

# Japan's 5-year experience in implementing the 1980 Hague Abduction Convention

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## I. Introduction

The Hague Convention on the Civil Aspects of International Child Abduction ('the Hague Convention') entered into force for Japan on 1 April 2014 after a three-year long consideration and thorough preparation process, and Japan became the 91st member of the Hague Convention. Since then, exactly 5 years had passed in April this year. This article will give an overview of Japan's 5-year experience in implementing the Hague Convention, by presenting as accurately and comprehensively as possible the Hague Convention procedure in Japan, how Hague cases have been handled and what their outcome has been. It thereby aims to enhance understanding of how the Hague Convention operates in Japan, which has not been easy so far, with only fragmentary information available oftentimes in Japanese. It will also touch upon the ongoing process of revising the Japanese implementing law of the Hague Convention in view of making the enforcement of return orders faster and more effective.

## II. Applications received by the Japanese Central Authority

The Minister for Foreign Affairs is designated as the Central Authority of Japan

('JCA') for the Hague Convention pursuant to Art 3 of the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction ('Implementation Act').<sup>1</sup> A person who seeks return of the child or access to the child through the Hague Convention procedure can file an application for assistance written in Japanese or English to the Ministry of Foreign Affairs.

### 1. Applications seeking the child's return

The following tables show the total numbers of applications for assistance in child's return that the JCA has received in the past 5 years<sup>2</sup> since 1 April 2014 when the Hague Convention entered into force for Japan.

Table 1 shows the total number of incoming return cases where the child in question was removed from another Contracting State to Japan or retained in Japan, as well as the number of cases that each requesting State has had with Japan. The USA stands out for its by far largest number of cases, and other major requesting States are also mostly Western and developed countries. In most of these cases, the taking parent was the child's mother.

1 A provisional English translation of the Implementation Act is available on the following website:  
<http://www.japaneselawtranslation.go.jp>.

2 The statistical figures presented in this article show the results as of 1 April 2019 unless mentioned otherwise.

Table 1: Applications for assistance in child's return from Japan to another Contracting State

Total: 105 (of which 91 accepted for assistance)
Requesting States and number of cases; United States of America (USA)(24), Australia(8), Germany(7), France(6), Canada(4), United Kingdom (UK)(4), Singapore(4), Brazil(4), Hong Kong(3), Russia(3), Italy(3), Republic of Korea (ROK)(2), Spain(2), Turkey(2), Switzerland(2), Thailand(2), Belgium(1), Sri Lanka(1), Fiji(1), Colombia(1), Sweden(1), New Zealand (NZ)(1), Mexico(1), Ireland(1), Hungary(1), Argentina(1), Ukraine(1) (Under examination 1, applications dismissed etc 13)

Table 2 shows the total number of outgoing return cases where the child was removed from Japan to another Contracting State or retained in that State, as well as the number of cases that Japan has had with each requested State. The USA is again ranked at the top of the list, but some Asian countries are also highly ranked, especially Thailand and the Philippines.

Table 2: Applications for assistance in child's return from another Contracting State to Japan

Total: 97 (of which 86 accepted for assistance)
Requested States and number of cases; 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) (Applications dismissed etc 11)

## 2. Applications seeking access to the child

The following tables show the numbers of applications for assistance in access to the child that the JCA has received for the past 5 years.

Table 3 shows the total number of incoming access cases where the child was located in Japan and the parent living in another Contracting State was seeking access to the child, as well as the number of cases that each requesting State has had with Japan. Here again the USA stands out for its remarkably large number of cases, followed by mostly Western countries.

Table 3: Applications for assistance in access to the child in Japan

Total: 103 (of which 86 accepted for assistance)
Requesting States and number of cases; 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) (Under examination 1, applications dismissed etc 16)

Table 4 shows the total number of outgoing access cases where the parent living in Japan was seeking access to the child living in another Contracting State, as well as the number of cases that Japan has had with each requested State. The USA is again the No 1 requested State, though the number of cases is relatively limited.

Table 4: Applications for assistance in access to the child in another Contracting State

Total: 30 (of which 29 accepted for assistance)
Requested States and number of cases; 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) (Withdrawal 1)

### 3. Changes in the number of applications from year to year

Table 5 shows the number of applications for child's return and access to the child that the JCA received in each fiscal year.

Table 5: Number of applications in each fiscal year

	FY* 2014	FY 2015	FY 2016	FY 2017	FY 2018	Total
Total	113	69	55	42	56	335
(a)	26	19	23	19	18	105
(b)	18	21	17	15	26	97
(c)	55	20	12	6	10	103
(d)	14	9	3	2	2	30

(a)Number of applications seeking the child's return from Japan to another Contracting State

(b)Number of applications seeking the child's return from another Contracting State to Japan

(c)Number of applications seeking access to the child in Japan

(d)Number of applications seeking access to the child in another Contracting State

\*FY: The Japanese fiscal year begins from 1 April and ends on 31 March of the following year.

In general, the number of applications for child's return per year remained around 40 in total (20 incoming and 20 outgoing) and was mostly unchanged from one year to

another. However, in fiscal year 2018 the number of incoming cases slightly decreased while the number of outgoing cases increased dramatically by 73%. Compared to the previous year, the number of outgoing cases with the USA increased from five to seven, with the Philippines from three to six, and with Thailand from zero to four in fiscal year 2018.

As for the access cases, there were a large number of applications in the first year. This is because it was only possible to apply for access, and not for return, in cases where removal or retention of the child predated the entry into force of the Hague Convention for Japan, and many of the left behind parents in those cases applied for access in fiscal year 2014, the first year of operation.

### III. Procedure for Hague return cases in Japan and their results

#### 1. Procedure for return cases

Once decided to provide assistance, the JCA attempts to make contact with the taking parent and facilitate communication between the parents. If both parents agree to seek an alternative dispute resolution (ADR), the JCA provides cost-free ADR sessions up to four times to foster dialogues and enhance an amicable resolution of the issues. ADR sessions can be held before, during, and after the court proceedings.

The left behind parent can also file a petition with the Tokyo or Osaka Family Court<sup>3</sup> to obtain a court order for the child's return. In the course of the court proceedings, the parents can attempt a conciliation at court<sup>4</sup> to resolve the issues amicably. If both parties fail to reach an agreement through conciliation or have not agreed to proceed to a conciliation, the court renders a judicial decision. When return of the child is ordered but the taking parent fails to comply, the left behind parent

3 The subject-matter and territorial jurisdiction for return proceedings is concentrated in the Tokyo Family Court for the Eastern part of Japan and in the Osaka Family Court for the Western part of Japan.

4 The conciliation is carried out at court by a conciliation committee composed of one judge and two or more conciliation commissioners. The agreement reached through conciliation is given the same effect as a final and binding judicial decision

can file for compulsory enforcement measures, as will be expounded below.

## 2. Results of the return cases

The following tables show the results of the cases in which the applicants sought child's return.

### (1) Results of the incoming return cases

Table 1 shows the results of the incoming return cases where the child was removed to Japan or retained in Japan. The JCA has provided assistance in 91 cases in total over the past 5 years. Of these 91 cases, 74 cases have been concluded with the child's return or non-return.

Table 1: Results of the incoming return cases

Cases granted assistance in child's return from Japan to another Contracting State	91	
Ongoing cases	14	
Concluded cases (A+B)	74	
	Return	Non-return
Total (A+B)	42	32
A) Out-of-court settlement (ADR etc.)	12	9
B) Court proceedings	14*	13
a) Conciliation		
b) Amicable settlement	1	1
c) Court order	15**	9
Withdrawal	3	

\*Of which, enforcement of the agreement failed in one case, while two cases are currently in the process of realising the child's return.

\*\*Of which, enforcement of the court order failed in two cases, while three cases are currently in the process of realising the child's return.

A breakdown of the 74 concluded cases is shown in sections A) and B). In total, 42 cases were concluded with the child's return and 32 cases were concluded with non-return. Of the 42 cases concluded with the child's return, in 34 cases the child in question was actually returned to the State of its habitual residence. The remaining

eight cases are shown in the notes with asterisks. In five cases the child is in the process of being returned, and in three cases enforcement of the child's return failed.

### (2) Results of the outgoing return cases

Table 2 shows the results of the outgoing return cases. The JCA has provided assistance in 86 cases in total. Of these 86 cases, 53 cases have been concluded.

Table 2: Results of the outgoing return cases

Cases granted assistance in child's return from another Contracting State to Japan	86	
Ongoing cases	29	
Concluded cases (A+B)	53	
	Return	Non-return
Total (A+B)	34	19
A) Out-of-court settlement (ADR etc.)	17	5
B) Court proceedings	17*	14
Withdrawal	4	

\*Of which, one case is currently in the process of realising the child's return.

A breakdown of the 53 concluded cases is shown in sections A) and B). In total, 34 cases were concluded with the child's return and 19 cases were concluded with non-return. The child in question was actually returned to Japan in 33 cases.

## 3. Some characteristics of the return cases in Japan

### (1) Preponderance of amicable resolution

As for the incoming return cases, around 70% of the cases have been settled through amicable dispute resolution methods, such as ADR or conciliation. This proportion is

quite important compared to the global average (30%) in 2015.<sup>5</sup>

Pursuant to Art 7 (c) of the Hague Convention, the JCA provides assistance to promote voluntary return of the child through negotiation. An amicable settlement is arguably more desirable in terms of the child's interests than contentious proceedings which tend to escalate the tension between the parents. Even after return or non-return of the child was decided, the parents need to communicate and cooperate with each other on such issues as visitations with the child, child support and education. Amicable resolution would allow both parents to agree flexibly on such issues and '[a]greed solutions are more sustainable since they are more likely to be adhered to by the parties.'<sup>6</sup>

This does not mean in any way that the JCA would discourage resolution of the issue by adjudication. The JCA explains to both parties all possible options and provides assistance for the court proceedings, such as lawyer referral and cost-free translation service for the documentary evidence to be submitted to the court.

## (2) Reasons for refusal of the child's return

For the sake of confidentiality, proceedings of the case seeking the return of child shall not be open to the public in Japan (Art 60 of the Implementation Act) and their outcomes are not entirely made public either. However, the reasons for refusal of the child's return relied upon in the court decisions rendered in the first three years (1 April 2014 – 31 March 2017) are presented in statistical figures in a survey done by a Japanese judge.<sup>7</sup>

According to the survey, decisions were rendered by courts at first instance in 21

cases, of which the child's return was refused in seven cases. Table 1 shows a breakdown of the reasons for refusal relied upon in these seven cases.

Table 1: Reasons for refusal in the court decisions at first instance

(a)	(b)	(c)	(d)	(e)
1 case	1 case	2 cases	0 case	3 cases

(a) Child not habitually resident in requesting State  
 (b) Left behind parent had no rights of custody  
 (c) Consent to or subsequent acquiescence in the removal/retention  
 (d) Grave risk of harm  
 (e) Child's objections

During the same three-year period as above, decisions were rendered by appellate courts in 18 cases, of which the child's return was refused in six cases. Table 2 shows a breakdown of the reasons for refusal relied upon in these six cases.

Table 2: Reasons for refusal in the court decisions at second instance

(a)	(b)	(c)	(d)	(e)
1 case	1 case	2 cases	1 case	1 case

There is not a large difference in the number of cases in which each of the reasons was relied upon. It would be worth mentioning that the grave risk of harm exception had been rarely relied upon in court decisions in Japan. It constitutes a sharp contrast to the global trend whereby 'the Art 13 (b) (grave risk of harm) exception was the most frequently relied upon' in 2015 and in previous years.<sup>8</sup>

## IV. Procedure for Hague access cases in Japan

The applicant for assistance in access to the child can proceed with mostly the same

<sup>5</sup> Preliminary Document No 11A (Revised, February 2018) of the Seventh Meeting of the Special Commission on the Practical Operation of the 1980 Hague Abduction Convention and the 1996 Hague Child Protection Convention, para 62. 'In total, 30% of all applications (593 applications) ended in an outcome with the consent of the parties...'

<sup>6</sup> HCCH Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction – Mediation, para 33.

<sup>7</sup> Yoda, Katei-no Ho-to-Saiban – Family Court Journal No.12 / 2018.1, 27–38 (in Japanese).

<sup>8</sup> Lowe and Stephens, How the 1980 Hague Abduction Convention operates in Germany – the 2015 statistics, [2018] IFL 247.

procedure as the return cases (Art 21 of the Hague Convention). The JCA is expected to discover the whereabouts of the child in Japan and attempts to make contact with the parent living with the child so as to facilitate communication between the parents. Both parents can benefit from the service provided by the JCA to promote amicable resolution through negotiation such as cost-free ADR sessions. The applicant can also file a petition with the court to envisage a conciliation or seek a court order, while receiving service in lawyer referral and cost-free translation for documents to be submitted to the court.

In addition, the JCA provides financial support to the parents in realising the access of the applicant to the child by means of visitation support institutions. The three visitation support institutions<sup>9</sup> commissioned by the JCA offer free visitation sessions up to four times as a transitional step to a regular access to the child.

## V. Compulsory enforcement of the child's return

### 1. Enforcement procedure under the current Implementation Act

If the taking parent does not comply with a return order, the left behind parent can proceed to compulsory enforcement of the child's return. Under the current Implementation Act, the petitioner has to attempt 'indirect' execution first, before moving on to 'direct' execution (execution by substitute) (Art 136). The indirect execution order obliges the taking parent to pay a certain amount of money if he or she does not comply with the return order, thus imposing psychological pressure on the non-complying taking parent so that he or she is compelled to abide by the return order.

If indirect execution turns out to be unsuccessful, the left behind parent can proceed to file a petition for execution by substitute, in which the 'return implementer' designated by the court (in most cases the left behind parent) is supposed to return the child to the State of its habitual residence in place of the taking parent (the obligor). On the day of enforcement, court execution officers visit the place where the taking parent and the child are living, in order to release and hand over the child to the return implementer. To this end, the court execution officers take necessary measures, including entering the taking parent's house and searching for the child. Under the current Implementation Act, an execution by substitute can be carried out 'only when' the child is with the taking parent (Art 140(3)). One of the reasons why the legislators introduced this mandatory condition is that it was considered to better serve the child's interests to give a final chance to the taking parent to voluntarily hand over the child and to prepare for the child's travel abroad. In addition, there may have been consideration for such cases in which 'the child may not have been in contact with the left-behind parent for a long time and that the abducting parent during this period has been the primary carer. Therefore it can be important to give the child an opportunity to say good-bye to the abducting parent.'<sup>10</sup>

### 2. Results of petitions for execution

In Japan, petitions for indirect execution of return orders were filed in 16 Hague cases from 1 April 2014 to 28 February 2019 and the petitions were granted in all these cases. Of these 16 cases, Table 1 shows five cases in which the child was actually returned to the State of its habitual residence after indirect execution, without proceeding to execution by substitute.

<sup>9</sup> 'International Social Service Japan (ISSJ)', 'Family Problems Information Center (FPIC)' and 'Okayama Family Support Center MIRAI' are commissioned by the JCA for the fiscal year 2019.

<sup>10</sup> HCCH Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction Part IV – Enforcement, para 106.

Table 1: Cases where the child was returned following indirect execution

Child's habitual residence (requesting State)	Child*	LBP**	TP***
Sri Lanka	F4	Father	Mother
Canada	M3	Father	Mother
USA	F0	Father	Mother
Singapore	F1	Father	Mother
UK	M4	Father	Mother

\* M: male, F: female; figures show the age of the child at the time of removal/retention.

\*\*LBP: Left Behind Parent

\*\*\*TP: Taking Parent

Table 2 shows seven cases in which execution by substitute has been attempted at least once. Of these seven cases, the enforcement failed in six cases and the petition was withdrawn in one case.

Table 2: Cases where execution by substitute has been attempted

Child's habitual residence (requesting State)	Children	LBP	TP
(i) USA	F10, M8, M6, F3	Mother	Father
(ii) UK	M9, F7, M4	Father	Mother
(iii) Russia	F8	Mother	Father
(iv) USA	M11, M11, F6, M6	Father	Mother
(v) USA	M11	Father	Mother
(vi) Russia	F9	Father	Mother
(vii) Thailand	F3	Mother	Father

Some characteristics can be pointed out as to these cases: in three of them multiple children (siblings) were involved, and most

of the children involved were relatively old compared to the children in Table 1.

The reasons for failure of enforcement were reported to be (a) absence of either or both the child and the taking parent at the scene of enforcement, (b) strenuous resistance of the taking parent, and (c) strong refusal of the child to be returned.

In cases (i) and (v)<sup>11</sup>, the left behind parent proceeded to file a petition for habeas corpus after the failure of enforcement, and the children in both cases were eventually returned to the USA. In case (iv),<sup>12</sup> the original return order was modified due to a change in circumstances after the failure of enforcement, and the petition for return was subsequently dismissed.

Table 3 shows the remaining four cases in which indirect execution orders became final but execution by substitute has not yet been attempted.

Table 3: Cases where execution by substitute has not yet been attempted since the indirect execution order became final

Child's habitual residence (requesting State)	Children	LBP	TP
UK (Northern Ireland)	M0	Father	Mother
Germany	M3, M2	Father	Mother
Ukraine	M3	Father	Mother
Brazil	M7	Father	Mother

### 3. Proposed revisions to the Implementation Act

#### (1) Background

(a) As shown above in Table 1, indirect execution proved to be effective in certain cases in realising the child's

11 The Supreme Court of Japan decided that a habeas corpus petition in this case be granted on 15 March 2018. 2017 (Ju) No. 2015 Case of a request for Habeas Corpus relief (INCADAT Ref. HC/E/JP 1388)

12 The Supreme Court dismissed the appeal of the left behind parent on 21 December 2017. 2017 (Kyo) No. 9 Case on Appeal with Permission against Modification of Final Order (INCADAT Ref. HC/E/JP 1387)

return. At the same time, it seemed to be operationally too rigid and needlessly time consuming to require that indirect execution be attempted before proceeding to execution by substitute in all cases across the board, including cases where the taking parent is obviously determined not to return the child at any cost. The prepositioning of indirect execution has been questioned in this respect.

- (b) The mandatory condition of the child and the taking parent's being together at the scene of enforcement has also been questioned as it tends to place the child in a high conflict situation with the presence of both parents. In addition, it turned out to be easy for the taking parent to thwart enforcement by simply being separate from the child at the time of the enforcement (e.g. by leaving the child with the grandparents).

## (2) Content of the revisions

Accordingly, the Legislative Council<sup>13</sup> of the Ministry of Justice took into account the views and concerns expressed in the public comment procedure and made up a plan of revised enforcement rules, and submitted it to the Minister of Justice in October 2018. The revision bill drafted in accordance with this revision plan was submitted to the ordinary session of the National Diet on 19 February 2019.

The proposed revisions under discussion are aimed at improving the enforcement procedure of the child's return. It is expected that the enforcement procedure will become faster and more effective once the revised law is put in place.

- (a) Under the revised Implementation Act, the petitioner will be able to proceed to execution by substitute of the child's return without having attempted indirect execution beforehand in certain cases.<sup>14</sup>

This change will make the enforcement procedure faster than the current one.

- (b) The revision will also enable court execution officers to carry out release of the child without the presence of the taking parent, but only when the left behind parent is present at the scene of enforcement.<sup>15</sup>
- (c) Both before and after the revision, court execution officers can carry out release of the child in a place occupied by a third party with the consent of the said third party under certain conditions. Under the revised law, in cases where the child lives in the aforementioned place (e.g. his/her grandparents' house), the court will be able to give permission in lieu of the occupant's consent under certain conditions. This change, along with the change in (b), is expected to allow more flexibility to court execution officers as to when, where and how to carry out the child's release, and thus make execution by substitute more effective than the present one.

## VI. Concluding remarks

The Hague Convention provides a framework of international cooperation aimed at realising return of the child or access to the child across borders, thus seeks to protect the best interests of the child involved. At the time of its ratification, Japan enacted the Implementation Act and introduced a mechanism to deal with Hague cases as required by the Hague Convention. Since then, Japan has had Hague cases with as many as 39 Contracting States, and dealt with each case properly in close cooperation with these Contracting States. In the course of a 5-year operation of the Hague Convention, Japan has sometimes been faced with unexpected difficulties and new challenges, and subsequently launched a process of revising the Implementation Act.

<sup>13</sup> The Legislative Council is an advisory body of the Minister of Justice composed of scholars, legal practitioners, representatives of business sector, government officials, etc.

<sup>14</sup> Certain cases mean either (i) cases where it cannot be said that there is a prospect of the taking parent's returning the child to the State of its habitual residence even if indirect execution is carried out, or (ii) cases where it is necessary to immediately carry out execution by substitute in order to prevent imminent danger to the child.

<sup>15</sup> The court can decide, under certain conditions, to allow court execution officers to carry out release of the child when the left behind parent cannot be present but his/her representative is present at the scene of enforcement.



Japan's 5-year experience described in this article is expected to serve as a useful reference, especially for non-Contracting States which are considering acceding to the Hague Convention. In this respect, the JCA

has been regularly making public the information on the cases it has handled and their results,<sup>16</sup> and will continue to make its experience available in both Japanese and English in future.

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<sup>16</sup> An implementation status of the Hague Convention in Japan is uploaded on the following website and monthly updated:  
<https://www.mofa.go.jp/files/000335933.pdf>.