

Fact Sheet

Implementation Status of the 1980 Hague Convention (Convention on the Civil Aspects of International Child Abduction) in Japan

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Hague Convention Division

Ministry of Foreign Affairs of Japan

(Central Authority of Japan for the 1980 Hague Convention)

1. Outline

In April 2014, the 1980 Convention on the Civil Aspects of International Child Abduction ("the Hague Convention") came into effect in Japan. In addition, the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction was enacted to set out the required domestic procedures in legislation. In the Act for Implementation, the Minister for Foreign Affairs was designated as the Central Authority. Since then, as the office of the Central Authority of Japan, the Hague Convention Division within the Ministry of Foreign Affairs of Japan (MOFA) has provided various forms of assistance, such as mediation of communications between parties, referrals to alternative dispute resolution (ADR), referrals to Hague Convention attorneys, and funding support for visitation support services.

Through cooperation with Contracting States and in accordance with the convention, Japan has appropriately handled cases subject to the Hague Convention. This fact sheet outlines the implementation of the Hague Convention in Japan and the assistance of the Central Authority of Japan in securing the return of a child.

2. Process of the return of a child

A left-behind parent can apply¹ to the Central Authority of Japan for assistance with the return of a child where the child has been wrongfully removed to Japan. The process is as follows:

- The application documents will be assessed within two weeks of receipt. In accordance with the Act for Implementation, the Central Authority of Japan will check the child's immigration records and residence certificate in order to confirm the child's whereabouts.
- A decision on assistance is made promptly for applications that meet the legal requirements. Following a decision, the Central Authority of Japan will send a letter to the parent who has removed the child and is living with the child, to confirm their intentions about any future course of action. If the applicant parent so wishes, the Central Authority of Japan will not contact the parent who lives with the child until a petition has been filed with the court.
- Approaches to resolve the case include talks between the parties, the ADR², and court proceedings. The Central Authority of Japan provides various assistance to achieve a prompt resolution: provision of

¹ The Application Form in PDF format that can be filled out electronically, and the Guide to Application (https://www.mofa.go.jp/fp/hr_ha/page22e_000337.html) that explains how to apply are available on the MOFA website in both English and Japanese. Applicants may also contact the Central Authority of Japan by email or telephone for further assistance.

² See 4(1) for details.

information about available ADR institutions and attorneys³; provision of out-sourced translation service for documentary evidence to be submitted to the Japanese courts; and funding for visitation supporting services⁴ for parents seeking visitation or contact without prejudice to the return of the child.

- Jurisdiction to hear a Hague Convention case on the return of a child is concentrated in either the Tokyo Family Court or the Osaka Family Court. It takes approximately 60 days for the first hearing to conclude. Hearings are normally held twice. The case could also be referred for in-court mediation⁵. The decision of the Central Authority of Japan to provide assistance is not a requirement for a petition for the return of a child, and the left-behind parent can also file a direct petition without it. In addition, the left-behind parent can file a petition for a Ne Exeat Order and an order for the surrender of the passport. If an application for assistance has been made to the Central Authority of Japan, the Central Authority of Japan will provide information on the whereabouts of the child in response to the commission of investigations by the court. In this way, the left-behind parent can file a petition even when the whereabouts of the child are unknown.

3. Cases for the return of a child

(1) Between April 1, 2014 and December 31, 2023, the Central Authority of Japan decided to provide assistance in 176 cases of children who were removed to Japan, and 149 cases for children who were removed from Japan to other countries.

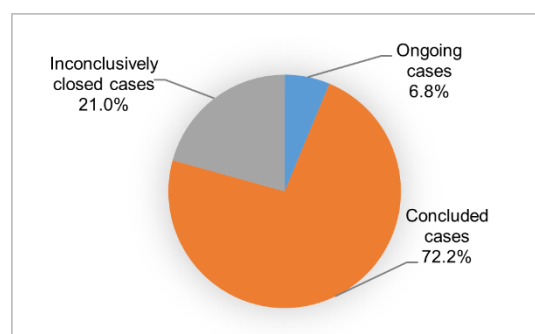
(2) Of the 176 cases in which assistance was granted for children who were in Japan, 127 cases concluded with a decision on the return or non-return of the child (72.2% of the total, see **Figure a**).

A breakdown of the approaches to resolution in these cases are as follows (see **Figure b**):

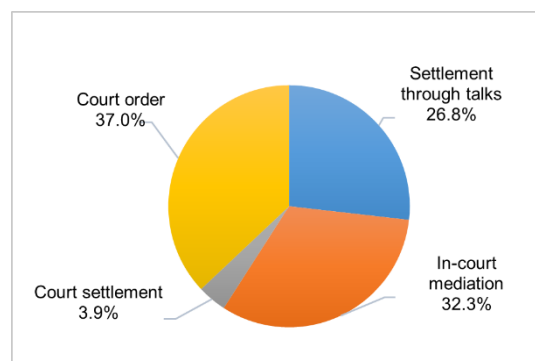
- settlement through talks (including ADR): 34 cases (26.8%)
- in-court mediation: 41 cases (32.3%)
- amicable settlement in court proceedings: 5 cases (3.9%)
- court order: 47 cases (37.0%)

(3) Of the 127 concluded cases, a total of 75 cases resulted in the return of the child. The number and percentage of cases in which the return of a child was determined by each approach to resolution are as follows (see **Figure c**).

- settlement through talks (including ADR): 21 cases (61.8%)
- in-court mediation: 23 cases (56.1%)
- amicable settlement in court proceedings: 3 cases (60.0%)
- court order: 28 cases (59.6%)



Breakdown of return cases from Japan (Figure a)



Approaches to resolution (for concluded cases) (Figure b)

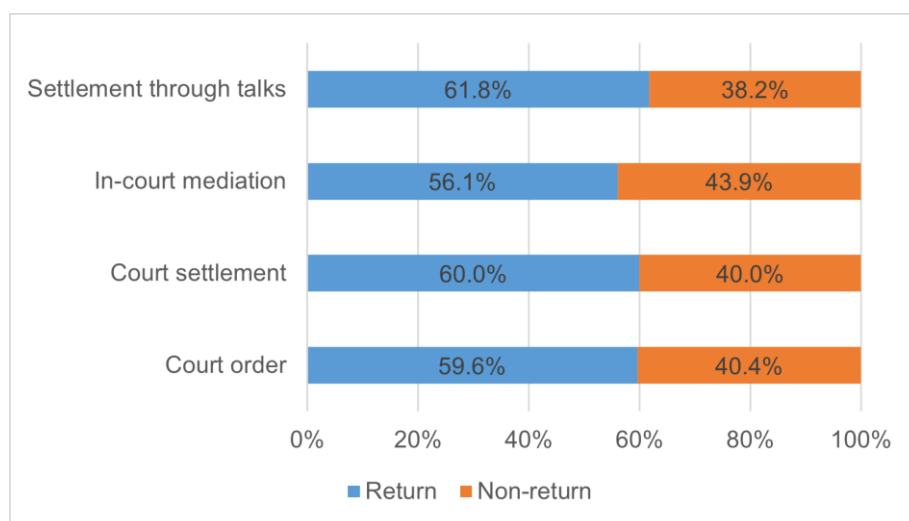
³ Names and contacts of three attorneys are usually provided upon request.

⁴ The Central Authority of Japan provides financial assistance of visitation supporting services for up to 4 in-person sessions and up to 4 online sessions.

⁵ Also known as in-court conciliation; see 4(2) for details.

For all of these approaches, the percentage of cases resulting in a decision to “return” is higher than that of decisions resulting in “non-return”. And in more than 90% of the 75 cases where a decision was made to return the child, the child has been returned to their country of habitual residence (As of December 31, 2023).

- (4) According to a publication by the Permanent Bureau of the Hague Conference on Private International Law (HCCH) in 2023, among all the court decisions reported by the Contracting States to the Hague Convention, 59.0% resulted in the return of the child. In Japan, 59.6% of court decisions resulted in the return of the child, which largely coincides with the global figure rate.
- (5) With the aim of further ensuring the procedural effectiveness of compulsory execution of the return of a child from Japan, the Act for Implementation was partially amended and came into force on April 1, 2020. After the amendment of the Act, the rate of successful enforcement of court orders improved to 80%.
- (6) As of the end of December 2023, of the 176 cases in which assistance in securing the return of a child was granted, 12 cases (6.8%) were ongoing and 37 cases (21.0%) were closed inconclusively either because of the applicants’ withdrawal or loss of contact (see **Figure a**).



Results of return cases by approach to resolution (**Figure c**)

4. Promotion of amicable settlement

The return of the child to the state of habitual residence is merely a first step, albeit significant, in resolving the issue surrounding the child in question. The parents must make and keep comprehensive arrangements for the custody of the child in the best interests of the child. To this end, the Central Authority of Japan offers the parties various opportunities for talks in Hague Convention cases. Accordingly, many cases have been resolved amicably in Japan; of all the concluded cases, approximately 60% have been resolved through voluntary talks, in-court mediation, or amicable settlement in court proceedings⁶.

(1) Use of ADR

The Hague Convention stipulates that it is the duty of the Central Authority to take all appropriate measures to secure the voluntary return of a child or to bring about amicable resolution of the issues (Article 7, paragraph (2), item (c)). Thus, the Central Authority of Japan has arranged for ADR institutions such as those established by bar associations, to provide the parents with opportunities to have talks with the involvement

⁶ See 3(2) and Figure b.

of a third party free of charge. The ADR institutions facilitate dispute resolution with the help of independent third-party mediators, such as lawyers or psychological counselors. With the ADR, the parties can arrange the talks more flexibly than at the court. In addition to the issue of return, they can also discuss the rights of custody of the child, child support payments, and other relevant arrangements.

(2) In-court mediation

It is in the spirit of the Hague Convention to seek an amicable resolution in the best interests of the child, even when a petition for the return of the child is filed with the court, and the family court encourages amicable resolution between the parents as far as possible. In this context, the case is referred to the mediation process when both parties give their consent. In mediation, highly experienced mediators facilitate the parties to account for the situation and their opinions, invite family court officials with expertise in interviewing children to advise the parties of the child's opinions as necessary and provide advice and mediation from an impartial and fair standpoint so that both parties can resolve the issues satisfactorily. As with the ADR, consultations can cover various arrangements, not limited to the issue of return. If an agreement is reached through in-court mediation, it has the same legal force and effect as a court decision. On the other hand, if the parties are deemed unlikely to reach an agreement in mediation, the process terminates, unless the judge decides to intervene and make an adjudication in lieu of conciliation. When the mediation process terminates inconclusively, the court proceedings on the return of the child resume.

5. Return of the child

(1) Compulsory execution of a court decision

If the child is not returned to the state of habitual residence despite a court's decision to return the child, the left-behind parent may take the following steps to enforce the effectiveness of the court decision.

- (a) Indirect execution: The court orders the person who has been ordered to return the child, to make a financial payment pending the return of the child, thereby indirectly expediting the return of the child.
- (b) Execution by substitute: Execution officers of the court forcibly release the child from the custody of the person who has been ordered to return the child, enabling the left-behind parent to bring back the child to the state of habitual residence in many cases. Execution officers of the court may request that officials of the Central Authority of Japan be present when enforcement is carried out.

(2) Habeas corpus proceedings

Habeas corpus proceedings may be used in the process of returning a child to the state of habitual residence. Although it is a separate framework to the Hague Convention proceedings, the court may determine the person who has been ordered to return the child to be illegally detaining the child, summon the person and the child to the court and release the child at the court. When necessary, police can be used to enforce the person's appearance in court.

- (3) Since April 1, 2020, the return rate in cases where execution by substitute was carried out by the court has improved to 80%.