

Much-awaited draft guidelines on the grave risk exception of the Child Abduction Convention (Art. 13(1)(b)) have been submitted for approval

After years in the making, the revised HCCH draft Guide to Good Practice on Article 13(1)(b) of the Child Abduction Convention has been completed and is accessible [here](#). It has been submitted to the governance body of the Hague Conference on Private International Law (*i.e.* the Council on General Affairs and Policy) for approval.

There are five exceptions under the Child Abduction Convention and this is one of them; see also Arts 12(2), 13(1)(a), 13(2) and 20 of the Convention. Under this exception, the judicial or administrative authority of the requested State *may* refuse to return the child to his or her State of habitual residence following a wrongful removal or retention.

According to the latest survey of the Hague Conference of applications made in 2015, the refusals on the basis of Article 13(1)(b) of the Child Abduction Convention amount to 18% of the total judicial refusals. Thus, this is the most frequently raised exception. Other grounds for judicial refusal relate to the scope of the Convention (such as the lack of habitual residence or rights of custody). See the survey available [here](#) (p. 15).

Article 13(1)(b) contains the following three different types of risk:

- a grave risk that the return would expose the child to physical harm;
- a grave risk that the return would expose the child to psychological harm; or
- a grave risk that the return would otherwise place the child in an intolerable situation.

Particularly useful for practitioners are the examples of assertions that can be raised under this exception, which include but are not limited to (see paras 53-77):

- Domestic violence against the child and / or the taking parent
- Economic or developmental disadvantages to the child upon return
- Risks associated with circumstances in the State of habitual residence
- Risks associated with the child's health
- The child's separation from the taking parent, where the taking parent would be unable or unwilling to return to the State of habitual residence
- Separation from the child's sibling(s)

In my opinion, the Child Abduction Convention, and in particular this exception, can no longer be interpreted in a vacuum and one should also look to the human rights case law which is quickly developing in this area (in addition to the applicable regional regulations).