

Japan's five-year experience in implementing the 1980 Hague Convention

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Outline of the 1980 Hague Convention

Convention on the Civil Aspects of International Child Abduction

- Drafted and adopted at the Hague Conference on Private International Law (HCCH) on 25 October 1980. It entered into force on 1st December 1983.
- The Convention came into force for Japan on 1st April 2014 and Japan became its 91st member State.
- There are 100 Contracting States as of 1st June 2019.

Basic principle: the interests of children are of paramount importance in matters relating to their custody (Preamble)

- Objects (Article 1);
 - a) to secure the prompt return of the child wrongfully removed to or retained in any Contracting State; and
 - b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Conditions for being a Hague return case

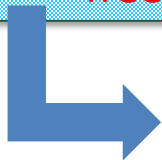
- The child in question should be **under 16 years of age**.
- The child was removed **across borders**.
 - ✓ Even if the parents are bi-national couple, the child's removal does not become a Hague case as long as the parents and the child remain in one country.
- The child was removed from one **Contracting State** to another.
- The child was **wrongfully** removed or retained.
 - ✓ "Wrongful" means that the removal/retention infringes on rights of custody attributed to another parent.
- ✗ The nationality of each parent or the child is irrelevant in a Hague case.
 - ✓ There are Hague cases which involve only parents of the same nationality such as Japanese parents.
 - ✓ There can be Hague cases which involve only nationals of a non-Contracting State.

“Basic principle” and “exceptions” of Hague return cases

Basic principle: promptly return the child to its State of habitual residence.

Exceptions for non-return;

- ① The proceedings have been commenced **after the expiration of the period of one year** from the date of the wrongful removal or retention and it is demonstrated that the child is now **settled in its new environment**.
- ② The applicant was **not actually exercising the custody rights** at the time of removal or retention.
- ③ The applicant had **consented to** or subsequently **acquiesced in** the removal or retention.
- ④ There is **a grave risk** that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.
- ⑤ The child **objects to being returned** and has attained an age and degree of maturity at which it is appropriate to take account of its views.
- ⑥ The return of the child would not be permitted by the fundamental principles of the requested State relating to **the protection of human rights and fundamental freedoms**.



Exceptions for non-return are narrowly interpreted.

⇒ **It is highly exceptional that the child's return can be refused.**

Central Authority of Japan – Hague Convention Division

“A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.” (Art. 6 para.1 of the Convention)

- The Hague Convention Division is a section of the Consular Affairs Bureau of the Ministry of Foreign Affairs of Japan.
- The officials of the Division include persons with expertise in various fields who come from outside the ministry.
- 15 officials in total are working as case officers, including Foreign Ministry officials, attorneys-at-law, a judge, a family court investigating officer, experts in child psychology, a DV victims counselor, and an immigration inspector.
- Every one of them can handle cases in English. Some officials speak other foreign languages than English.

Total number of applications for five years

As of 1st April 2019

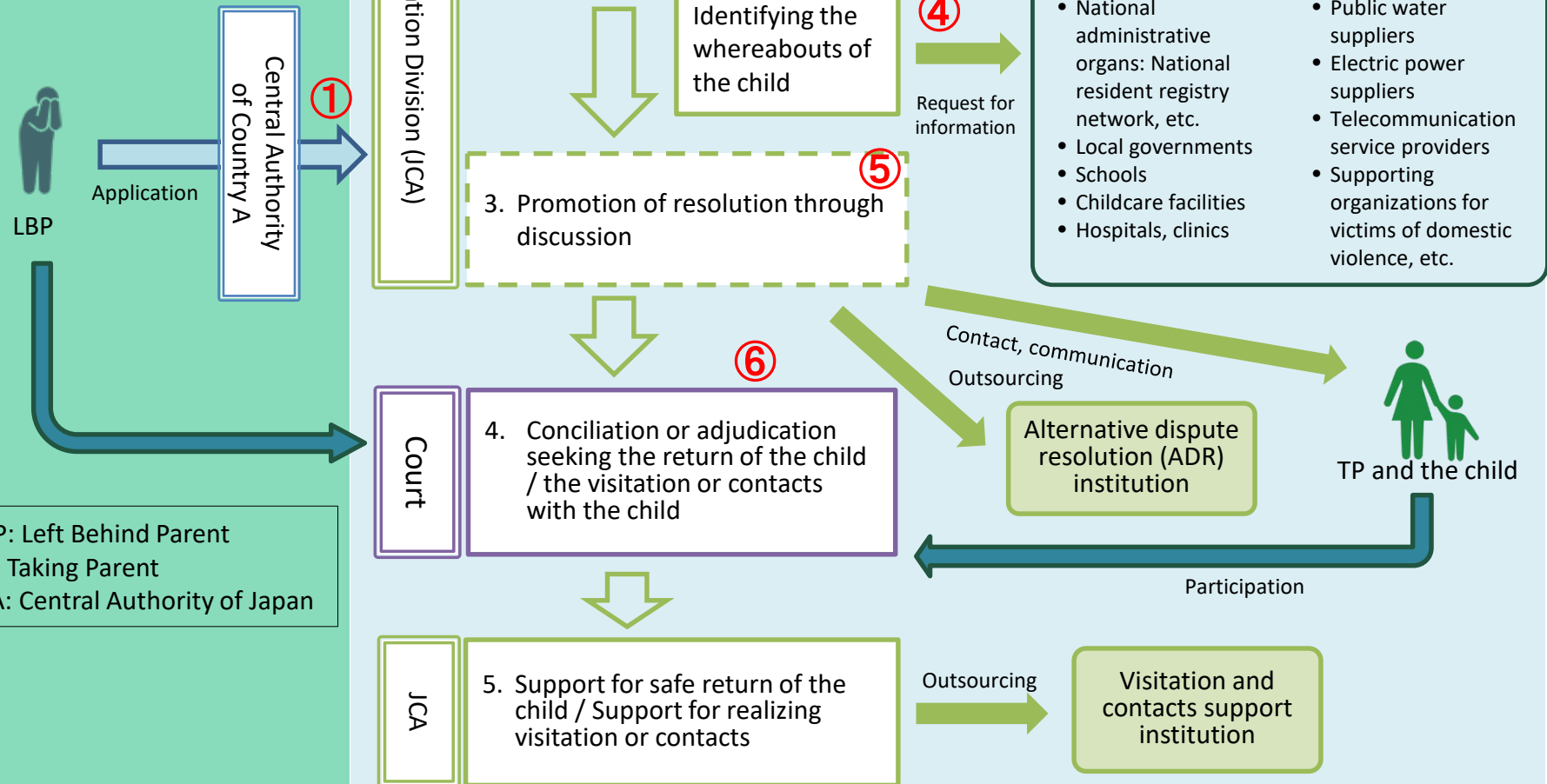
	Applications for the child's return	Applications for access to the child
Applications concerning children located in Japan	<p><u>105 (of which 91 granted assistance)</u></p> <p>USA 24, Australia 8, Germany 7, France 6, Canada 4, UK 4, Singapore 4, Brazil 4, Hong Kong 3, Russia 3, Italy 3, ROK 2, Spain 2, Turkey 2, Switzerland 2, Thailand 2, Belgium 1, Sri Lanka 1, Fiji 1, Colombia 1, Sweden 1, NZ 1, Mexico 1, Ireland 1, Hungary 1, Argentina 1, Ukraine 1</p> <p>(Under examination 1, applications dismissed, etc. 13)</p>	<p><u>103 (of which 86 granted assistance)</u></p> <p>USA 47, UK 6, Australia 6, France 5, Canada 5, Singapore 4, NZ 4, Mexico 2, Germany 2, Thailand 1, Costa Rica 1, Italy 1, Sweden 1, Finland 1</p> <p>(Under examination 1, applications dismissed, etc. 16)</p>
Applications concerning children located outside Japan	<p><u>97 (of which 86 granted assistance)</u></p> <p>USA 17, Thailand 10, the Philippines 10, ROK 6, Brazil 6, Peru 5, Russia 4, France 4, Germany 3, Canada 2, Sweden 2, UK 2, Sri Lanka 2, Hong Kong 2, Poland 2, Italy 1, Spain 1, Switzerland 1, South Africa 1, Slovakia 1, Romania 1, Belarus 1, Ecuador 1, Australia 1</p> <p>(Applications dismissed, etc. 11)</p>	<p><u>30 (of which 29 granted assistance)</u></p> <p>USA 6, Russia 3, Canada 3, Germany 2, Ukraine 2, Thailand 2, ROK 2, UK 2, Australia 1, Uruguay 1, the Netherlands 1, Poland 1, Hong Kong 1, Fiji 1, Ireland 1</p> <p>(Withdrawal 1)</p>
Total	202 (of which 177 granted assistance)	133 (of which 115 granted assistance)

Incoming cases where the left behind parent in Country A is seeking return of or access to the child in Japan

Country A

Japan

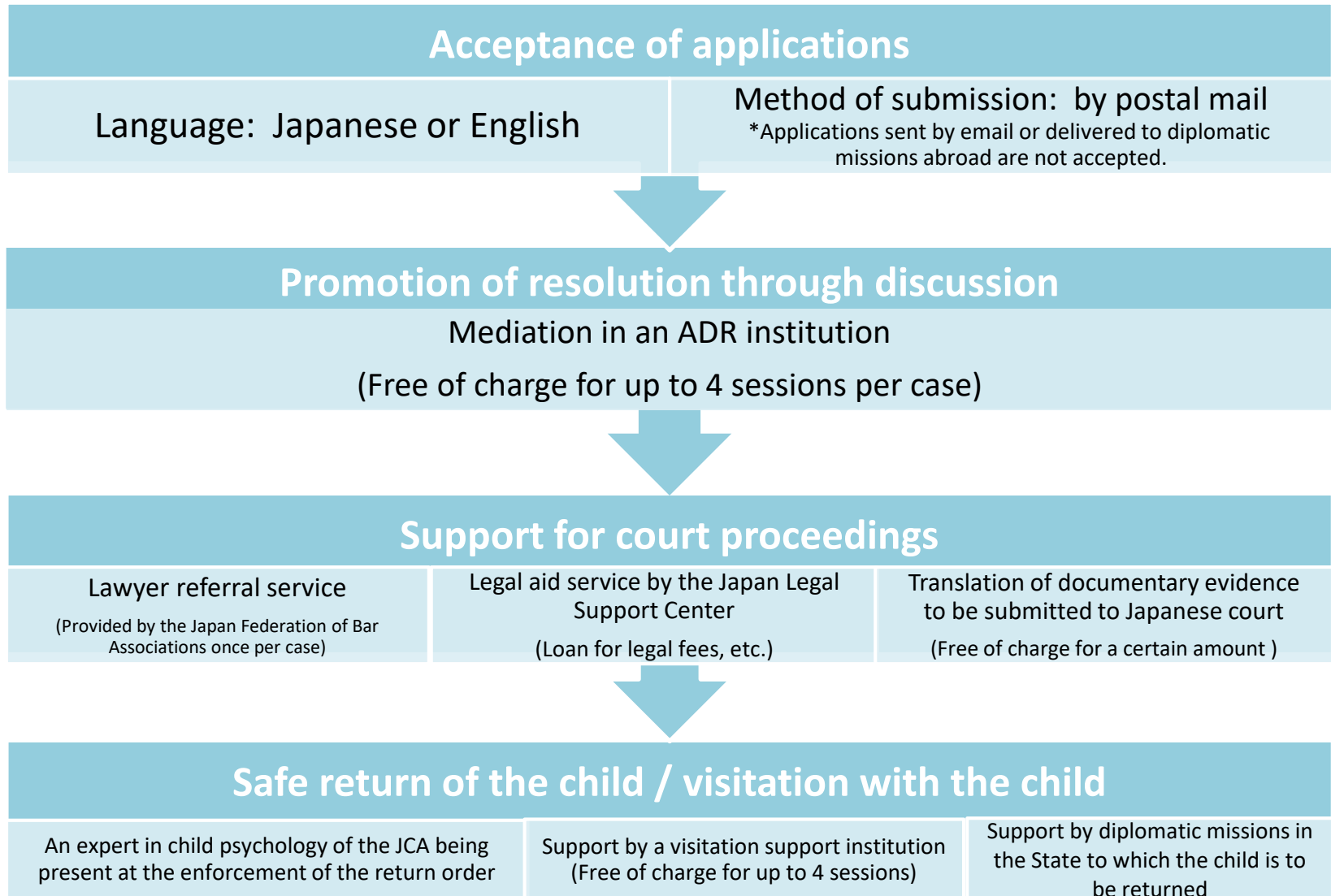
- (1) Check if all necessary documents are provided.
- (2) Check if there are any grounds for dismissal of the application under the Implementation Act.
- (3) Check if the child is in Japan, referring to the immigration data, residence certificate, etc.
⇒ If the child is found to be outside Japan, the application is transferred or dismissed.



*LBP: Left Behind Parent
TP: Taking Parent
JCA: Central Authority of Japan

Services provided by the JCA in **incoming** return and access cases

*The JCA provides assistance to both parties.



Results of the return cases

As of 1st April 2019

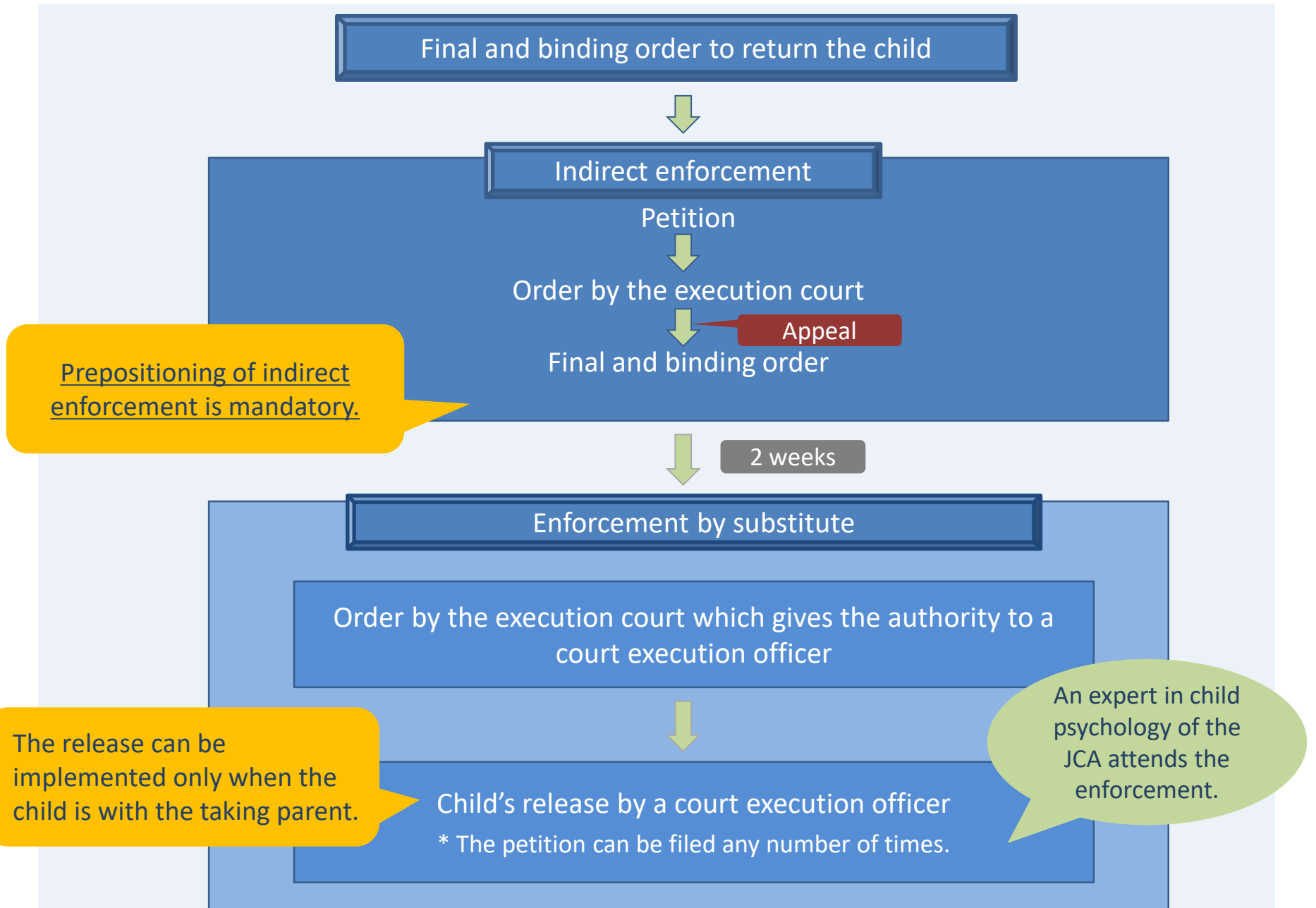
Cases granted assistance in the child's return to a foreign country	91		Cases granted assistance in the child's return to Japan	86	
Ongoing cases	14		Ongoing cases	29	
Cases concluded with the child's return or non- return	74		Cases concluded with the child's return or non-return	53	
	Return	Non-return		Return	Non-return
(Total)	42	32	(Total)	34	19
1 Settlement through talks	12	9	1 Settlement through talks	17	5
2 Court proceedings 1) Conciliation (in-court mediation)	14 (*1)	13	2 Court proceedings	17 (*3)	14
2) Amicable settlement	1	1	Other (cases dismissed by foreign Central Authorities)	4	
3) Court order	15 (*2)	9			
Other	3				

*3: Of which 1 case is currently in the process of realizing the child's return.

*1: Of which in 1 case the enforcement of the agreement failed. Of which 2 cases are currently in the process of realizing the child's return.

*2: Of which in 2 cases the enforcement of the court order failed. Of which 3 cases are currently in the process of realizing the child's return.

Current procedure for compulsory enforcement of the child's return



Prepositioning of indirect enforcement is mandatory.

The release can be implemented only when the child is with the taking parent.

An expert in child psychology of the JCA attends the enforcement.

Results of petitions for enforcement

In Japan, petitions for indirect enforcement of the child's return were filed in 16 Hague cases from 1 April 2014 to 31 December 2018. Of these 16 cases, indirect enforcement orders were rendered in the following 15 cases.

1. In 5 cases the child was returned following the indirect enforcement and before proceeding to direct enforcement

	Child's State of habitual residence	Child (sex and age)	Left behind parent	Taking parent
①	Sri Lanka	F4	Father	Mother
②	Canada	M3	Father	Mother
③	USA	F0	Father	Mother
④	Singapore	F1	Father	Mother
⑤	UK	M4	Father	Mother

2. In 7 cases direct enforcement was attempted (in 6 cases the enforcement failed and in 1 case the petition was withdrawn)

	Child's State of habitual residence	Children (sex and age)	Left behind parent	Taking parent
⑥	USA	F10, M8, M6, F3	Mother	Father
⑦	UK	M9, F7, M4	Father	Mother
⑧	Russia	F8	Mother	Father
⑨	USA	M11, M11, F6, M6	Father	Mother
⑩	USA	M11	Father	Mother
⑪	Russia	F9	Father	Mother
⑫	Thailand	F3	Mother	Father

3. In 3 cases direct enforcement has not been tried yet after the indirect enforcement order became final

	Child's State of habitual residence	Children (sex and age)	Left behind parent	Taking parent
⑬	UK (Northern Ireland)	M0	Father	Mother
⑭	Germany	M3, M2	Father	Mother
⑮	Ukraine	M3	Father	Mother

Enforcement procedure of the child's return (major changes made by the amendment)

Current procedure

Final and binding order to return the child

Indirect enforcement

Petition

Order by the execution court

Appeal

Final and binding order

2 weeks

Enforcement by substitute

Order by the execution court which gives the authority to a court execution officer

- **Preposition of indirect enforcement is mandatory.**
- Interrogation of obligor is mandatory.

Child's release by a court execution officer

* The petition can be filed any number of times.

- **The release can be carried out only when the child is with the taking parent.**
- The presence of the left behind parent is not mandatory.

Procedure after the revision

Enforcement by substitute

Order by the execution court which gives the authority to a court execution officer

- **Preposition of indirect enforcement is not necessary** and the order can be immediately given in the following cases.
 - 1) It cannot be said that there is a prospect for the child's return even if the indirect order is carried out.
 - 2) It is necessary to immediately carry out this enforcement in order to prevent danger to the child.
- Interrogation of obligor can be omitted.

Child's release by a court execution officer

* The petition can be filed any number of times.

- **The release can be carried out without the presence of the taking parent.**
- For the sake of the child's interests, the left behind parent should in principle appear at the enforcement site.

Information on Hague procedure

YouTube

6 series of whiteboard animation which explains the outline of the Hague Convention and its implementing mechanism in Japan.



Twitter

<https://twitter.com/1980HaguePR>

Providing trivia and useful knowledge on the Hague Convention.



Thank You!

Hague Convention Division
Consular Affairs Bureau
Ministry of Foreign Affairs