

Judicial Application of the 1980 HCCH Convention in Morocco

The question of the accession (or reluctance to accede) of Muslim countries to the 1980 HCCH Convention has attracted the interest of scholars from Muslim countries and abroad. Scholars who have addressed this issue have come to different (sometimes contradictory) conclusions, especially when it comes to the influence of classical Islamic rules and principles on the attitudes and policies of Muslim states. Unfortunately, it is not uncommon that the available studies on this subject do not take into account the actual judicial practice of Muslim jurisdictions and focus more on the (theoretical) compatibility (or not) of Islamic rules and principles underlying the 1980 HCCH Convention. This post briefly presents some decisions dealing with the issue of cross-border child abduction under the 1980 HCCH Convention in a Muslim state, **Morocco**, but without going into too much into details or assessment, as this deserves to be done properly in a dedicated article.

Morocco became a member state of the HCCH in 1993 and a party to the 1980 HCCH Convention in 2010. It is often presented in literature as the first Islamic country to ratify the 1980 HCCH Convention. The Convention effectively entered into force in Morocco on March 1, 2012, with the publication of the text of the Convention in the Official Gazette (No. 6026). Since then, and for more than a decade, Moroccan courts have been dealing with cross-border abduction cases under the Convention. To my knowledge, there are so far ***seven*** Supreme Court decisions on the application of the 1980 HCCH Convention. Surprisingly, these cases have not been included in the database maintained by the HCCH (INCADAT), nor (apparently) have they been reported or commented on elsewhere, although they provide extremely valuable material for the study of the operation of the 1980 HCCH Convention in an Islamic context.

The seven cases are summarized in the following tables:

Case 1	Ruling No. 283 of 2 June 2015 (Case No. 443/2/1/2014)
Taking Parent	Mother (M), Moroccan national
Left behind Parent	Father (F), Moroccan national, domiciled in France
Child(ren)	1 (son) Moroccan national born in France
Age (at the time of the return order application as deduced from the facts)	4
Return requested to	France
Cited Articles	Art. 3, Art. 12, Art. 13
Legal Issue(s)	Whether there was a wrongful removal of the child and whether the 1980 HCCH Convention should apply
Ruling (loose summary)	<p>M and F had their habitual residence in France with their child before M returned to Morocco with the child. According to French law (Art. 371-1 and 2 Civil Code), which is the law of the child's place of habitual residence prior to its removal to Morocco, custody (<i>hadhana</i>) is a right jointly shared by the parents during their marriage</p> <p>Morocco has ratified the 1980 HCCH Convention, thus its application should take precedence over national law upon its publication. The court of the appealed decision which failed to apply the HCCH Convention violated the Constitution and the provisions of the Convention</p>
Outcome	Appeal admitted. The appealed decision rejecting the return of the child overturned

Case 2	Ruling No. 90 of 26 January 2016 (Case No. 286/2/1/2015)
Taking Parent	Father (F), Moroccan national, domiciled in Morocco
Left behind Parent	Mother (M), German national, domiciled in Germany
Child(ren)	4 (3 sons and 1 daughter). All Moroccan nationals
Age (At the time of the return order application as deduced from the facts)	13, 11, 9, and 6
Return requested to	Germany
Cited Articles	Art. 2, art. 3
Legal Issue(s)	Whether there was child abduction in the meaning of the 1980 HCCH Convention
Ruling (loose summary)	The children's habitual residence is in Morocco (as they have been living there with their father since M decided to return to Germany). Therefore, the conditions for the application of the Convention are not met.
Outcome	Appeal admitted. The appealed decision ordering the return of the children overturned

Case 3	Ruling No. 196 of 27 March 2018 (Case No. 660/2/1/2016)
Taking Parent	Mother (M), Muslim Moroccan
Left behind Parent	Father (F), non-Muslim Italian

Child(ren)	2 (sons) born out of wedlock in Italy
Age (at the time of the return order application as deduced from the facts)	One has 7, the age of the other is not unclear due to confusing details in the judgment
Return requested to	Italy
Cited Articles	Art. 3, Art. 12, Art. 14
Legal Issue(s)	Whether the application of the 1980 HCCH Convention depends on the existent of a legitimate filiation between the children and their father
Ruling (loose summary)	It was established that the two children had been removed from their habitual residence in Italy to Morocco in violation of the provisions of the 1980 HCCH Convention, which does not require the existence of legitimate bond (filiation) between the parents and the child.
Outcome	Appeal rejected. The appealed decision ordering the return of the children affirmed

Case 4	Ruling No. 303 of 28 July 2020 (Case No. 629/2/2/2018)
Taking Parent	Mother (M), Moroccan
Left behind Parent	Father (F), Moroccan, domiciled in Belgium
Child(ren)	1 (daughter)
Age (at the time of the return order application as deduced from the facts)	unclear

Return requested to	Belgium
Cited Articles	Art. 3, Art. 5, Art. 16
Legal Issue(s)	Whether the mother's action for custody can be admitted despite the ongoing proceedings for the return of the child return under the 1980 HCCH Convention
Ruling (loose summary)	By rendering a decision on the custody despite the ongoing proceedings to order the return of the child, the court of the appealed decision violated the provisions of the Convention
Outcome	Appeal admitted. The appealed decision conferring custody to the mother overturned

Case 5	Ruling No. 38 of 2 February 2021 (Case No. 1226/2/1/2019)
Taking Parent	Father (seems to be Moroccan)
Left behind Parent	Mother (seems to be Canadian)
Child(ren)	2 (daughters)
Age (at the time of the return order application as deduced from the facts)	11, 5
Return requested to	Canada (Ontario)
Cited Articles	Art. 13(4)
Legal Issue	Whether the opinion of the children who refused to return with their mother should be heard and taken into account

Ruling (loose summary)	The court of the appealed decision which disregarded the father's arguments according to which his daughters refuse to return to Canada and that they suffer from their mother's mistreatment and refused to accept his request to initiate an investigation in order to find the truth violated the provisions the Convention
Outcome	Appeal admitted. The appealed decision ordering the return of the children overturned with remand

Case 6	Case 6: Ruling No. 297 of 8 June 2021 (Case No. 61/2/1/2020)
Taking Parent	Mother (M) (nationality unclear, but seems to be Moroccan)
Left behind Parent	Father (F) (nationality unclear, but seems to be Moroccan) domiciled in Belgium
Child(ren)	1 (son). The child in this case had a brother
Age (at the time of the return order application as deduced from the facts)	8
Return requested to	Belgium
Cited Articles	Art. 3, Art. 17
Legal Issue	Whether the judgment conferring custody to the taking parent in the State where the child was wrongfully retained could justify the refusal to order the return of the child to the State of its habitual residence

Ruling (loose summary)	The judgment rendered in the State where the child was retained attributing custody of the child should not be taken into account. The court of the appealed decision which considered that the M's refusal to return the child constituted a wrongful retention within the meaning of article 3, overturned the first instance decision of the CFI and ordered the return of the child to Belgium, exercised its discretion in assessing the facts and correctly took into account the best interests of the child
Outcome	Appeal dismissed. The appealed decision ordering the return of the child affirmed

Case 7	Ruling No. 421 of 26 July 2022 (Case No. 200/2/1/2019)
Taking Parent	Father (F) (nationality unclear but seems to be Moroccan)
Left behind Parent	Mother (M) (nationality unclear but seems to be Moroccan) domiciled in Belgium
Child(ren)	3 (1 daughter and 2 sons)
Age (at the time of the return order application as deduced from the facts)	10 and 8 for the sons, 3 for the daughter
Return requested to	Belgium
Cited Articles	Art. 13 [(1)(b)]
Legal Issue	Whether there was grave risk that could justify the refusal to return the children to their place of habitual residence

Ruling (loose summary)	The evidence and testimony presented to the court show that the mother, who was prosecuted for adultery, verbally and physically abused the children and lacked moral integrity and rectitude (as she used to invite a stranger into the home and cheated on the father in front of the children); therefore, returning the children to their mother would expose the children to grave risks.
Outcome	Appeal admitted. The appealed decision which ordered the return of the children overturned