

## Deciding on Habitual Residence of the Hague Child Abduction Convention (summary)

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### 1. The aim of the convention and interest of children

The measure that the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction has chosen for the interest of children is their prompt return to the State of their habitual residence. The convention supposes that the child should be in the country of the habitual residence when the upbringing of the child is decided. Returning children make them enable to resume their social and family environment. These are the first aim of the convention, which is for the benefit of the child involved in the specific case. When almost all the children are returned to the country of the habitual residence, international movement without consent of other persons who have parental responsibility will be deterred. The deterrence of wrongful removal and retention is the second aim of the convention. The second aim is for the benefit of all the children who can be involved in disputes revolving around international movement of children. (Re E. [2011] UKSC 27 at [13]–[15], Paul R. Beaumont & Peter E. McEleavy, *The Hague Convention on International Child Abduction*, Oxford 1999 at 29-30)

### 2. Habitual residence

The Court of Justice of the European Communities ruled in Case C-523/07 of 2009 about the concept of the habitual residence under the Article 8(1) of Council Regulation (EC) No 2201/2003, which provides jurisdiction, that it corresponds to the place which reflects some degree of integration by the child in a social and family environment. The Supreme Court of the UK adopted the test of the European court when to inquire into habitual residence of the convention in *A v A* [2013] UKSC 60. The Supreme Court of the United States has also adopted the test in *Monasky v. Taglieri* 140 S.Ct. 719 (2020).

Tokyo High (appellate) Court decided on habitual residence in a similar way to these rulings in the *Reiwa Gannen (Ra) No 2408* on 15 May 2020, *Kateino Hou to Saiban vol 36* at 105. Two cases of Tokyo and Osaka High Court followed the same line, mentioning the ruling by the Supreme Court of the US.

### 3. The aim of the convention and habitual residence

As long as the proceeding of the convention is where the child should be when that issue

is decided, the concept of habitual residence to point the country where children shall be returned under the convention should be consistent with the concept of habitual residence to indicate which country's court has jurisdiction.

It cannot be denied that the more weight is given to the aim of deterrence, the more weight the last shared intent of the parents gets, though the more weight is given to the intent, the more the integration by the child in the environment is disregarded. If the habitual residence is found mainly by the test of the last shared intent, in practice, the meaning to require habitual residence other than no consent or acquiescence decreases significantly.

To allow one factor to be a trump over other factors relating to social and family environment of a child is against the core concept of the convention.

The habitual residence is a question of fact to be decided by reference to all the circumstances of any particular case as what makes a place habitual is integration by the child in the environment.