

Between Borders and Best Interests

CHILD PROTECTION IN A MULTI-LEVEL LEGAL FRAMEWORK

Prof. Dr. Hendrika van Schelle, IMJ Introduction to European Family Law Conference, 23 October 2025

Introduction

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Facts of the Block-Case

- 2014 – separation of the parents
- March 2021 – father keeps the two youngest children without mother's consent
- September 2021 – Hamburg Family Court grants father provisional custody rights
- October 2021 – Higher Regional Court overrules, grants residence rights to mother
- December 2021 – Danish courts refuse to enforce German order
- February 2023 – Danish courts rule returning children would expose them to serious harm
- New Year's Eve 2023/2024 – Father attacked; children relocated to the mother
- Early January 2024 – High Court Hamburg grants father temporary sole custody; orders immediate return to him
- February 2024 – High Court Hamburg declares itself no longer competent; Denmark is habitual residence
- April 2024 – German Federal Constitutional Court rejects mother's constitutional complaint

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Regulation (EU) 2019/1111 (Brussels IIb)

► Article 7

1. The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.
2. Paragraph 1 of this Article shall be subject to Articles 8 to 10.

► Article 21

1. When exercising their jurisdiction under Section 2 of this Chapter, the courts of the Member States shall, in accordance with national law and procedure, provide the child who is capable of forming his or her own views with a genuine and effective opportunity to express his or her views, either directly, or through a representative or an appropriate body.
2. Where the court, in accordance with national law and procedure, gives a child an opportunity to express his or her views in accordance with this Article, the court shall give due weight to the views of the child in accordance with his or her age and maturity.

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Convention on the Civil Aspects of International Child Abduction 1980

► Article 3

The removal or the retention of a child is to be considered wrongful where -

- a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

[...]

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Convention on the Civil Aspects of International Child Abduction 1980

► Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -

- a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
- b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views. In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

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Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children 1996

► Article 7

- (1) In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State, and
- a) each person, institution or other body having rights of custody has acquiesced in the removal or retention; or
 - b) the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment.
- (2) The removal or the retention of a child is to be considered wrongful where -
- a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
 - b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

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German Constitutional Law

► Art. 6 Basic Law

- (1) Marriage and the family shall enjoy the special protection of the state.
- (2) The care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them. The state shall watch over them in the performance of this duty.
- (3) Children may be separated from their families against the will of their parents or guardians only pursuant to a law and only if the parents or guardians fail in their duties or the children are otherwise in danger of serious neglect. [...]

► Art. 2 par. 1 Basic Law

- (1) Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law. [...]

► Art. 1 par. 1 Basic Law

- (1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority. [...]

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Challenges and Developments

- Time factor: Lengthy proceedings make return less likely
- Best interests standard varies across jurisdictions: Age, format, location, and conduct of hearings differ nationally
- Procedural safeguards are necessary: Child hearings, guardians, psychosocial support, mediation essential
- Efficiency vs. welfare: Rapid procedures risk subordinating child welfare to procedural speed
- International coordination: Divergent national laws and complex EU/Hague frameworks create gaps
- Child-centered focus: Children's voices must be meaningfully integrated; legal decisions should prioritize welfare over parental disputes

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Thank you for listening!



Prof. Dr. Hannelore van Schellevis, IJL Introduction to European Family Law Conference, 23 October 2020
