

CROSS-BORDER JUDICIAL COMMUNICATION BETWEEN COURTS & BETWEEN CENTRAL AUTHORITIES

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PRACTICAL CASE NO. 1

Ana is a Lithuanian national who moved to study to the UK in 2013. Since 2014 she was cohabitating with her course mate Andrew, who is British citizen. In 2015 their son Thomas was born. In 2017, following the breakdown of the relationship with Andrew, Ana and Thomas left the UK for Lithuania without any notice to Andrew. Andrew applied to the competent Lithuanian court requesting the child return order according to the 1980 Hague Convention.

Questions:

- Was the removal “wrongfull” according to Art. 3 of Hague Convention?
- How can you gain information that you need?

PRACTICAL CASE NO. 2

One parent lives with the child in your State. The other parent lives abroad and he wants to obtain access rights in his State. You think that it is possible to order contact in the other State, but only supervised contact. You need information about the possibilities in the other State to order supervised contact.

Question:

- How can you gain information that you need?

TOPICS

- Cross-border direct judicial communication in matters of parental responsibility
- The role of central authorities in the application of the Brussels IIA Regulation
- Cooperation on cases specific to parental responsibility
- Interactive presentation of the available online instruments
- Exchange of experiences made by participants

CROSS-BORDER DIRECT JUDICIAL COMMUNICATION IN MATTERS OF PARENTAL RESPONSIBILITY

Expressly required in:

- Art. 15 (6) Brussels IIa: transfer of jurisdiction
- Art. 11 (6) and (7) Brussels IIa: information about the refusal of return
- Articles 8, 9, 31 of the 1996 Hague Convention
- Domestic legislation of some Member States

CROSS-BORDER DIRECT JUDICIAL COMMUNICATION IN MATTERS OF PARENTAL RESPONSIBILITY

Matters that may be the subject of direct judicial communications include, for example:

- establishing whether protective measures are available for the child or other parent in the State to which the child would be returned and, in an appropriate case, ensuring that available protective measures are in place in that State before a return is ordered
- ascertaining whether the foreign court can accept and enforce undertakings offered by the parties in the initiating jurisdiction
- ascertaining whether the foreign court can issue a mirror order (i.e., same order in both jurisdictions)
- confirming whether orders were made by the foreign court
- verifying whether findings about domestic violence were made by the foreign court
- verifying whether a transfer of jurisdiction is appropriate

CROSS-BORDER DIRECT JUDICIAL COMMUNICATION IN MATTERS OF PARENTAL RESPONSIBILITY

- Problems:

- 1) Whom can I contact in the other State?
- 2) By what means?
- 3) In which language?
- 4) How can I guarantee to the foreign colleague that I am a judge?

CROSS-BORDER DIRECT JUDICIAL COMMUNICATION IN MATTERS OF PARENTAL RESPONSIBILITY

- Emerging Guidance regarding the development of the International Hague Network of Judges and **General Principles for Judicial Communications**, including **commonly accepted safeguards for direct judicial communications in specific cases**, within the context of the International Hague Network of Judges, prepared by the Permanent Bureau of the Hague Conference on Private International Law, July 2012 // <https://assets.hcch.net/docs/634ffb35-e1ce-4baf-aac2-439853478d74.pdf>
- Additional information and **examples of direct judicial communication** can be found in the “Report on Judicial Communications in Relation to International Child Protection” // <https://assets.hcch.net/upload/wop/abduct2011pd03be.pdf>

CROSS-BORDER DIRECT JUDICIAL COMMUNICATION IN MATTERS OF PARENTAL RESPONSIBILITY

Communication safeguards:

- 6.1 Every judge engaging in direct judicial communications must respect the law of his or her own jurisdiction.
- 6.2 When communicating, each judge seized should maintain his or her independence in reaching his or her own decision on the matter at issue.
- 6.3 Communications must not compromise the independence of the judge seized in reaching his or her own decision on the matter at issue.

Source: <https://assets.hcch.net/docs/634ffb35-e1ce-4baf-aac2-439853478d74.pdf>

CROSS-BORDER DIRECT JUDICIAL COMMUNICATION IN MATTERS OF PARENTAL RESPONSIBILITY

6.4 In Contracting States in which direct judicial communications are practised, the following are commonly accepted procedural safeguards:

- except in special circumstances, parties are to be notified of the nature of the proposed communication;
- a record is to be kept of communications and it is to be made available to the parties;
- any conclusions reached should be in writing;
- parties or their representatives should have the opportunity to be present in certain cases, for example via conference call facilities.

Source: <https://assets.hcch.net/docs/634ffb35-e1ce-4baf-aac2-439853478d74.pdf>

CROSS-BORDER DIRECT JUDICIAL COMMUNICATION IN MATTERS OF PARENTAL RESPONSIBILITY

Initiating the communication:

- 7.1 In considering whether the use of direct judicial communications is appropriate, the judge should have regard to speed, efficiency and cost-effectiveness.
- 7.4 The initial communication should ordinarily take place between two Hague Network Judges in order to ascertain the identity of the judge seized in the other jurisdiction.

Source: <https://assets.hcch.net/docs/634ffb35-e1ce-4baf-aac2-439853478d74.pdf>

CROSS-BORDER DIRECT JUDICIAL COMMUNICATION IN MATTERS OF PARENTAL RESPONSIBILITY

7.5 When making contact with a judge in another jurisdiction, the initial communication should normally be in writing and should in particular identify:

- a) the name and contact details of the initiating judge;
- b) the nature of the case (with due regard to confidentiality concerns);
- c) the issue on which communication is sought;
- d) whether the parties before the judge initiating the communication have consented to this communication taking place;
- e) when the communication may occur (with due regard to time differences);
- f) any specific questions which the judge initiating the communication would like answered;
- g) any other pertinent matters.

Source: <https://assets.hcch.net/docs/634ffb35-e1ce-4baf-aac2-439853478d74.pdf>

CROSS-BORDER DIRECT JUDICIAL COMMUNICATION IN MATTERS OF PARENTAL RESPONSIBILITY

The form of communications and language difficulties:

- 8.1 Judges should use the most appropriate technological facilities in order to communicate as efficiently and as swiftly as possible.
- 8.2 The initial method and language of communication should, as far as possible, respect the preferences, if any, indicated by the intended recipient in the list of members of the Hague Network. Further communications should be carried out using the initial method and language of communication unless otherwise agreed by the judges concerned.
- 8.14 Oral communications are encouraged where judges involved come from jurisdictions which share the same language.
- 8.17 Oral communications can take place either by telephone or videoconference and, in those cases where it is necessary that they deal with confidential information, such communications should be carried out using secured means of communication.

Source: <https://assets.hcch.net/docs/634ffb35-e1ce-4baf-aac2-439853478d74.pdf>

THE ROLE OF CENTRAL AUTHORITIES IN THE APPLICATION OF THE BRUSSELS IIA REGULATION

- Each Member State shall designate one or more central authorities to assist with the application of this Regulation and shall specify the geographical or functional jurisdiction of each (Art. 53).

THE ROLE OF CENTRAL AUTHORITIES IN THE APPLICATION OF THE BRUSSELS IIA REGULATION

- CA for the application of Brussels Iia
- CA for the application of the 1980 HC (Art. 6-10, 21, 24, 26-28,30 1980 HC)
- CA for the application of the 1996 HC (Art. 29-39 1996 HC)

Search for CA for the application of Brussels Iia in particular country: https://e-justice.europa.eu/content_matrimonial_matters_and_matters_of_parental_responsibility-377-en.do

Search for CA per convention: <https://www.hcch.net/en/instruments/authorities2>

THE ROLE OF CENTRAL AUTHORITIES IN THE APPLICATION OF THE BRUSSELS IIA REGULATION

Art. 55: The central authorities shall, upon request from a central authority of another Member State or from a holder of parental responsibility, cooperate on specific cases to achieve the purposes of this Regulation. To this end, they shall, acting directly or through public authorities or other bodies, take all appropriate steps in accordance with the law of that Member State in matters of personal data protection to:

- (a) collect and exchange information: (i) on the situation of the child; (ii) on any procedures under way; or (iii) on decisions taken concerning the child;
- (b) provide information and assistance to holders of parental responsibility seeking the recognition and enforcement of decisions on their territory, in particular concerning rights of access and the return of the child;
- (c) facilitate communications between courts, in particular for the application of Article 11(6) and (7) and Article 15;
- (d) provide such information and assistance as is needed by courts to apply Article 56; and
- (e) facilitate agreement between holders of parental responsibility through mediation or other means, and facilitate cross-border cooperation to this end.

THE ROLE OF CENTRAL AUTHORITIES IN THE APPLICATION OF THE BRUSSELS IIA REGULATION

- Art. 11 (6): If a court has issued an order on non-return pursuant to Article 13 of the 1980 Hague Convention, the court must immediately either directly or through its central authority, transmit a copy of the court order on non-return and of the relevant documents, in particular a transcript of the hearings before the court, to the court with jurisdiction or central authority in the Member State where the child was habitually resident immediately before the wrongful removal or retention, as determined by national law. The court shall receive all the mentioned documents within one month of the date of the non-return order.
- Art. 11 (7): Unless the courts in the Member State where the child was habitually resident immediately before the wrongful removal or retention have already been seised by one of the parties, the court or central authority that receives the information mentioned in paragraph 6 must notify it to the parties and invite them to make submissions to the court, in accordance with national law, within three months of the date of notification so that the court can examine the question of custody of the child.

THE ROLE OF CENTRAL AUTHORITIES IN THE APPLICATION OF THE BRUSSELS IIA REGULATION

- Art. 15 (6). The courts shall cooperate for the purposes of this Article, either directly or through the central authorities designated pursuant to Article 53.

THE ROLE OF CENTRAL AUTHORITIES IN THE APPLICATION OF THE BRUSSELS IIA REGULATION

Art. 56. Placement of a child in another Member State

- 1. Where a court having jurisdiction under Articles 8 to 15 contemplates the placement of a child in institutional care or with a foster family and where such placement is to take place in another Member State, it shall first consult the central authority or other authority having jurisdiction in the latter State where public authority intervention in that Member State is required for domestic cases of child placement.
- 2. The judgment on placement referred to in paragraph 1 may be made in the requesting State only if the competent authority of the requested State has consented to the placement.

COOPERATION ON CASES SPECIFIC TO PARENTAL RESPONSIBILITY

Judicial networks in civil matters:

- European Judicial Network in Civil and Commercial Matters (EJN-civil)
- International Hague Network of Judges (IHNJ)
- Ibero-American Legal Assistance Network (Iberred)
- Regional networks

ECJ-CIVIL

- Established by Council Decision 2001/470/EC of 28 May 2001 and started operating on 1 December 2002. This legal basis was modified once in 2009
- All Member States except Denmark participate in it
- Provides support for the implementation of EU civil justice instruments in daily legal practice by facilitating and supporting relations between national judicial authorities through contact points in each Member State
- Provides online tools to search for general information about national legal systems

ECJ-CIVIL

Browser address bar: https://e-justice.europa.eu/content_ejn_in_civil_and_commercial_matters-21-en.do

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EJN in civil and commercial matters

The European Judicial Network in civil and commercial matters (EJN-civil) is a flexible, non-bureaucratic network which brings together national judicial authorities. It aims to simplify and strengthen judicial cooperation between Member States. In operation since 2002, the EJN-civil improves the practical application and implementation of EU civil justice instruments. In such way, it contributes to building bridges between the different justice systems of the Member States and thereby creating mutual trust.

The Network's main tasks are direct contacts and case-handling between national Network contact points, facilitating cross-border access to justice through information given to the public and to practitioners through factsheets and other publications available at the European e-Justice Portal in all Union languages, evaluating and sharing of experience on the operation of specific Union law instruments in civil and commercial matters.



Please consult relevant subpages to find more information on:

- [About the network](#)
- [Citizens](#)
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INTERNATIONAL HAGUE NETWORK OF JUDGES

- Established in 1999
- Facilitates communication and cooperation between judges in international child protection cases in the context of the 1980 HC:
 - by collecting and disseminating general information
 - by facilitating direct judicial communication with regard to specific cases
- In 2015 the number of Network judges reached 100, 75 States worldwide were represented

INTERACTIVE PRESENTATION OF THE AVAILABLE ONLINE INSTRUMENTS

- European E-justice Portal: <https://e-justice.europa.eu/home.do?action=home>
- European Judicial Atlas in Civil Matters (is being phased out, some information on this website has not been updated. Up-to-date information is being gradually added to the European e-Justice Portal): https://e-justice.europa.eu/content_european_judicial_atlas_in_civil_matters-321-en.do
- EUR-Lex access to the EU law: <http://eur-lex.europa.eu>
- N-Lex offers a single entry point to national law databases in individual EU countries: <http://eur-lex.europa.eu/n-lex/>
- CURIA: <http://curia.europa.eu>

LANGUAGE OF JUDICIAL DOCUMENTS EXCHANGED UNDER THE BRUSSELS IIA REGULATION

- Article 41. Rights of access

2. The judge of origin shall issue the certificate referred to in paragraph 1 using the standard form in Annex III (certificate concerning rights of access) . . .

The certificate shall be completed in the language of the judgment.

- Article 42. Return of the child

2. The judge of origin who delivered the judgment referred to in Article 40(1)(b) shall issue the certificate referred to in paragraph 1 . . .

The certificate shall be completed in the language of the judgment.

LANGUAGE OF JUDICIAL DOCUMENTS EXCHANGED UNDER THE BRUSSELS IIA REGULATION

- Article 11. Return of the child

6. If a court has issued an order on non-return pursuant to Article 13 of the 1980 Hague Convention, the court must immediately either directly or through its central authority, transmit a copy of the court order on non-return and of the relevant documents, in particular a transcript of the hearings before the court, to the court with jurisdiction or central authority in the Member State where the child was habitually resident immediately before the wrongful removal or retention, as determined by national law.

LANGUAGE OF JUDICIAL DOCUMENTS EXCHANGED UNDER THE BRUSSELS IIA REGULATION

Practice Guide for the application of the Brussels Iia Regulation:

- The mechanisms of translation are not governed by Article 11 (6).
- Judges should try to find a pragmatic solution which corresponds to the needs and circumstances of each case.
- Subject to the procedural law of the State addressed, translation may not be necessary if the case is transferred to a judge who understands the language of the case.
- If a translation proves necessary, it could be limited to the most important documents.
- The central authorities may also be able to assist in providing informal translations.
- If it is not possible to carry out the translation within the one-month time limit, it should be carried out in the Member State of origin.

LANGUAGE OF JUDICIAL DOCUMENTS EXCHANGED UNDER THE BRUSSELS IIA REGULATION

Greatest degree of inconsistency noticed in the use of:

- foreign personal names
- names of foreign institutions
- foreign geographical names

PERSONAL NAMES

- Personal names should retain their original accents, e.g. Grybauskaitė, Cañete, Malmström, Šefčovič.
- If specific letters are not available on the keyboard, accented letters such as đ, ž and ũ can be found by using the Insert Symbol menu in Word.
- Care should be taken to use the right transliteration system for the right language: for example, a Russian 'Ольга' is 'Olga', but a Ukrainian one is 'Olha'.

*English Style Guide: A handbook for authors and translators in
the European Commission*

PERSONAL NAMES

- Mr Aguirre Zarraga, represented by the Bundesamt für Justiz, by A. Schulz, acting as Agent,
- – Ms Pelz, by K. Niethammer-Jürgens, Rechtsanwältin,
- – the German Government, by T. Henze and J. Kemper, acting as Agents,
- – the Greek Government, by T. Papadopoulou, acting as Agent,
- – the Spanish Government, by J.M. Rodríguez Cárcamo, acting as Agent,
- – the French Government, by B. Beaupère-Manokha, acting as Agent,
- – the Latvian Government, by M. Borkoveca and D. Palcevska, acting as Agents,
- – the European Commission, by A.-M. Rouchaud-Joët and W. Bogensberger, acting as Agents. . .

Case C-491/10 PPU Joseba Andoni Aguirre Zarraga v Simone Pelz

NAMES OF FOREIGN INSTITUTIONS

- 21 By judgment of 22 November 2007 of the Okrožno sodišče v Mariboru (Regional Court, Maribor) (Slovenia), confirmed by judgment of the Vrhovno sodišče (Supreme Court) (Slovenia) of 2 October 2008, the order of the Tribunale di Tivoli of 25 July 2007 was declared enforceable in the territory of the Republic of Slovenia.
- 22 On the basis of the judgment of the Vrhovno sodišče, enforcement proceedings were brought before the Okrajno sodišče v Slovenski Bistrici (District Court, Slovenska Bistrica) (Slovenia) for the child to be returned to Mr Sgueglia and placed in the children's home. However, by order of 2 February 2009, that court suspended enforcement until the final disposal of the main proceedings.
- 23 On 28 November 2008 Ms Detiček made an application to the Okrožno sodišče v Mariboru for a provisional and protective measure giving her custody of the child.

Case C-403/09 Jasna Detiček v Maurizio Sgueglia

GEOGRAPHICAL NAMES

- Use the native form for geographical names (retaining any accents) except where an anglicised form is overwhelmingly common.

English Style Guide: A handbook for authors and translators in the European Commission

- CJEU example:
- In addition, in the vicinity of the Haag route, the German authorities have designated the following additional protection zone:
- – Ebersberger and Großhaager forest (DE 7837-371).

Case C-244/05 Bund Naturschutz in Bayern eV and Others v Freistaat Bayern

'PROPER NAMES ARE POETRY IN THE RAW. LIKE ALL POETRY THEY ARE UNTRANSLATABLE.'

W.H. AUDEN



