# Grounds for refusal

To prevent your child from being returned, the Convention contains several grounds for refusal.

## Article 12

In article 12 of The Hague Convention on Child Abduction it is stated that the child must be returned to the country of origin within one year of the abduction. If the one year period has passed, the child must still be returned. This applies unless it can be shown that the child has settled into their new surroundings during this period. Being settled into their new surroundings refers to relationships that the child has built up, for example, school friends, neighborhood friends or friends at a sports' club. The judge is only obliged after one year, at the earliest, to decide whether the child has settled in their new surroundings and if it is no longer in the child's interests to return them.

## Article 13

All grounds for refusal stated in article 13 apply to the situation whether the request for return is submitted within one year of the abduction or not. The onus of proof lies on the parent that has appealed on the basis of the grounds for refusal. There are three grounds for refusing to comply with the request for return within article 13:

-it is in the child's best interests to stay with the caring parent (article 13, section 1, sub a);
--the child's return would expose him/her to physical or emotional danger (article 13, section 1 sub b);
---the child objects to being returned (article 13, section 2).

With the first ground for refusal it must be shown that the other parent was not engaged in custody in practical terms or that the other parent did give their permission for the child to be taken. Case law has shown that custody, in practical terms, is not often breached. Sufficient proof must be provided of any permission granted. Permission given for family visits or holidays does not imply that the child can stay in the Netherlands for a longer period. The onus of proof lies firmly with the person who is preventing the child from returning.

With the second ground for refusal, the specific circumstances will be examined. This ground for refusal is applied on a limited basis, the risk is not accepted per se. Living conditions that are unfavorable compared to those in the Netherlands, such as the political climate, the lack of good health care and a bad economic situation are, by themselves, insufficient to be cited as posing a serious risk of physical or emotional danger or creating an untenable situation. The danger must be considerable, concrete and current for the specific child. The onus of proof lies on the parent that is employing the grounds for refusal.

With the third ground for refusal, there must be serious objections, by the child, against the return to the country from which they came. It does not refer to the child's preference to stay in one or other of the countries.

## The child can be heard by the judge so that they can give their opinion

There is no minimum age for giving the child a hearing. The authorities themselves decide whether the child should be given a hearing. Opinions regarding age are very divided. Case law suggests that the limit lies between eight and twelve years of age. If the child is 12, the judge is obliged to give them a hearing. Sometimes the circumstances are too overwhelming for the child to have a hearing or the situation may be considered too stressful for the child. Ultimately, the circumstances themselves will be the deciding factor.

## Article 20

The return of the child can be refused if it cannot be permitted, on the basis of the petitioning state's fundamental principles regarding the protection of human rights and fundamental freedom. It is insufficient that the return opposes these principles, the child's return must be truly prohibited. This ground for refusal has never been successfully employed.