminal case relating to child abduction is opened. It is therefore important that, if a child is taken abroad before a care order is implemented, the child welfare service initiates a child abduction case before six weeks have passed, so that the order does not lapse; see section 4-13, first paragraph. Lapse means that a valid care order is no longer in place, and the 1980 Hague Convention will then be inapplicable.

The child welfare service must contact the chair of the county child and social welfare board if it wishes to extend the deadline for implementing the decision beyond the first year. The chair of the county child and social welfare board must conduct an individual assessment of the circumstances of the case and decide whether a deadline extension is in the best interests of the child. There are no restrictions on the length of time by which the chair of the county child and social welfare board may extend the deadline, or on how many times the child welfare service may contact the board to request a deadline extension. To ensure that the order does not lapse, it is important that the chair of the county child and social welfare board settles the question of extension before the one-year deadline expires, or before the expiry of any earlier decision granting a deadline extension.

If the central authority of the recipient country or a court requests information about the role and expertise of the Norwegian child welfare service, the child welfare service should provide this. The Ministry can assist with the forwarding of information to the central authority of the recipient country. Reference is also made to the website of the [Norwegian Directorate for Children, Youth and Family Affairs](#) and the information brochure from 2015 entitled

“Child welfare service. In the best interests of the child”, which contains information about the Norwegian child welfare service for Norwegian and foreign authorities. The brochure is available in several languages.

4.4 The role of the police and prosecuting authority

The Norwegian police may play an important role at different stages of a case involving the abduction of a child from Norway to another country. The police can assist in situations in which a parent with share in parental responsibility has reason to fear that an abduction may occur, while a child is being abducted from Norway and after a child has been taken out of the country. The same applies to the child welfare service in cases where Norwegian law makes it unlawful to take a child out of the country without the consent of the child welfare service.

In situations where it is feared that a child may be abducted, the police can assist with the assessment of what measures can/should be taken to prevent or hinder a criminal act.

Potential preventive measures include:

- withdrawing or seizing the child’s passport,
- imposing a temporary travel restriction until the restriction can be considered by the courts; see section 41, third paragraph, of the Children Act,
- ensuring internal notification within the police, and/or
- imposing a ban on visits pursuant to section 222a of the Criminal Procedure Act.

In an acute situation in which a child is in the process of being abducted from Norway, the person the child is abducted from should contact the police as quickly as possible. The police can intervene to prevent or hinder a criminal act; see section 7, first paragraph, subparagraph 3, of the Police Act. The police also have a duty to take delivery of a missing persons report and/or a report concerning the matter. It is important that all relevant information about the child, the abductor and the possible travel route is given to the police as quickly as possible so that the police can implement possible measures to hinder continued escape.

If it is clear that a child has already been abducted from Norway, or that the child is being unlawfully retained abroad following a lawful stay, the remaining parent (or the child welfare service) should contact the police as quickly as possible to report the child as missing and, if relevant, to report the matter. It may also be appropriate to report the child as missing even though it is known where the child is located abroad. This may result in the Norwegian police being notified if the child is taken to another country. The prosecuting authority may also decide to issue a search notice for the abductor if deemed appropriate.

The remaining parent must decide whether the abductor should be reported for the child abduction. A report may intensify the conflict between the parents and may make it more difficult to reach an amicable agreement regarding the child’s situation. On the other hand, a report can be crucial in stopping the abductor and the child on the way out of the country, or in obtaining assistance from the authorities in the recipient country as regards locating the abductor and the child if the place they are staying is unknown.

An international search for the abductor to facilitate arrest and extradition to Norway require that the matter has been reported.

Public prosecution is not conditional on an application by the aggrieved party (the remaining parent), provided that the prosecution is deemed to be in the public interest.

A missing persons report can be submitted to initiate an international search for the child. The abductor does not have to be reported to the police for an abducted child to be reported as missing.

The explanation provided with regard to assistance from the police also applies to cases where a child is abducted from Norway to a state that is not a signatory to the convention; see chapter 5. If a child is abducted to a country

that is not engaged in convention cooperation with Norway, reporting the abductor to the police may be an important measure to pressure the abductor to help return the child to Norway. However, it should be noted that the opposite effect may also result, particularly where the abductor's connection with Norway is weak or non-existent. In some countries, there is a real risk that a search request is simply noted without steps being taken against the abductor. It is even possible that information will be leaked to the abductor about the fact that he/she is the subject of a search. This may be highly undesirable in terms of resolution of the case, and may worsen the situation of the remaining parent. Accordingly, the assessment as to whether a report/search for the abductor is appropriate should be undertaken based on a specific assessment of the circumstances of individual case.

More information about what the police can assist with can be found on the website of the Ministry:
www.government.no/child-abduction.

If there is a risk that a child will be abducted, the police/prosecuting authority can:

- withdraw or seize the child's passport,
- impose a temporary travel restriction until the restriction can be considered by the courts; see section 41, third paragraph, of the Children Act,
- ensure internal notification within the police,
- impose a ban on visits pursuant to section 222a of the Criminal Procedure Act, and/or
- intervene to prevent or hinder a criminal act, see section 7, first paragraph, subparagraph 3, of the Police Act, for example to stop the abductor on the way out of the country.

If the child has been abducted, the police/prosecuting authority can:

- Accept a missing persons report for the child.
- Search for the abducted child nationally and internationally. In certain cases, the police can request foreign authorities to take custody of the missing child.
- Receive a report against the abductor relating to child abduction. Implement an investigation with the aim of clarifying whether a criminal child abduction within the meaning of section 261 of the Penal Code has been committed.
- Search for the assumed perpetrator (the abductor) with the aim of arrest and possible extradition from the foreign country to Norway if appropriate.
- Provided that it will not damage the investigation, inform the aggrieved person (the remaining parent or the child welfare service) of the steps taken by the police in the child abduction case.
- Issued an indictment against the abductor.

A contact person has been appointed for the prosecuting authority in child abduction cases. This person works at the National Criminal Investigation Service (Kripos), and can be contacted by the police and prosecuting authority for advice and guidance on such cases.

4.5 Processing of applications for return in the recipient country

The decision as to whether a child should be returned to Norway is made by the courts or an administrative authority in the country to which the child has been abducted. In most convention states, the decision is made by a court.

The Ministry of Justice and Public Security cannot influence the outcome of the proceedings of foreign authorities or courts in child abduction cases. Nor will the Ministry play a role in the courts' consideration of child abduction cases.

4.5.1 The role of the central authority of the recipient country

When a request for the return of a child which has been abducted from Norway is received by the central authority of the recipient country, the central authority reviews the application and, if necessary, requests additional information. The central authority of the recipient country has the same obligations under the convention as the Ministry of Justice and Public Security; see Article 7 of the Hague Convention.

If the remaining parent does not know where in the recipient country the child is located, the Ministry of Justice and Public Security can ask the central authority of the recipient country for assistance in locating the child. See also section 4.4 on the assistance provided by the police in international searches for a child in order to determine its whereabouts.

4.5.2 Legal processing of the return application

In most convention states, the question of return will be decided by the courts. In some convention states, the remaining parent must bring the case before the courts personally, if necessary with the assistance of a local lawyer.

There may be major or minor differences in the legal processing of cases under the 1980 Hague Convention in different convention states. Some convention states have centralised jurisdiction, i.e. only one or a limited number of courts deal with cases under the convention. The different convention states have different legal systems and procedural rules which may influence the processing of the case, including the role of the remaining parent.

If the courts of the recipient country have not settled the case within six weeks of receiving the application, the Ministry of Justice and Public Security can request a statement of the reasons for the delay; see Article 11, second paragraph, of the 1980 Hague Convention.

4.5.3 Request to suspend an ongoing parental dispute in the recipient country

A decision on the child abduction case under the 1980 Hague Convention does not entail any decision as to parental responsibility, daily care or future access with the child.

Article 16 of the 1980 Hague Convention provides that the court shall not issue a substantive ruling in a case concerning parental responsibility or access rights if the child is the subject of a return application under the 1980 Hague Convention.

The remaining parent may ask for assistance from the Ministry of Justice and Public Security with requesting suspension of an ongoing case in which questions concerning parental responsibility, where the child shall reside or access are to be dealt with. The Ministry will ask the central authority of the recipient country to notify the court that a child abduction case has been initiated so that it does not make a decision regarding the child's habitual residence, etc. until the child abduction case has been settled, with reference to Article 16 of the Hague Convention.

5 ABDUCTION FROM NORWAY TO A STATE THAT IS NOT ENGAGED IN CONVENTION COOPERATION

The Ministry of Foreign Affairs is responsible for providing consular assistance to Norwegians abroad. Consular assistance is provided within the framework set out in the white paper Meld. St. 12 (2010–2011) on consular assistance to Norwegians abroad. In cases where a child is abducted to a country that is not engaged in convention cooperation, the Ministry of Foreign Affairs may be contacted for assistance, advice and guidance.

When a child is abducted to a state with which Norway does not have convention cooperation, the case must be resolved by means of an amicable agreement between the parents or through legal proceedings in the country to which the child has been abducted. Note that experience indicates that cases of this type take a long time, potentially several years.

The Ministry of Foreign Affairs routinely offers the remaining parent in Norway an initial meeting in connection with the initiation of the case in order to provide information and clarify important points concerning the further processing of the case. See also section 4.2 on the role of the remaining parent in child abduction cases and section 4.4 on the role of the police and the prosecuting authority.

The foreign service can assist with both cases falling within and outside the scope of convention cooperation. The Ministry of Foreign Affairs has prepared its own instructions on the assistance provided by foreign service missions in international child abduction cases.

The Ministry of Foreign Affairs also has a 24/7 operational centre that can advise and give guidance to Norwegian's staying abroad. One of its most important tasks is to deal with enquiries received by foreign service missions outside the missions' ordinary opening hours. This also includes cases of child abduction from Norway.

For further information on the assistance the Ministry of Foreign Affairs can provide in such cases, see section 3.4.2 and section 11.3 of the white paper [Prop. 143 L \(2014–2015\)](#) on international child abduction. See also chapter 5.8 of the white paper [Meld. St. 12 \(2010–2011\) on consular assistance to Norwegians abroad](#).

Summary of the role of the Ministry of Foreign Affairs:

- Receive enquiries from affected parents in Norway, the child welfare service or others.
- Provide information and guidance, including by offering an initial meeting to affected parents or the child welfare service or others who initiate a child abduction case.
- Facilitate mediation between the parties.
- Arrange contact with a local lawyer and the local authorities through the relevant foreign service mission.
- Facilitate return, for example by issuing an emergency passport for the child.

6 ABDUCTION TO NORWAY FROM A STATE THAT IS A SIGNATORY TO THE 1980 HAGUE CONVENTION

6.1 The role of the Ministry of Justice and Public Security

6.1.1 General

The rules on the processing of applications for the return of children from Norway to another convention state found in chapter IV and chapter V of the Child Abduction Act. Various provisions are also found in other chapters of the act.

6.1.2 Application for return of a child – requirements as to content and enclosures

When the Ministry receives an application for return from another convention state, it will review the application to check that it contains the information required under the convention and that the necessary enclosures and translations have been provided. If there are deficiencies or unclear matters in the application, the Ministry will ask the central authority in the country of habitual residence to send these before forwarding the case to the district court.

It is recommended that an application is thoroughly documented. Missing documentation may extend the duration of the case.

Section 15, first paragraph, of the act sets out what information an application for return under the convention must contain. The provision equates to Article 8, second paragraph, of the convention, and the information listed is mandatory. See also the list in section 4.1.2 of documentation that must or should be enclosed with an application pursuant to the 1980 Hague Convention.

Section 13(2) of the Child Abduction Act requires an application to be written in Norwegian or English or to be accompanied by a translation into Norwegian. The same applies to enclosures and written evidence. Both application and all enclosures must generally be translated into the language of the recipient country; see Article 24 of the 1980 Hague Convention. Pursuant to Article 24, first paragraph, all applications, notifications and other documents must be sent to the central authority of the recipient country in the original language and be accompanied by a translation into the language of the recipient country or, if this is difficult to achieve, a translation into French or English. Convention states may opt out of the French or English option. Norway has opted not to accept translations into French.

Once the application is deemed to be complete, the Ministry will forward the application to Oslo District Court for processing. Under the 1980 Hague Convention, there is no obstacle to the submission of an application for the return of a child directly to the district court. However, most cases are sent via the central authorities that undertake the initial review of the case before it is forwarded to the court for consideration.

6.1.3 Declaration of unlawfulness

Before the legal or administrative authorities of a convention state order the return of a child, they may require – pursuant to Article 15 of the Hague Convention – the remaining parent to obtain a decision or other declaration from the authorities of the country of habitual residence that the abduction or retention is unlawful; see Article 3.

The provision in section 15(2) of the Child Abduction Act corresponds to Article 15 of the convention. If the court sees a need for such a decision/declaration, the Ministry of Justice and Public Security can assist with the forwarding of such a request.

6.1.4 Notification to the child welfare service of abduction to Norway

To ensure that children abducted to Norway are cared for in the period before a child abduction case is resolved, section 19a(2) of the Child Abduction Act requires the Ministry of Justice and Public Security routinely to inform the local child welfare service responsible for the place where the child is staying that it has received an application for return under the 1980 Hague Convention. In such situations, the child may require assistance and individual follow-up until the return case has been decided by the Norwegian courts.

Such notification must be dealt with by the child welfare service as a notification of concern pursuant to section 4-2 of the Child Welfare Act. The child welfare service must assess, in the ordinary manner, whether an investigation is necessary and, if relevant, evaluate whether there is a need to implement measures pursuant to the rules in the Child Welfare Act. The child welfare service may offer the child and the family assistance if it sees a need for it.

6.1.5 The role of the Ministry once an application for return has been sent to the court

The Ministry will receive information about matters such as rulings pronounced by the court and forward these to the central authority of the country of habitual residence and, if relevant, the remaining parent or his/her Norwegian lawyer. The Ministry will also follow up on enquiries from the central authority of the country of habitual residence or from the remaining parent asking questions such as whether a court hearing has been scheduled or whether the court has issued a ruling in the case. The Ministry does not play an active role beyond this while the case is being

considered by the courts. The remaining parent and the abductor will generally receive information directly from the court or, in relevant cases, via their Norwegian lawyer.

6.1.6 Conclusion of the case

The Ministry closes the case once it receives confirmation from the remaining parent or his/her lawyer that

- the child has been voluntarily returned to the country of habitual residence, or
- the child has been returned pursuant to a Norwegian ruling, or
- the parents have reached an amicable agreement that the child should not be returned, or
- a legally binding decision has been issued that the child should not be returned to the country of habitual residence.

The Ministry will inform the central authority of the country of habitual residence that the case has been closed.

Summary of the role and assistance provided by the Ministry of Justice and Public Security:

- Main task: harmonise and coordinate contact between Norwegian and foreign authorities and between authorities and private persons to achieve a rapid resolution of child abduction cases.
- Provide information and guidance on the 1980 Hague Convention.
- Receive and forward applications for return to the district court.
- Receive and forward information required to process the application.
- Send notification to the child welfare service when the Ministry receives an application for return under the 1980 Hague Convention.

6.2 The role of the remaining parent

It is the remaining parent who initiates a child abduction case pursuant to the 1980 Hague Convention, normally by submitting an application for return of the child to the central authority of the child's country of habitual residence. Further, it is the remaining parent who is a party to the court proceedings in Norway concerning the child abduction. It is also the remaining parent who may decide to conclude or withdraw a child abduction case while it is still ongoing, for example if the remaining parent and the abductor have reached an amicable agreement as to where the child should reside, etc.

6.2.1 Legal assistance

There is no requirement for the parties to be represented by a lawyer during the legal consideration of a child abduction case in Norway. However, the remaining parent may wish to engage a Norwegian lawyer during the consideration of the child abduction case. It may be an advantage for the remaining parent to be represented by a Norwegian lawyer, for example if the remaining parent is not in a position to participate personally in court hearings, in connection with the service of court rulings or in connection with the practical implementation of a ruling ordering the return of the child.

If the remaining parent wishes to engage a lawyer in Norway, a list has been prepared of lawyers with particular expertise in and knowledge of the child abduction field. The list is available on the Ministry's child abduction website: www.government.no/child-abduction under the headline "list of lawyers in child abduction cases". . The remaining parent is also free to choose a lawyer who is not on the list.

For information on the coverage of legal expenses, see chapter 10 on coverage of legal assistance expenses in child abduction cases.

6.2.2 Implementation of return of a child to another country

If the court decides that the child should be returned to the country of habitual residence, the court should also at the same time decide what means of enforcement are to be used. The court's ruling should set the time or the deadline for return; see section 18 of the Child Abduction Act, see also section 13-14 of the enforcement act. For further details in this regard, see section 6.4.9.

In principle, the abductor is responsible for arranging the child's return to the country of habitual residence. The remaining parent will often have a role to play in ensuring a safe and effective return of the child to the country of habitual residence, including by making practical arrangements for the child's trip. If the child is to be returned with the assistance of an enforcement officer, see section 6.5.

6.3 The role of the police and prosecuting authority

The police can assist in cases where a child has been abducted to Norway from another country. Such assistance will typically involve locating a child who is the subject of an international search at the request of a foreign police force or Norwegian court.

The police will also become involved in cases where a child has been reported as missing and is being searched for and/or when a search is being made for the abductor for the purpose of arrest and extradition. The police and the Ministry of Justice and Public Security will in such cases exchange information and cooperate on further proceedings until it has been decided whether the child is to be returned to the country of habitual residence, on what legal basis, and how this is to be effected.

For further information on the role of the police in child abduction cases, see section 4.4.

6.4 Processing of child abduction cases by the courts

A decision in a child abduction case under the 1980 Hague Convention does not entail any decision as to parental responsibility, daily care or future access with the child.

From 1 January 2016, Oslo District Court will have responsibility for all cases under the 1980 Hague Convention where a child is abducted from a convention state and brought to Norway, regardless of where in the country the child is staying; see section 13(2) of the Child Abduction Act.

The court decides the matter by issuing a ruling.

6.4.1 Processing time

An important objective of the Hague Convention is that return should occur promptly. The requirement for speed has a significant impact on the proceedings. The courts are required to give priority to applications for the return of a child when they receive such applications.

If the court has not made a decision on an application within six weeks of the application being submitted, the court must explain the reasons for the delay at the foreign central authority's request; see section 16(2) of the Child Abduction Act, see also Article 11, second paragraph, of the Hague Convention. The six-week deadline is calculated as of the date on which the case reaches the court. The deadline applies to the court proceedings as such, i.e. the total processing time before the district court and the court of appeal (and in relevant cases the Supreme Court) if the case is appealed. In practice, it is difficult to meet this deadline when the case is considered by several different courts.

6.4.2 Assistance in locating a child

In some cases, the place where the abductor or the child is staying may be unknown to the remaining parent, or the child may be deliberately concealed to prevent return. In such cases, the court may request the assistance of local police to attempt to locate the child and the abductor.

See also section 6.3 on the assistance of the police with location.

6.4.3 The right of the child to comment

The child's right to comment follows from Article 12 of the UN Convention on the Rights of the Child, which has been implemented in Norwegian law through the Act of 21 May 1999 No. 30 relating to the strengthening of the status of human rights in Norwegian law (the Human Rights Act). The consultation of children in child abduction cases is regulated by section 17 of the Child Abduction Act, which clarifies when children must be given an opportunity to comment during the processing of the child abduction case by the court, who should interview the child, and rules on confidentiality.

Children who have reached the age of seven, and younger children who are capable of forming their own opinions, must be informed and be given an opportunity to comment wherever possible. The opinion of the child must be given weight in proportion to the age and maturity of the child.

The white paper [Prop. 143 L \(2014–2015\)](#) on international child abduction states, in section 5.3.4 on page 35, that “[t]he Ministry is of the opinion that it is appropriate for the Child Abduction Act to contain an arrangement for the consultation of children corresponding to the arrangements under the Children Act, the Child Welfare Act and the Adoption Act.” Further, “[t]he Ministry would note that the clarification in the proposed statutory text does not mean that there is a lower age limit for when a child should be consulted. Children under the age of seven who are capable of forming their own views also have a right to be consulted; see Article 12 of the Convention on the Rights of the Child.”

When consulting children in child abduction cases, it is important to be aware that such cases are not cases under the Children Act. A decision in a child abduction case only concerns the question of whether the child should be returned.

If the age and maturity of the child indicate that the child's opinion should be given weight, one of several relevant factors is whether the child opposes return; see the exception provision in section 12, paragraph c, of the Child Abduction Act and Article 13, second paragraph, of the 1980 Hague Convention.

6.4.4 Care for the child pending a decision in the case

The court may order the child welfare service to take over the care of the child pending a decision in the child abduction case; see section 18(2) of the Child Abduction Act. This will be a temporary decision. The condition is that it is inadvisable for the child to stay with one of the parents while the case is being processed. The condition may be met in situations where it is feared that the child will be harmed, but also where it must be assumed that the parent that is with the child may conceal or abduct the child to a third country and thereby complicate or prevent return.

When the court decides to grant the child welfare service temporary custody of the child, it is the child welfare service that decides where to place the child; see section 4-15 of the Child Welfare Act.

6.4.5 Decisions under the Children Act when a child abduction case is received

Section 19(1) of the Child Abduction Act, see also Article 16 of the 1980 Hague Convention, provides that the court shall not issue a substantive ruling in a case concerning parental responsibility or access rights under the Children Act which has been brought in Norway if the child is the subject of a return application under the 1980 Hague Convention. Cases concerning habitual residence are not mentioned in section 19, but must be assumed to

be included.

If the Ministry of Justice and Public Security is informed that a Norwegian district court has received an application for consideration of questions concerning parental responsibility, daily care or access rights by the Norwegian courts, the Ministry will ask the court – by reference to section 19(1) of the Child Abduction Act and Article 16 of the 1980 Hague Convention – not to make a decision on these issues until the child abduction case has been settled.

The rule in section 19 of the Child Abduction Act that no decisions as to parental responsibility or access rights shall be made before the child abduction case has been settled does not apply to temporary decisions. Pursuant to section 18(1), first sentence, temporary decisions may be made in child abduction cases with regard to parental responsibility, habitual residence and access rights; see the reference to section 60 of the Children Act, which is also consistent with the provision in section 82, second paragraph, of the Children Act.

However, care should be taken with respect to awarding temporary custody or habitual residence to the person who has unlawfully abducted the child, unless the interests of the child makes this absolutely necessary. If the court issues a temporary decision regulating such circumstances until the child abduction case is decided, this restriction should be stated explicitly in the decision, so that the temporary decision does not in reality also become decisive in the child abduction case. See also Article 17 of the 1980 Hague Convention.

If the court issues a temporary ruling that the child should remain with one of the parents while the child abduction case is being processed, conditions may be imposed in order for access to take place; see section 18(2), second sentence.

Once the application for return has been finally ruled on, it is section 82, first paragraph, of the Children Act that regulates the question of jurisdiction in any case concerning custody, habitual residence or access.

6.4.6 Legal costs and court fees

Chapter 20 of the Dispute Act concerning legal costs applies to the liability of the parties for legal costs in connection with the court's consideration of a child abduction case.

Article 26, fourth paragraph, of the 1980 Hague Convention lays down the principle that the court, when there is reason to do so, may order the abductor to pay all necessary expenses incurred by the remaining parent, including travel expenses. This is consistent with section 13-14, second paragraph, of the Enforcement Act, which makes the defendant liable for expenses connected to enforcement if enforcement is to be implemented by an enforcement officer or the remaining parent. Section 13-14, second paragraph, second sentence, provides that the court may order the abductor to pay the likely costs in advance. In its ruling, the court should therefore make a decision on the question of costs, including who should be responsible for the payment of expenses connected to potential enforcement of the decision with the assistance of an enforcement officer.

See also section 6.5 on enforcement of the court ruling with the assistance of an enforcement officer.

Pursuant to section 15, third paragraph, subparagraph 2, of the Court Fees Act, no court fees are payable in cases dealt with under the Child Abduction Act.

6.4.7 Service or notification of the court ruling

The court's ruling shall be served to the parties. The court also sends a copy of the ruling to the Ministry of Justice and Public Security, which informs the central authority of the country of habitual residence of the decision that has been made.

If the abductor is not represented by a lawyer in Norway, the most appropriate means of service is to use a process-server. If the remaining parent is not represented by a lawyer in Norway, normal practice is for the ruling to be

served through a simplified procedure or to be notified via the central authority of the country of habitual residence. If the court so wishes, it is sufficient for the court to send the ruling to the Ministry, which will ask the central authority of the country of habitual residence to assist with simplified service or notification of the ruling to the remaining parent.

Information on the right of appeal must be provided at the time the ruling is sent to the Ministry. The court must arrange necessary translations of the ruling and provide information on the right of appeal before the materials are sent to the Ministry.

If the simplified procedure for service is used, the court will enclose a form to acknowledge receipt, and the central authority of the country of habitual residence will be asked to return a signed copy. If the ruling is only to be notified, the Ministry will ask for notification of when the ruling was notified (forwarded) to the remaining parent by the central authority of the country of habitual residence.

This simplified procedure is based on the assumption that it must be possible to effect service in child abduction cases directly through the central authorities of the convention states, rather than pursuant to the provisions of the act of 15 November 1965 that incorporated into Norwegian law the Hague Convention of the same date relating to service abroad of judicial and extrajudicial documents in civil or commercial matters. In other words, in child abduction cases it will not be necessary to complete the international form used in connection with requests under the service convention.

Neither the Child Abduction Act nor the 1980 Hague Convention contains separate provisions on the relationship to the service convention. Nor is the question discussed in any of the preparatory works relating to these documents. However, the requirements of the Child Abduction Act as to rapid and effective case-processing and cooperation among the central authorities must mean that the central authorities themselves arrange necessary service. In several countries, the central authority for the child abduction convention is not the same as the central authority for the service convention, meaning that involving a third party that would not otherwise have been involved in the case will cause delay and complicate the administrative proceedings. This view is shared by several states.

In the few cases where the request is sent directly to the district court by a party or a lawyer abroad without the involvement of the central authority of the country of habitual residence, the most natural solution for service will be to proceed in accordance with the provisions of the service convention. In such cases, requests should be marked as urgent. As regards the application of this Convention, reference is made to Ministry of Justice and Public Security [circular G-04/2007](#) on legal requests in civil cases.

6.4.8 Appeal

The deadline for appeal is two weeks; see section 16(3) of the child abduction convention. A shorter deadline has been introduced for appeals in child abduction cases than in ordinary civil cases.

The district court's ruling may be appealed to the court of appeal and on to the Supreme Court.

6.4.9 Return of the child to the foreign country – timing of the enforcement

If the court concludes that the child should be returned to the country of habitual residence, the question arises how return is to be implemented. The 1980 Hague Convention contains no rules in this regard. Accordingly, the question is governed by the domestic law of each individual state.

It is advantageous in terms of saving time if the court's return decision specifies the means of enforcement to be used. The court's ruling should set a date or deadline for return; see section 18 of the Child Abduction Act, see also section 13-14 of the Enforcement Act. This can be done by

- giving of the abductor a deadline for returning the child to the country of habitual residence, and/or
- setting a date on which the remaining parent, or a person authorised by the remaining parent, may collect the child to return it to the country of habitual residence, and/or
- when the enforcement authorities shall effect return

The best solution for the child will often be for the abductor and the child to return voluntarily to the child's country of habitual residence, since this will be the least invasive measure with respect to the child. However, the court should set a deadline for the abductor to arrange return, so that return can occur as quickly as possible for the child's benefit. This will also be consistent with the 1980 Hague Convention's objective of a prompt return of a child that has been unlawfully abducted.

6.4.10 Deferred enforcement when an appeal is made

An application for enforcement of a ruling ordering the return of a child under section 11 of the Child Abduction Act may be made once the ruling has become legally binding and any deadline for compliance has passed; see section 18(2) of the Child Abduction Act. An exception may be made if this is in the best interests of the child, provided that the ruling has been served and any compliance deadline has passed.

See section 5.5 of the white paper [Prop. 143 L \(2014–2015\)](#) on international child abduction.

6.4.11 Liaison judges in child abduction cases

In many of the countries that are signatories to the 1980 Hague Convention, special liaison judges have been appointed with responsibility for matters related to the convention and for assisting other judges. Since 2007, Norway has had two such contact judges, appointed by the Norwegian Courts Administration. The liaison judges can answer questions and provide general information to other judges on the Norwegian rules and how child abduction cases are handled by the courts.

6.5 Enforcement with the assistance of an enforcement officer

As stated in section 6.4.9 above, the court decides the means of enforcement to be used. The court's ruling should set a deadline for return; see section 18 of the Child Abduction Act, see also section 13-14 of the Enforcement Act.

Section 18 of the Child Abduction Act, see also section 13-1 of the Enforcement Act, provides that enforcement officers do not enforce return decisions on their own initiative, but at the request of the remaining parent. The remaining parent can initiate this by contacting the court and the court then forwards the case to the local enforcement authority in the place where the child is staying for further enforcement steps. The remaining parent may also contact the enforcement authority directly. The court can provide information on which enforcement authority should be contacted in each individual case.

It may be advantageous for the remaining parent to engage a Norwegian lawyer to assist with this part of the case, for example if there are language or other practical obstacles to direct contact with the enforcement authorities. The central authority will also assist if there is a need for it to do so.

It is important that the return of a child is implemented as carefully as possible to protect the child. The enforcement officer will often be accompanied by an assistant with child welfare expertise to protect the child's interests. The enforcement officer may also ask that the police to be present..

The abductor must generally be informed of any application for enforcement of the court's decision before enforcement is actually implemented; see section 13-6 of the Enforcement Act. As stated above, the court will normally give the abductor a deadline for voluntarily returning the child to the country of habitual residence. The abductor will be notified of this through service of the court's decision. If the abductor fails to comply voluntarily with the court ruling ordering the return of the child, there will likely be grounds to assume that the abductor will

seek to evade enforcement, for example by moving elsewhere or keeping the child concealed. Accordingly, in the Ministry's view, it will be appropriate not to notify the abductor of the specific time the court ruling is to be enforced.

The remaining parent should generally travel to Norway and be present at the place where the child is to be handed over. The enforcement officer will deliver the child to the remaining parent, who may then travel back to the country of habitual residence with the child.

If the remaining parent is unable to travel to Norway for practical or financial reasons to take delivery of the child, another person the child trusts and who is authorised by the remaining parent should be appointed, wherever possible, to accompany the child back to the country of habitual residence. If the remaining parent is not going to travel with the child, a decision will have to be made in the individual case. Before the decision is enforced, the remaining parent must arrange a flight ticket for the child and make other practical arrangements connected to the trip. The remaining parent must clarify these matters and inform the enforcement authorities *before* the decision can be enforced. The Ministry of Justice and Public Security does not cover expenses connected to the return of a child from Norway to another country.

The court should make a decision on the question of costs in the ruling ordering return; see section 6.4.6.

7 ABDUCTION TO NORWAY FROM A STATE THAT IS NOT ENGAGED IN CONVENTION COOPERATION

Cases involving abduction to Norway from a state that is not engaged in convention cooperation can in principle be resolved in two ways:

- if the parents reach an agreement
- if parental dispute proceedings are initiated before a Norwegian court.

Neither the Ministry of Justice and Public Security nor the Ministry of Foreign Affairs has any involvement in such cases.

Parents involved in parental dispute proceedings may apply for reimbursement of legal fees in accordance with the general rules in the Act relating free legal aid of 13 June 1980 No. 35 (the Legal Aid Act).

8 APPLICATION FOR ACCESS – THE 1980 HAGUE CONVENTION

Article 21 of the 1980 Hague Convention permits an application to be made for organised access or to ensure that access rights can in fact be exercised.

As Norway's central authority under the 1980 Hague Convention, the Ministry of Justice and Public Security also assists in cases concerning access under the convention. Applications may be made by both a parent in Norway who wishes to have access with a child on another convention state, and by parents in another convention state who wish to have access with a child living in Norway.

8.1 Application for access with a child in another convention state

If a parent in Norway applies for access to be organised or ensured with a child in another convention state, the applicant should use the standard application form, i.e. the same form as is used in cases for the return of a child under the convention. On the form, the parents must indicate whether they are applying for return or applying for

access in accordance with Article 21.

On the application form (or in an enclosure to the form), information should also be provided as to how the parent envisages access could be arranged, and that consideration is being given to the best interests of the child. A description of the scope, timing and location of access should be included. Any agreement or decision relating to access should also be enclosed.

The Ministry then forwards the application to the foreign central authority and requests assistance in securing exercise of the access rights.

8.2 Application for access with a child in Norway

When the Ministry receives an application to organise or secure access with a child in Norway from a parent in another convention state, it forwards the application to the parent in Norway with a cover letter urging of the parties to find an amicable solution that ensures that access rights can be exercised. The parent in Norway is given a deadline to respond to the Ministry. If the Ministry receives a reply to this enquiry, this is forwarded to the foreign central authority.

If the parents fail to find an amicable solution to ensure access, the case must be resolved as an ordinary parental dispute under the Norwegian Children Act.

In such cases, the Ministry forwards information via the central authority of the other convention state, relating how the parent in the other country can proceed to initiate a parental dispute in Norway, including information on free legal aid and how to proceed to engage a Norwegian lawyer.

Unlike in the case of applications for return, which the Ministry forwards to the district court, parental disputes must be initiated by one of the parents.

In cases concerning access in which a decision on access has been made previously, it may be more effective to apply the rules in the 1980 Council of Europe Convention, if both countries are signatories to it.

9 RECOGNITION AND ENFORCEMENT OF DECISIONS – THE 1980 COUNCIL OF EUROPE CONVENTION

The Council of Europe Convention 1980 regulates the re-establishment of custody and recognition and enforcement of custody or access rights.

The general rule in the 1980 Council of Europe Convention is that a decision relating to parental responsibility or access rights that has been made in a convention state must be recognised and enforced in another convention state; see section 6(1) of the Child Abduction Act. However, there are exceptions to this general rule, including if it would be contrary to the principle of the best interests of the child; see section 7 of the act.

The 1980 Council of Europe Convention has proven to be of little practical significance in child abduction cases. The 1980 Hague Convention is simpler, and provides for

more practical solutions in such cases than the 1980 Council of Europe Convention. However, it may be practical to use 1980 Council of Europe Convention in connection with recognition and enforcement of foreign decisions relating to access rights.

Useful information is available on the [website of the Council of Europe](#), including an official commentary edition of the convention.

See also section 3.2.2 of the white paper [Prop. 143 L \(2014–2015\)](#) on international child abduction.

9.1 Recognition and enforcement of decisions in Norway

Foreign decisions in civil cases cannot be recognised and enforced in Norway without special legal authority; see section 19-16 of the Dispute Act. The 1980 Council of Europe Convention provides such special legal authority.

It is possible to apply for recognition and enforcement in Norway of a decision from another convention state. If *enforcement* in Norway of a decision relating to parental responsibility or access rights is applied for, a requirement applies that the decision must provide a basis for enforcement in the state in which it has been made; see section 6 of the Child Abduction Act. Enforcement means that the Norwegian authorities are required to enforce the decision in accordance with Norwegian rules on enforcement.

The Ministry of Justice and Public Security is the central authority under the 1980 Council of Europe Convention; see section 5 of the Child Abduction Act. The Ministry's tasks are largely the same as under the 1980 Hague Convention; see section 6.1. The Ministry receives applications under the convention and forwards these to a local district court for processing.

Section 18(1) of the Child Abduction Act provides that section 65, first paragraph, of the Children Act applies in connection with enforcement of access rights. In such cases, the court may impose a daily penalty fine on the defendant in the event of failure to comply with the access decision; see section 65, first paragraph, of the Children Act, see also section 13-14 of the Enforcement Act.

Further, in cases concerning the recognition and enforcement of access rights under the 1980 Council of Europe Convention, the court may impose conditions on enforcement of access rights; see section 10 of the Child Abduction Act.

The courts only deal with decisions that are to be recognised *and* enforced.

Some countries have a system of registration/preapproval of foreign decisions. A request to recognise a foreign decision from a country that is a signatory to the Council of Europe Convention can be decided by the Ministry of Justice and Public Security. Other Norwegian authorities mandated to evaluate who has parental responsibility before a case can be decided are also authorised to review whether the foreign decision meets the substantive and formal conditions for recognition under the act and the convention, or whether recognition must be refused; see section 7 of the act. An example of this is a Norwegian Embassy that in its capacity as a passport issuing authority has to decide whether a decision regarding parental responsibility from another convention state can be accepted in connection with the issuing of a passport for a child. The comments on section 6 of the Child Abduction Act in the white paper Ot.prp. nr. 52 (1987–1988) indicate that the condition for application of a foreign decision relating to parental responsibility and access rights in Norway is that the decision has been made in another convention state. Further, “[b]eyond this, no special legal or administrative review is required.”

9.2 Recognition and enforcement of Norwegian decisions in other convention states

It is possible to apply for recognition and enforcement of a Norwegian decision in another convention state. The Ministry receives such applications and forwards them to the central authority in the convention state in which the

decision is to be recognised and/or enforced. The Ministry monitors the case until a final decision has been made.

Applications under the 1980 Council of Europe Convention:

- A standard application form and power of attorney have been developed which can be used. Alternatively, a letter can be sent stating what is to be recognised and/or enforced
- The form or cover letter shall be accompanied by a power of attorney from the applicants to the central authority in the recipient country
- An original or certified copy of the decision that is to be recognised and/or enforced must be submitted
- The form (in English) and the power of attorney (in Norwegian and English) are available on the website of the Ministry: www.government.no/child-abduction/forms.

10 REIMBURSEMENT OF LEGAL ASSISTANCE EXPENSES IN CHILD ABDUCTION CASES, ETC.

Neither the Ministry of Justice and Public Security nor the Ministry of Foreign Affairs can make a financial contribution in connection with child abduction cases. An application may be made for needs-assessed legal aid under the Legal Aid Act.

Reimbursement of legal assistance expenses in child abduction cases is discussed specifically in section 8.4 of circular G–12/05 on free legal aid. This contains guidelines on the processing of such applications. See also section 8 of the white paper [Prop. 143 L \(2014–2015\)](#) on international child abduction.

10.1 General

Reimbursement of expenses in child abduction cases is subject to financial needs assessment; see section 1-1 of the [Regulations of 12 December 2005 No. 1443 on the Legal Aid Act](#). Reimbursement of legal assistance expenses may be granted even if the financial conditions are not met, provided that the legal assistance expenses are significant relative to the applicant's financial capacity; see section 11, fourth paragraph, section 16, fourth paragraph, and section 12, third paragraph, of the Legal Aid Act.

Reimbursement of legal assistance expenses may also be applied for after a case has been decided; see section 6 of the Legal Aid Act (subsequent award of free legal aid). The general rule, however, is that an application must be made in advance.

Pursuant to section 22, fourth paragraph, of the Legal Aid Act, a grant of reimbursement of legal assistance expenses may be expanded to include some or all of the applicant's liability for the legal costs of the opposing party.

Applications for the reimbursement of legal fees of the abductor must be assessed by reference to the exception provisions in section 11, third paragraph, and section 16, third paragraph, of Legal Aid Act. A restrictive practice is followed in relation to such applications. For further details, see [circular G–12/05](#) on free legal aid.

10.2 In the case of abduction from Norway to another country

Article 26 of the 1980 Hague Convention provides that central authorities and other public bodies in convention states may not claim payment by the remaining parent of costs and expenses related to court hearings or other legal

advice costs. However, many states, including Norway, have made a reservation against this provision. In many convention states, it is possible to apply for reimbursement of the costs of assistance by a lawyer under a scheme of full or partial reimbursement of expenses relating to the case.

Expenses related to child abduction cases, including legal assistance expenses, must in principle be sought to be recovered in the state in which the child has been abducted to; see section 5 of the Legal Aid Act.

In practice, exceptions are made to the general rule in section 5 if it is clear that the state only offers a limited legal aid scheme, or it must be expected that the processing of the application will take a disproportionately long time. In such cases, it is possible to apply for reimbursement of such expenses in Norway under the Legal Aid Act.

Pursuant to section 12 of the Legal Aid Act, it is possible to apply for the reimbursement of expenses connected to a foreign court or administrative body. Section 12, first paragraph, subparagraph 2, of the Legal Aid Act provides that such reimbursement may be granted to “the person whose child has been unlawfully abducted from Norway; see Article 3 of the child abduction convention of 25 October. The same applies to a person whose child has been unlawfully abducted from Norway, where the police have registered the child as missing or a criminal child abduction case has been opened”.

The provision in section 12, first paragraph, subparagraph 2, of the Legal Aid Act means that expenses related to *legal assistance abroad* in cases involving abduction of a child from Norway may be granted for both cases under the 1980 Hague Convention and cases falling outside the scope of cooperation under the convention. In cases involving child abduction to a country not engaged in convention cooperation, however, it is required that the police have registered a child as missing in a child abduction case, or that a criminal child abduction case has been opened under section 261 of the Penal Code.

An application for reimbursement of *legal assistance expenses in Norway* connected to abduction to another country must be made under the exception provision in section 11, third paragraph, of the Legal Aid Act.

10.3 In the case of abduction from another country to Norway

Section 16, second paragraph, of the Legal Aid Act provides that a remaining parent abroad whose child has been unlawfully abducted to Norway may be granted reimbursement of legal assistance expenses in connection with the child abduction case; see Article 3 of the 1980 Hague Convention.

10.4 Special comments on cases under the 1980 Council of Europe Convention

Article 5(3) of the 1980 Council of Europe Convention provides that convention states may not demand payment for the processing of an application for recognition or enforcement under the convention. This also applies to the reimbursement of expenses connected to legal proceedings and legal advice, but not the reimbursement of expenses connected to the return of a child.

As regards cases dealt with by the Norwegian courts, applications for reimbursement of legal assistance expenses are processed by the Ministry of Justice and Public Security.

If recognition or enforcement is refused, and if the central authority of the recipient state considers that it should comply with a request by the applicant to bring in the recipient state proceedings concerning the “substance of the case”, see Article 5(4) of the convention, the general rules of the Legal Aid Act apply.

10.5 Special comments on access cases under the 1980 Hague Convention

When an application is made for access with the child in another convention state, the Norwegian applicant may apply for reimbursement of legal assistance expenses in the other convention state in accordance with the same principles in the 1980 Hague Convention as apply in child abduction cases; see Article 26 of the Hague Convention

and the provisos made by the countries. See also the further discussion in section 10.1 above.

As regards access cases under the convention in which are heard in Norway, an application may be made for reimbursement of expenses connected to the proceedings in accordance with the Legal Aid Act's general rules on free legal aid. Such cases are heard as ordinary parental disputes under the Norwegian Children Act; see section 8.

Reimbursement of expenses in cases involving the abduction of a child <u>to another country</u>	<p>First apply in the state to which the child has been abducted, thereafter apply in Norway. Subject to financial needs assessment.</p> <p>Both cases under the 1980 Hague Convention and cases falling outside the scope of convention cooperation. In abduction cases falling outside the scope of convention cooperation: supplementary conditions relating to the filing of a missing persons report or opening of a criminal case.</p> <p>The County Governor of Oslo and Akershus processes all applications for free legal aid in cases involving the abduction of a child to another country.</p>
Reimbursement of expenses in cases involving abduction of a child <u>to Norway</u>	<p>Only in cases under the 1980 Hague Convention.</p> <p>The courts process applications from a remaining parent relating to free legal representation in Norway. The County Governor of Oslo and Akershus processes all other applications for free legal aid in cases involving the abduction of a child to Norway.</p>
<p>A separate form has been developed for applications for free legal aid in Norway, which is available on the website of the Ministry: https://www.regjeringen.no/en/sub/child-abduction/links-and-sources/forms1/id733095/</p> <p><u>More information about the free legal aid scheme and how to apply:</u></p> <ul style="list-style-type: none">• The website of the County Governor of Oslo and Akershus: www.fylkesmannen.no/Oslo-og-Akershus• The website of the Norwegian Civil Affairs Authority: http://www.sivilrett.no	

11 CONTACT INFORMATION

Contact information for the Ministry of Justice and Public Security:

Ministry of Justice and Public Security
Civil Affairs Department
Telephone: +47 22 24 54 51
Fax: +47 22 24 27 22
Email: barnebortforing@jd.dep.no
Visiting address: Gullhaug torg 4a, 0504 Oslo
Postal address: PO Box 8005 Dep, 0030 Oslo

The Ministry's website relating to child abduction: www.government.no/child-abduction

Contact information for the Ministry of Foreign Affairs:

Ministry of Foreign Affairs
Services Department
Section for Consular Affairs
Consular Assistance Unit
Telephone: +47 23 95 00 00
Email: post@mfa.no
Visiting address: 7. juni-plassen/Victoria Terrasse
Postal address: PO Box 8114 Dep, 0032 OSLO

The Ministry of Foreign Affairs operational centre:
Telephone +47 23 95 00 00

Overview of Norwegian foreign service missions: [Ministry of Foreign Affairs/foreign service missions](#).

12 SOURCES

This section contains an overview of relevant and useful sources.

Acts and conventions

Acts

Act of 13 August 1915 No. 5 relating to the courts (the Courts of Justice Act)

Act of 10 June 1977 No. 71 relating to recognition and enforcement of Nordic judgments in the area of private law (the Nordic Enforcement Act)

Act of 13 June 1980 No. 35 relating to free legal aid (the Legal Aid Act)

Act of 8 April 1981 No. 7 relating to children and parents (the Children Act)

Act of 22 May 1981 No. 25 relating to legal procedure in criminal cases (the Criminal Procedure Act)

Act of 17 December 1982 No. 86 relating to court fees (the Court Fees Act)

Act of 8 July 1988 No. 72 relating to recognition and enforcement of foreign decisions on custody, etc. and the return of children (the Child Abduction Act)

Act of 4 July 1991 No. 47 relating to marriage (the Marriage Act)

Act of 26 June 1992 No. 86 relating to enforcement (the Enforcement Act)

Act of 17 July 1992 No. 100 relating to child welfare services (the Child Welfare Act)

Act of 4 August 1995 No. 53 relating to the police (Police Act)

Act of 19 June 1997 No. 82 relating to passports (the Passport Act)

Act of 21 May 1999 No. 30 relating to the strengthening of the status of human rights in Norwegian law (the Human Rights Act)

Act of 17 June 2005 No. 90 relating to mediation and procedure in several disputes (the Dispute Act)

Act of 20 May 2005 No. 28 relating to criminal penalties (the Penal Code)

International conventions and regulations

Convention of 6 February 1931 between Norway, Denmark, Finland, Iceland and Sweden containing international private law provisions on marriage, adoption and guardianship, with final protocol (the Nordic Family Law Convention)

European Convention on Human Rights with protocols of 4 November 1950 (the European Convention on Human Rights, ECHR)

Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (the 1980 Hague Convention)

European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (the 1980 Council of Europe Convention)

UN Convention on the Rights of the Child with protocols of 20 November 1989 (UNCRC)

White papers – bills

Prop. 143 L (2014-2015) *Endringer i barne bortføringsloven, barnevernloven, straffeloven 2005 og rettshjelploven (internasjonal barne bortføring)*

Prop. 46 L (2011-2012) *Endringer i straffelova mv. (internasjonal barne bortføring mv.)*

Ot.prp. nr. 22 (2008-2009) *Om lov om endringer i straffeloven 20. mai 2005 nr. 28*

Ot.prp. nr. 56 (1996-97) *Om lov om endring i lov 8. april 1981 nr. 7 om barn og foreldre (barnelova)*

Ot.prp.nr. 44 (1991-1992) *Om lov om barnevernstjenester (barnevernloven)*

Ot.prp. nr. 52 (1987-88) *Om A Lov om anerkjennelse og fullbyrding av utenlandske avgjørelser om foreldreansvar m.v. og om tilbakelevering av barn. B Lov om samtykke til ratifikasjon av Europarådskonvensjonen 20. mai 1980 om anerkjennelse og fullbyrding av avgjørelser om foreldreansvar og om gjenopprettelse av foreldreansvar og Haagkonvensjonen 25. oktober 1980 om de sivile sider ved internasjonal barne bortføring* (Relating to consideration of the white paper: Innst.O. nr. 84 (1987-88); Consideration by the Odelsting (1987-88) pages 860-863, Consideration by the Lagting (1987-88) page 111)

Other white papers

Stortingsmelding nr. 12 (2010-2011) *Bistand til nordmenn i utlandet*

Circulars

Rundskriv Q-18/97 Endringer i lov 8. april 1981 nr. 7 om barn og foreldre (barnelova). Barne- og familiedepartementet 1997. Available at: [Rundskriv Q-18/97](#)

Rundskriv G-12/2005 om fri rettshjelp. Justis- og politidepartementet 2005. Available at: [Rundskriv G-12/05](#)

Rundskriv Q-02/2008: Forskrift om mekling etter ekteskapsloven og barneloven. Barne- og likestillingsdepartementet 2008. Available at: [Rundskriv Q-02/08](#)

International commentary editions of conventions

1980 Hague Convention:

Explanatory Report on the 1980 Hague Child Abduction Convention by Elisa Pérez-Vera, 1982
http://www.hcch.net/index_en.php?act=publications.details&pid=2779&dtid=3.

1980 Council of Europe Convention:

<http://www.coe.int/en/web/conventions/>. Information about the convention can be found via the list of Council of Europe conventions. The 1980 convention is number 105.

Decisions by the Supreme Court of Norway

Supreme Court Reports (Rt.) 1991, page 1410

Supreme Court Reports (Rt.) 1993, page 881

Supreme Court Reports (Rt.) 1993, page 1144

Supreme Court Reports (Rt.) 1996, page 160

Supreme Court Reports (Rt.) 1996, page 1332

Supreme Court Reports (Rt.) 2000, page 185

Supreme Court Reports (Rt.) 2004, page 2034

Supreme Court Reports (Rt.) 2008, page 257

Supreme Court Reports (Rt.) 2008, page 829

Supreme Court Reports (Rt.) 2011, page 1564

Supreme Court Reports (Rt.) 2013, page 59

Supreme Court Reports (Rt.) 2014, page 956

Supreme Court Reports (Rt.) 2014, page 714

Supreme Court Reports (Rt.) 2014, page 286

Supreme Court Reports (Rt.) 2015, page 222

Websites containing international case law

Hague Conference database INCADAT (International Child Abduction Database), www.incadat.com (includes a link to conclusions and recommendations of special commissions on child abduction and allows searches of case law from convention states and the European Court of Human Rights).

The European Court of Human Rights' electronic and online collection of its own case law:

<http://hudoc.echr.coe.int>.

Other public documents

Report “*Internasjonal barne bortføring*” by the working group on review of the rules, organisation and processing of child abduction cases in Norway, 2013.

[Internasjonal barne bortføring](#)

Barne bortføringssaker for domstolen. En veileder, Selvaag, Anne Marie, 2013. Available on the website of the Norwegian Courts Administration:

Barne bortføringssaker for domstolen - en veileder

Literature

Backer, Inge Lorange: *Barneloven kommentarutgave*, 2. utgave, 2008

Bratholm, Anders og Matningsdal, Magnus: *Straffeloven med kommentarer*, Første Del, 2. utgave, 2003.

Bratholm, Anders og Matningsdal, Magnus: *Straffeloven med kommentarer*, Anden Del, Forbrydelser, 1995.

Kvisberg, Torunn Elise: *Internasjonale barnefordelingssaker. Internasjonal barnebortføring*, 2009. Gyldendal Norsk Forlag AS (ISBN 978-82-05-39225-0). Also available in the Norsk Lovkommentar commentary collection.

Nylund, Anna: *Mekling i barnefordelingssaker på godt og ondt*, Tidsskrift for familierett, arverett og barnevernrettslige spørsmål i 2011.

Ofstad, Kari og Skar Randi: *Barnevernloven med kommentar*, 2008.

Søvig, Karl Harald: *Avgjørelser fra EMD i saker om vern av privat- og familieliv fra 2014*, Tidsskrift for familierett, arverett og barnevernrettslige spørsmål 2015-2.

Relevant websites

- Information from the Norwegian authorities, the Ministry of Justice and Public Security and the Ministry of Foreign Affairs: www.government.no/child-abduction.
- The Hague Conference on Private International Law has a dedicated “Child Abduction Homepage” (which contains conclusions and recommendations from special commissions on child abduction, good practice guides, etc.): [HCCH Child Abduction Section](http://www.hcch.org/child-abduction).

For further useful sources and websites, including links to the websites of the central authorities of other countries, see www.government.no/child-abduction/links-and-sources .

- 13 ENCLOSURES

The application form for cases under the 1980 Hague Convention, the application form for cases under the 1980 Council of Europe Convention and the power of attorney, and the application form for free legal aid can be found here: www.government.no/child-abduction/forms