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Key judicial decisions rendered in cross-border child abduction and child protection matters involving civil / common law and Shari'a law States



Key judicial decisions in child abduction court cases involving the Netherlands and Shari'a law States

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District court of The Hague, The Netherlands

I. Netherlands – Morocco

The mother had taken her two children from Morocco to the Netherlands. The parents were divorced in Morocco.

Father files a request at the District Court of The Hague for the return of the children to Morocco.

Dispute between father and mother: is this a ‘wrongful removal’ in the sense of the 1980 Hague Abduction Convention? In other words: was the mother entitled to relocate the child to the Netherlands without consent of the father?

I. Netherlands – Morocco

The District Court of The Hague (10 April 2017)

- first sets out that this matter is ruled by **Moroccan law (Mudawanna)** since the child was habitually resident in Morocco before the removal by the mother
- The Father is the legal representative of the children; this is called **Wilaya** (art. 233 Mud.) and therewith responsible for all personal matters concerning the child. He will only be replaced by the mother when he has deceased or is otherwise absent or not able to legally represent the child. (art. 231 Mud.).

I. Netherlands – Morocco

- During the marriage the parents jointly exercise '**hadana**'; this means to protect the child from harm and the upbringing of the child, and to serve its best interests (art. 163 Mud.)
- After divorce the 'wilaya', the right of custody of the father, includes all aspects of life of the minor child, with the exception of 'hadana'. Hadana will be executed solely by the mother after divorce (art. 171 Mud.).

I. Netherlands – Morocco

The mother in this case has 'hadana'. The court holds that this does not mean that she can decide, without consent of the father, about the question in which State the children have their habitual residence.

The court explicitly mentions that under Moroccan law, the father has an important role as legal representative of the child (art 178 Mud.) A relocation of the child within Morocco is not forbidden, under the condition that the father is still able to exercise 'hadana'.

Netherlands – Morocco

- The court concludes that the mother is not entitled to unilaterally decide to change the child's habitual residence from Morocco to the Netherlands
- From this follows that the child was wrongfully removed from Morocco to the Netherlands in the sense of article 3 of the 1980 Hague Convention

I. Netherlands – Morocco

The court further rules that there was no ground for refusal of the return under the 1980 Hague Convention

The court ordered the return of the child to Morocco.

Link to court decision:

<https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBDHA:2017:4895>

II. Netherlands – Egypt

The District Court of the Hague (14 October 2021) rules as follows:

- In Egypt distinction between Hanefit Law and Coptic-Orthodox Law. Both parents are muslim -> Hanefit Law must be applied.
- In Egypt, parental custody is ruled in Decree/law 118 and 119, 1952 and, partly, in religious law. According to religious law, the father is legal representative of the child (**wilaya**) and the mother has "**hadana**", the right to take care of the child. "Hadana" for both boys and girls ends at the age of 15 (art. 20 Law 25, 1929).

II. Netherlands – Egypt

Child (age 7) was removed, first from Egypt to Türkiye and then from Türkiye to the Netherlands by the father, without consent of the mother (both Egyptian nationality).

Mother files a request at the District Court of The Hague for the return of the child to Egypt

Dispute between father and mother: is this a ‘wrongful removal’ in the sense of the 1980 Hague Abduction Convention? In other words: was the father entitled to relocate the child to the Netherlands without consent of the mother?

II. Netherlands – Egypt

- Right before the removal of the child from Egypt to the Netherlands, the father only had the right to see the child for 3 hours a week, in the presence of the mother. This follows from a decision of the Egypt court of 25 July 2018, in which it was also confirmed that the mother has “Hadana”.
- After the removal the mother could not exercise “Hadana” anymore.
- Under these circumstances, the court finds that the father could not remove the child from Egypt without consent of the mother.

II. Netherlands – Egypt

The Court concludes that the child was wrongfully removed from Egypt (through Türkiye) to the Netherlands in the sense of article 3 of the 1980 Hague Convention

The court further rules that there was no ground for refusal of the return under the 1980 Hague Convention

The court ordered the return of the child to Egypt

Link to court decision:

<https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHDHA:2021:2498>

III. Netherlands – Saudi Arabia

Child was removed from Saudi Arabia to the Netherlands by the mother, without consent of the father (both Saudi nationality).

Father files a request at the District Court of The Hague for the order to return the child to Saudi Arabia.

Dispute between father and mother: is this a ‘wrongful removal’ in the sense of the 1980 Hague Abduction Convention? In other words: was the father entitled to relocate the child to the Netherlands without consent of the mother?

III. Netherlands – Saudi Arabia

The District Court of The Hague rules as follows (7 february 2018):

* Both parents agree that according to the law in Saudi Arabia with respect to custody – which is based on Islamic Shari’a law – the mother cannot decide upon the habitual residence of the child with the exclusion of the father.

* This implies that the mother needed the consent of the father for the removal of the child to the Netherlands.

III. Netherlands – Saudi Arabia

- It is up to the mother to provide evidence of the consent of the father
- The mother could not provide such evidence.
- The Court concludes that the child was wrongfully removed from Saudi Arabia to the Netherlands in the sense of article 3 of the 1980 Hague Convention

III. Netherlands – Saudi Arabia

The court further rules that there was no ground for refusal of the return under the 1980 Hague Convention

The court ordered the return of the child to Saudi Arabia.

Link to court decision:

<https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBDHA:2018:1705>