



Observatoire ARGA

ARGA Atlas

**FAMILY AND PROPERTY DISPUTES WITH AN
INTERNATIONAL ELEMENT: CHILD RETENTION,
ASSET RETENTION, AND CONFLICTS OF
JURISDICTION**

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Anglet, 13 March 2026

Purpose of the document:

To explain systematically why family and property disputes with an international element cannot be treated as “ordinary family conflicts complicated by a foreign address,” how such cases intersect with questions of jurisdiction, applicable law, recognition and enforcement of decisions, urgent protective measures, return of the child, recovery of maintenance, and preservation of assets, and why, in cases involving the retention of children and assets, the struggle is almost always not only over the final outcome, but also over control of time, forum, and procedural initiative. The relevant international framework is built primarily around the 1980 Hague Convention on the Civil Aspects of International Child Abduction, the 1996 Hague Child Protection Convention, the Brussels IIb Regulation, Regulation (EU) 2016/1103 on matrimonial property regimes, Regulation (EC) No 4/2009 on maintenance obligations, and the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

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1. EXECUTIVE SUMMARY

A family dispute with an international element almost never exists in the form of a single proceeding. In practice, it usually consists of several parallel or intersecting tracks: a return application, a dispute over parental responsibility and contact, a jurisdictional dispute, a dispute over recognition and enforcement of an existing judgment, a dispute over matrimonial property, a dispute over maintenance, and often a dispute over urgent protective measures in respect of assets. That is why such matters cannot be litigated as one unified “family conflict.” They are always a system of proceedings in which losing time and losing the forum may matter more than losing on the merits. The 1980 Hague Convention is expressly aimed at securing the prompt return of children wrongfully removed or retained and protecting rights of access, while Brussels IIb reinforces the European framework in matters of parental responsibility and international child abduction.

The special difficulty is that retention of children and retention of assets very often go hand in hand. One parent attempts to anchor the child in a new jurisdiction by using time and a newly created factual environment. At the same time, one spouse or beneficial owner attempts to secure control over bank accounts, corporate shares, real estate, trust structures, or other assets, thereby creating a new procedural reality before the other side manages to obtain judicial intervention. The case thus becomes a race not only for judgment, but for the factual consolidation of the status quo. That is the central danger of the international family dispute: law almost always moves more slowly than airplanes, bank transfers, and relocation.

International instruments try to respond to this problem by dividing functions. The 1980 Convention does not determine custody on the merits, but creates a return mechanism designed to restore the jurisdictional starting point. The 1996 Convention is broader and deals with jurisdiction, applicable law, recognition, enforcement, and cooperation in respect of parental responsibility and measures for the protection of children, including protection of the child's property. In the EU, Brussels IIb strengthens coordination in matrimonial matters, parental responsibility, and child abduction, while separate instruments govern matrimonial property and maintenance obligations. International law itself therefore assumes that no universal single proceeding is possible here.

2. WHY AN INTERNATIONAL FAMILY DISPUTE IS ALMOST NEVER “ONE CASE”

The principal practical mistake in such matters is the attempt to compress everything into one emotionally satisfying formula: “the child must be with me,” “the property is ours,” “that court decides nothing,” or “we will file one claim and resolve everything together.” The international framework is built differently. Different issues are governed by different instruments. Return of the child after wrongful removal or retention belongs to one legal framework, parental responsibility and protective measures to another, matrimonial property to a third, and maintenance obligations to a fourth. That is why an international family dispute always requires procedural mapping rather than emotional compression into one pleading.

This multiplicity is not a defect of the system. It reflects the different legal nature of the disputes. The 1980 Convention exists to prevent one parent from gaining an advantage through unilateral relocation or retention and to restore the proper forum. The 1996 Convention creates a more stable system of jurisdiction and cooperation around parental responsibility and protective measures. Regulation (EU) 2016/1103 lays down rules on jurisdiction, applicable law, and recognition and enforcement for matrimonial property regimes in participating EU States. Regulation (EC) No 4/2009 and the 2007 Hague Convention create the international framework for recovery of maintenance. In other words, the law itself tells the parties not to try to solve everything with one hammer.

3. CHILD RETENTION: WRONGFUL REMOVAL, WRONGFUL RETENTION, AND THE LOGIC OF PROMPT RETURN

The 1980 Hague Convention protects children from the harmful effects of wrongful removal and retention across international boundaries by providing a procedure to bring about their prompt return and to secure protection for rights of access. It applies to children who were habitually resident in a Contracting State immediately before the breach of custody or access rights, and it ceases to apply when the child reaches the age of 16. The central logic is therefore clear: not to decide permanently with whom the child should live, but to restore the proper jurisdictional starting point quickly.

That is why proceedings under the 1980 Convention should not be turned into a substitute custody trial about who is the “better parent.” If a return court begins deciding the merits of custody, it departs from the Convention’s purpose. This is often inconvenient for the parties, because each side would like the return application to become a moral referendum on the other parent. The international design exists precisely to prevent unilateral removal or retention from creating a procedural advantage. First, the return mechanism restores the forum. Only then is the dispute on the merits to be heard in the competent jurisdiction. People would naturally prefer to win everything in one strike. The law in this area is less sentimental than that.

4. THE BROADER FRAMEWORK OF CHILD PROTECTION: PARENTAL RESPONSIBILITY, PROTECTIVE MEASURES, AND JURISDICTIONAL CONTINUITY

The 1996 Hague Convention is much broader. The Hague Conference describes it as covering a wide range of civil measures for the protection of children in cross-border situations, including parental responsibility, contact, representation, and the protection of children’s property. This is critically important because an international family dispute nearly always extends beyond the physical location of the child. It includes schooling, healthcare, contact arrangements, urgent protective measures, representation, control over child-related assets, and international recognition of such measures.

The 1996 Convention also expressly states that it does not affect the application of the 1980 Child Abduction Convention as between States Parties to both instruments, but that its provisions may still be relevant in obtaining the return of a child or organizing access rights. The 1980 and 1996 Conventions therefore do not compete mechanically. They operate together. The first addresses return following wrongful removal or retention. The second creates a broader protective and cooperative framework. In practice, that means child protection does not end with the question whether the child must be returned. After that begins the much longer process of determining parental responsibility and protective jurisdiction.

Within the European Union, Brussels IIb reinforces this structure. The Regulation states that it should strengthen legal certainty, increase flexibility, and protect children from the harmful effects of wrongful removal or retention. EU materials also explain that Brussels IIb complements and reinforces the 1980 Hague Convention. In European cases, therefore, disputes about the child must be seen through a dual lens: Hague instruments plus EU procedural architecture. Ignoring one layer is a reliable way to lose control of the case.

5. THE PROPERTY BLOCK: MATRIMONIAL PROPERTY, MAINTENANCE, HIDDEN ASSETS, AND FORUM SHOPPING

The property dimension of an international family dispute is too often underestimated until the assets have already been transferred, the accounts frozen by the wrong side, or access to information lost. Yet the European framework has long treated matrimonial property as requiring separate conflict-of-law and jurisdictional rules. EUR-Lex explains that Regulation (EU) 2016/1103 applies to the property of married couples where they have different EU nationalities or links with more than one country, and that it governs jurisdiction, applicable law, and recognition and enforcement. That means the property side of an international marriage is not a secondary appendix to divorce. It is a separate cross-border legal field in its own right.

The same is true for maintenance. Regulation (EC) No 4/2009 lays down rules to facilitate the payment of cross-border maintenance claims, and the 2007 Hague Convention states that its object is to ensure the effective international recovery of child support and other forms of family maintenance. In practical terms, this means that the dispute over the child, the dispute over where the child should live, and the dispute over money for the child are not the same case. They cannot be merged either strategically or legally. One parent often tries to use delay in the return track as pressure in negotiations over maintenance. The other may try to use the property dispute to block all cooperation regarding the child. This is how a family dispute turns once again into a procedural chessboard, only with worse stakes.

6. RETENTION OF ASSETS AND PROCEDURAL WARFARE FOR CONTROL OVER PROPERTY

In international family disputes, assets are not retained only through literal physical concealment. Much more often, more “civilized” methods are used: urgent transfers of funds, changes in corporate control, movement of shares, shifting of banking routes, insertion of new holding layers, extraction of liquidity, sudden changes in management of family assets, or the transformation of jointly accumulated resources into supposedly third-party-controlled property. The law responds through rules on jurisdiction, applicable law, recognition, enforcement, and international cooperation, but the speed of factual action almost always exceeds the speed of legal reaction. That is why early protective measures and correct forum selection often matter more than a later grand claim on the merits.

An additional problem is that family property in an international context rarely exists in the simple form of “an apartment and a bank account.” It may consist of a company, a fund interest, a trust structure, an investment portfolio, digital assets, payment rights, intercompany claims, property formally held by one party but accumulated in substance within the family, or even assets linked to the child. The 1996 Convention outline specifically notes that protective measures may extend to matters of representation and the protection of the child’s property. Even assets associated with the child therefore fall within the broader international protective framework. If these issues are not addressed immediately, the active side in the dispute will almost always try to consolidate factual control before the law has time to describe it.

7. HUMAN RIGHTS, THE BEST INTERESTS OF THE CHILD, AND THE LIMITS OF A MECHANICAL APPROACH

Although the international family conventions and regulations create a rather technical system of return and jurisdiction, child-retention cases cannot be reduced to mechanics alone. The ECtHR’s current guide on the rights of the child expressly links such cases to Article 8 rights, including parents’ right to enjoy family life with their child, and explains that obligations under Article 8 remain relevant in matters of international child abduction. This matters because an overly formal procedure may end up destroying exactly what it claims to protect: real family ties and meaningful best-interests analysis.

But the opposite extreme is equally dangerous. If, under the banner of “the best interests of the child,” every state simply begins to entrench a new factual situation created by unilateral removal or retention, the entire logic of the 1980 Convention collapses. International law therefore tries to preserve a difficult balance: not to allow self-help relocation to ripen into legal advantage through the passage of time, but also not to turn the child into an object of automatic logistics. In practice, that balance depends heavily on the quality of the court, the speed of the proceedings, and whether the

parties themselves understand the difference between a return mechanism and a final custody determination. Which, naturally, is not always the case.

8. A PRACTICAL MODEL OF DEFENSE

A strong strategy in an international family and property dispute must be built in at least five parallel layers. The first is jurisdictional mapping: one must immediately determine habitual residence, the current forum, possible competing forums, the applicable Hague and EU instruments, and recognition and enforcement pathways. The second is the urgent child strategy: the question of return, contact, interim protective measures, communication with central authorities, and evidence of wrongful removal or retention must be addressed separately and immediately. The third is the property-preservation strategy: inventory of assets, ownership structure, risk of dissipation, urgent freezing or preservation measures, and a plan for cross-border recognition of protective decisions. The fourth is the maintenance and support track: maintenance cannot be postponed because financial exhaustion of one side is frequently used as a procedural weapon. The fifth is human rights and narrative discipline: the case must be presented not as chaotic family outrage, but as a coherent account of wrongful retention, process disruption, and risk to the child's interests or to property rights.

The crucial mistake is to wait for some "main court" to sort everything out later. In international family disputes, victory often belongs to the party that first fixes the forum, first obtains urgent relief, first identifies the correct legal instrument, and first translates factual chaos into the language of a specific international regime. Yes, it is a grim structure, because family drama almost always moves faster than legal technique. That is exactly why, without legal technique, these cases are so often lost.

9. CONCLUSION

Family and property disputes with an international element, including the retention of children and assets, are not one dispute but a system of intersecting proceedings. In that system, rules on return, parental responsibility, child protection, maintenance, matrimonial property, recognition, and enforcement all operate at once. The Hague Conventions, Brussels IIb, Regulation (EU) 2016/1103, and Regulation (EC) No 4/2009 all make the same point: an international family conflict cannot be litigated as a local quarrel into which a foreign passport accidentally wandered. It is a fully cross-border legal structure in which time, jurisdiction, and interim measures matter as much as being right on the merits.

The main practical conclusion is simple and unpleasant. In such disputes, it is not enough to be right. One must also secure that right procedurally before the other side secures a new factual reality. If that is not done, the child ends up in one forum, the assets in another, maintenance in a third, and actual control over the process in the hands of the party that first understood that an international family case is won not only by arguments, but by speed of legal architecture.

APPENDIX A. TERMINOLOGY

Wrongful removal / wrongful retention
The unlawful removal or retention of a child across international borders within the meaning of the 1980 Convention, linked to breach of custody or access rights. The Convention is designed to secure prompt return and protection of access rights.

Habitual residence
A key connecting factor in international child cases, central to identifying the original jurisdictional point and to the functioning of return mechanisms and parental-responsibility frameworks.

Parental**responsibility**

A broad category governed by the 1996 Convention and Brussels IIb, covering jurisdiction, applicable law, recognition, enforcement, and cooperation in respect of measures concerning children.

Matrimonial**property****regime**

The legal regime governing the property relations of spouses, for which the EU has separate rules on jurisdiction, applicable law, and recognition and enforcement under Regulation (EU) 2016/1103.

Maintenance**obligations**

Obligations of family support governed internationally through Regulation (EC) No 4/2009 and the 2007 Hague Convention.

APPENDIX B. MATRIX OF RISKS IN FAMILY AND PROPERTY DISPUTES WITH AN INTERNATIONAL ELEMENT

Risk	How it appears	Legal significance
Misidentification of the correct process	One party tries to resolve return, custody, property, and maintenance in a single claim	Leads to loss of precision and jurisdictional advantage
Child retention through time pressure	A new factual environment is created faster than the return procedure moves	Undermines the return logic of the 1980 Convention
Fragmentation across jurisdictions	The child, the assets, and maintenance issues are split between different forums	Radically complicates recognition and enforcement
Dissipation or concealment of assets	Property is transferred before protective measures are obtained	Requires early asset-preservation strategy
Error in habitual-residence analysis	The original jurisdictional point is formulated too late or too weakly	Weakens both return and parental-responsibility tracks
Neglect of the maintenance block	Support is left “for later”	Increases financial pressure and procedural asymmetry
Mechanical approach without Article 8 sensitivity	The case is treated as pure return technique	Risks harm to family-life rights and best-interests analysis
No recognition and enforcement plan	A judgment exists, but no route for recognition and execution is prepared	Produces paper victory without practical effect

The legal significance of these risks follows from the combined operation of the 1980 and 1996 Hague Conventions, Brussels IIb, Regulation (EU) 2016/1103, Regulation (EC) No 4/2009, and the Article 8 family-life framework in the case-law of the European Court of Human Rights.

OFFICIAL SOURCES

1. **Convention of 25 October 1980 on the Civil Aspects of International Child Abduction** - the core international return mechanism for wrongful removal or retention.
2. **Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children** - the broader framework for child protection in cross-border situations.

3. **Council Regulation (EU) 2019/1111 (Brussels IIb)** - jurisdiction, recognition, and enforcement in matrimonial matters, parental responsibility, and international child abduction.
4. **Council Regulation (EU) 2016/1103** - jurisdiction, applicable law, recognition, and enforcement in matters of matrimonial property regimes.
5. **Council Regulation (EC) No 4/2009** - the cross-border framework for maintenance obligations.
6. **Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance** - the international recovery of child support and family maintenance.
7. **ECtHR Guide on the Rights of the Child / Article 8 family-life materials** - family life, parental rights, and international child-abduction context under the European Convention on Human Rights.