

DETERMINATION OF A CHILD'S HABITUAL RESIDENCE IN INTERNATIONAL CHILD ABDUCTION CASES: CHARTING THE WAY TOWARDS HARMONIZATION

By: Hamid, AG (Hamid, Abdul Ghafur)^[1]; Seine, KM (Seine, Khin Maung)^[1]

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Abstract

The 1980 Child Abduction Convention is aimed at addressing the increasingly disturbing problem of trans-border parental child abduction, its key mechanism being to promptly return an abducted child to his or her country of 'habitual residence.' In essence, habitual residence is established as the chosen personal connecting factor in international child abduction cases. However, in view of the failure of the Convention to define the term, it has become the responsibility of the courts around the world to improvise their own standards for the determination. The objectives of this article are to assess the deplorable situation of fragmented approaches and standards used by the courts in determining the habitual residence of a child and to explore the recent developments in judicial pronouncements in order to be able to demonstrate the changing trend in the jurisprudence of the courts. To achieve these objectives, the article appraises the decisions of the courts in the United States of America, Canada, the European Union, the United Kingdom and other common law countries. The article concludes that the changing trend is clearly discernible and a number of courts of States parties are increasingly applying a hybrid or combined approach rather than various subjective and one-sided approaches. Thus, moving towards the achievement of harmonization in the determination of a child's habitual residence, the underlying principle of the Convention.

Keywords

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Author Information

Reprint Address:

International Islamic University Malaysia Int Islamic Univ Malaysia, Int Law & Maritime Affairs ILMA Res Cluster, Ahmad Ibrahim Kulliyah Laws, Gombak, Selangor, Malaysia.

Corresponding Address: Hamid, AG (corresponding author)

+ Int Islamic Univ Malaysia, Int Law & Maritime Affairs ILMA Res Cluster, Ahmad Ibrahim Kulliyah Laws, Gombak, Selangor, Malaysia.

Addresses:

+ [1] Int Islamic Univ Malaysia, Int Law & Maritime Affairs ILMA Res Cluster, Ahmad Ibrahim Kulliyah Laws, Gombak, Selangor, Malaysia

E-mail Addresses: ghafur@iium.edu.my

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