



Guidelines on applying for the return of a child

Applicable Conventions

The *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (HC 1980)* and the *European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and Restoration of Custody of Children (EC 1980)* aim to ensure that court proceedings for the return of a child (simplified legal assistance proceedings) are initiated. Both require that the children concerned had their **habitual residence** in a [Contracting State to the Convention](#) and that they have been **wrongfully** removed to or retained in another Contracting State. If the children's current place of residence is unknown but presumed to be in a Contracting State, the Central Authority will assist to locate them.

In most cases, it is the Hague Convention on Child Abduction (HC 1980) and not the European Convention on Custody (EC 1980) that applies. Contrary to the HC 1980, the EC 1980 always requires the presentation of an official or court order granting rights of custody, the application must be filed within 6 months (after which the right to apply expires), there is no rule prohibiting a decision on the merits while EC 1980-return proceedings are pending, and the request for enforcement is subject to additional requirements. The following information is therefore focussed on the HC 1980.

When preparing and completing an application, you should seek **advice from the Swiss Central Authority**. In particular, it can provide information on the best course of action, the relevant Convention, the potential costs and expected procedure. You will find additional information in our [brochure](#).

Requirements for an application

Any person or authority that has **sole or joint rights of custody or the right to determine the children's place of residence** and has **actually exercised these rights** may apply for the child's return ([parental custody since 1st of July 2014](#)). Even a violation of a restriction on leaving the country (non-removal-order) can constitute a wrongful removal.

The children concerned must be under the **age of 16**. They will have been removed to or retained in an HC 1980 Contracting State **without the consent** of the applicant (for example after going there on holiday or to visit a relative).

If all efforts to reach an amicable solution have failed, you should not wait too long before filing an application. If the return proceedings based on the HC 1980 are filed in the competent court **more than 12 months later**, and if the children have already settled into their new living environment, the court may refuse to order their return.

The application for return may be submitted to the Swiss Central Authority, the foreign Central Authority (with copy to the Swiss Central Authority) or directly to the competent court/authority at the children's current whereabouts. This last course of action is recommended in cases of serious urgency (where the children are at risk, where the 12-month period after the abduction is about to expire), but you will normally have to mandate and pay for a lawyer to represent you.

Important: Return proceedings lead to a decision only on whether the children should return to the State where they had previously been resident. The court concerned **may not decide on any other parental rights** (parental responsibility, custody, right to determine the children's place of residence) or

arrangements, with the exception of emergency child protection measures. The parents' ability to care for their children is only an issue if the children may be at risk of serious harm when returned.

Completing the form

Complete the form in the official language of the State where the children are or are presumed to be staying. If this is not an official Swiss language, complete a form in German, French, Italian or English as well. In the event of any doubt, contact the Central Authority. If you know the children's whereabouts, indicate the foreign Contracting State on the first page ("Requested Central Authority [country]"). Be careful to complete the form legibly and in full (date and signature!).

In urgent cases, in particular where child protection measures are required, you can file your application previously by e-mail or fax.

Section I

Personal descriptions and **recent portrait and/or full body photographs** of the children and their presumed carers or escort (sent if possible by e-mail) are helpful and must be provided, particularly if the children's whereabouts are unclear or unknown.

In addition, information and documentary evidence of where the children were previously habitually resident and for how long must be provided.

Section III

The Central Authority can assist you in searching for **missing children** and arrange for a police alert to be issued to help establish their whereabouts (but not that of the persons accompanying them). In case of high urgency, you should contact the Central Authority.

Section IV

Some States require evidence (an e-mail printout or other communication) that the applicant has requested the return of their children without success or that their return has been expressly refused. If available, please attach a copy of the document.

Section V

If your right to apply is based on a decision issued by an administrative authority (e.g. a child protection authority), by a court (e.g. a marriage protection or divorce decree) or on a legally valid agreement, please enclose a **copy with a certificate of legal validity**.

Explain how you exercised your custody or access rights in relation to the children, especially in cases of separation.

Section VI

The Central Authorities can advise you on possible, urgently required **child protection measures**, but cannot take and order these measures themselves. The Swiss Central Authority can pass your report of possible risks to the children on to the foreign Central Authority, or if the children are currently staying in Switzerland, to the competent Swiss authorities.

As return proceedings can be very protracted, depending on the individual case and State of residence, regular contact with the applicant parent is very important for the children. If you are obstructed or

prevented from having contact with your children, tell us about the problems that you have experienced. In order to **maintain regular contact** during the proceedings, a request can be made to the court with specific proposals (contacts and/or visits: when, where and how often, by telephone, Skype, e-mail, Facebook etc.).

Section VII

Please notify the Central Authority immediately, if after filing your application you receive a **court order or an official decision that is relevant to the return proceedings**.

Also inform the Central Authority immediately if you are considering filing or have already filed a **criminal complaint**.

Section VIII

Experience shows that the parents' own efforts to settle their conflict can help to avoid stressful, protracted and sometimes expensive return proceedings. In particular, in this way the individual interests and needs of the children can be taken into account and long-term solutions can be found more quickly.

Not all Contracting States offer the option of out-of-court dispute resolution through **mediation and conciliation proceedings**. The Central Authority can inquire the availability of such procedures and their potential costs to you. ([Brochure](#) and [manual SSI](#)).

Section IX

Organising and enforcing the court ordered return can be made more agreeable for the children if you are prepared to collect the children yourself or have them collected by a person that they know and trust.

Section X

Do you expect serious accusations to be made against you (e.g. domestic violence, abuse, psychological problems, addictions, stalking, refusal to pay maintenance, etc.) for the purpose of preventing the return of the children? Contact the Central Authority and discuss whether you should mention these matters in your application.

Section XI

The applicant must arrange for the application form and all attachments to be translated into the official language of the Contracting State where the children are or are presumed to be resident. In order to avoid unnecessary translation costs and delays when filing a large number of documents, check with the Central Authority beforehand which documents have to be translated into which language.

Information and advice

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