

Case Report

# The Effectiveness of the Hague Convention on the Civil Aspects of International Child Abduction: A Study of the Case X vs. Latvia

Estefany Rocha Monteiro\* 

International Law Department, Amorim Law Firm, São Paulo, Brazil

## Abstract

In a context of continuous migratory flows and global mobility, this article analyzes the effectiveness of the Hague Convention on the Civil Aspects of International Child Abduction (CHSIC) in resolving cases of international child abduction, focusing on the best interests of the child. Initially, it discusses the functioning of the Convention as a normative framework for the expeditious return of abducted children to their habitual residence countries, highlighting its innovations and main criticisms. Subsequently, it examines the jurisprudence of the European Court of Human Rights (ECtHR), particularly exemplified in the case Latvia. Through this case, it investigates how the Hague Convention influences the protection of children's rights and its effectiveness in ensuring the return of abducted children. This integrated analysis provides a deep understanding of the practical implementation of the Convention and its effectiveness in protecting children's individual rights. It is concluded that while the Hague Convention establishes a robust mechanism for resolving cross-border disputes, its application needs to be complemented by a detailed consideration of children's individual rights, as emphasized by the ECtHR. Thus, the effective integration of this legal instrument with documents such as the United Nations Convention on the Rights of the Child (UNCRC) not only strengthens international protection of minors but also promotes a legal environment that prioritizes the well-being and unique interests of each child involved in international abduction cases.

## Keywords

Private International Law, Hague Convention, International Child Abduction, European Court of Human Rights, Best Interests of the Child

## 1. Introduction

Throughout history, children have been repeatedly made invisible and marginalized in society. In fact, before their recognition as vulnerable beings distinct from adults in the early 18th century, barbaric practices towards children were common across all social classes. In addition, they had no meaningful voice, were deprived of access to justice and

complaint mechanisms, and had no credibility before adults or the law [11]. Data from this period reveal this pattern: excluded from early historical records and occupying a position of low social importance, children were perceived as easily replaceable, and their care was seen as a despicable activity that could be delegated to others. Thus, their specific needs

---

\*Corresponding author: [estefanyrmonteiro@gmail.com](mailto:estefanyrmonteiro@gmail.com) (Estefany Rocha Monteiro)

**Received:** 27 December 2024; **Accepted:** 9 January 2025; **Published:** 7 February 2025



Copyright: © The Author(s), 2025. Published by Science Publishing Group. This is an **Open Access** article, distributed under the terms of the Creative Commons Attribution 4.0 License (<http://creativecommons.org/licenses/by/4.0/>), which permits unrestricted use, distribution and reproduction in any medium, provided the original work is properly cited.

and rights only began to be recognized in the late 18th century and were consolidated in the 19th century<sup>1</sup> [5, 14], when the awareness emerged that children were not just the property of their parents or miniatures of adults [24, 9].

In the 1920s, Eglantyne Jebb, founder of Save the Children, took a crucial step by drafting what would become the draft of the Geneva Declaration of the Rights of the Child, adopted in 1924, which established five fundamental rights for children [5, 13]. This document was a pioneer in the formal recognition of children's rights at the international level [23]. The impact of this Declaration was profound, inspiring the 1959 Declaration of the Rights of the Child, adopted by the United Nations (UN), which expanded on previously established rights and laid the foundation for the 1989 UNCRC. The UNCRC, a legally binding treaty and the most ratified in history, is considered a landmark in UN standard-setting. This is because it introduced a comprehensive approach that recognized the civil, political, economic, social and cultural rights of all individuals under the age of 18 in a single document and represented a paradigm shift from the old paternalistic approach in which children were seen and not heard [14].

At the same time, the 1970s and 1980s saw a significant increase in international mobility, with thousands of refugees and displaced persons emigrating to other countries, the growth of multinational corporations, and the expansion of tourism globally. These factors, combined with the increasing number of intermarriages and the rising divorce rates and perceptions of unfavorable custody decisions, resulted in a worrying phenomenon of international child abduction by one of the parents and, consequently, an increase in interjurisdictional conflicts over child custody [7]. This type of interparental conflict, characterized by the removal of a child to a foreign country without the consent of the other parent or a court, or by the retention of the child in a foreign country at the end of a trip, has serious consequences for the child's well-being and identity, in addition to negatively impacting their family relationships [14, 17].

During this period, the concept of “international child abduction” was not yet properly recognized in the legal field, and was often referred to as “legal abduction” or “child abduction”. The complexity of locating the abducted child and bringing an application for custody abroad made the process expensive, time-consuming and exhausting, with no guarantee of outcome due to the lack of satisfactory legal mechanisms and the absence of mutual enforcement mechanisms between States. Recognizing the need for an international approach to dealing with parental abduction, the Hague Conference on Private International Law (HCCH) began

taking steps in 1976 to create an international treaty that would address this problem [7, 17].

In 1980, the CHSIC was unanimously adopted on 24 October during the Fourteenth Session of the HCCH, and formally entered into force on 1 December 1983, following its ratification by Canada, France and Portugal. The Convention was widely recognized as an effective response by the international community to this universally condemned phenomenon [14]. By introducing a mechanism for the automatic and expeditious return of abducted children, subject to a limited number of narrow exceptions, the Convention sought to protect children from the harmful effects of unilateral removal or retention by promptly returning them to the State of their habitual residence. This legal approach represented a significant advance in the protection of children's rights and in international cooperation to address the challenges associated with international child abduction [7, 17].

Immersed in this context related to children's rights and their protection, this article aims to analyze the CHSIC and its effectiveness in ensuring the resolution of cases of international child abduction so that children's rights are, in fact, guaranteed in their best interests. To this end, the methodology adopted will involve the analysis of the provisions of the Convention and the case *X vs. Latvia* [21], decided by the ECtHR in 2013. The choice of this case is justified due to the continued relevance of the ECtHR's case law in the interpretation and application of this Convention, considering the lack of a court or body that oversees the CHSIC. In fact, this Court brings together a series of decisions in which it applied the European Convention on Human Rights (ECHR) in light of the Hague Convention and also the UNCRC, reinforcing the complementarity between these Conventions to guarantee the best interests of the child and the authority of their principles in resolving cases on this topic.

To this end, this article is divided into three parts: (i) first, it will discuss the CHSIC, outlining its operation based on its articles and provisions and also shedding light on its innovations and criticisms; (ii) secondly, it will analyze the case *X vs. Latvia*, highlighting the changes in the ECHR's case law regarding child abduction and the influence of the CHSIC on its decisions; (iii) thirdly and finally, it will conclude the study.

## 2. The Hague Convention on the Civil Aspects of International Child Abduction: Functioning and Innovations

As mentioned above, the 1980 Hague Convention on the Civil Aspects of International Child Abduction was created to address a growing problem: international child abduction by a parent or guardian. Before the Hague Convention came into existence, many States had no specific legal provisions to deal with such cases, applying only the principle of the best interests of the child in all decisions. This situation often fa-

<sup>1</sup>The 19th century was a period of great social and economic transformation. The Industrial Revolution significantly increased the demand for labor, and children were often employed in precarious and dangerous conditions in factories and mines. Social reformers and labor movements began to highlight these deplorable conditions, driving campaigns to limit child labor and improve working conditions. This period marked the beginning of a growing public awareness of the need to protect children from abuse and exploitation.

vored abductors, who hoped to find more favorable laws in the State of refuge or to create a de facto state in which the best interests of the child required his or her stay there [7, 25].

With the entry into force of this Convention in 1983, a new approach emerged to deal with this issue and ensure the protection of the children involved. In this sense, the CHSIC is divided into six parts: (i) scope; (ii) Central Authorities (CA); (iii) return of children (procedure and exceptions); (iv) visitation rights; (v) general provisions; and final clauses. The preamble of the Convention highlights that the interests of the child are of primary importance in all matters relating to his or her custody, and the signatories expressed the desire to protect the child from the harmful effects resulting from wrongful change of domicile or retention and to establish procedures that guarantee the immediate return of the child to the State of his or her habitual residence, in addition to ensuring the protection of the right to visit [7, 15].

Indeed, the Hague Convention provides for the cooperation of the States Parties in order to allow the unlawfully abducted child to return immediately to his or her country of origin, being a response to the cross-border challenge posed by international abduction that applies with significant global scope – even if not without criticism [7]. According to its Article 1, the Convention has as its primary objectives: (a) to ensure the speedy return of children wrongfully removed or retained in any Contracting State; and (b) to ensure effective respect for the rights of custody and/or access as established by the law of a Contracting State, when applied in other Contracting States [7]. Thus, this document aims to protect children from the harmful effects of unlawful removal or retention and, to this end, establishes procedures to ensure their rapid return to the State of habitual residence, as well as to guarantee respect for custody and visitation rights.

As to its (i) applicability, the Convention applies to any child who had habitual residence in a Contracting State immediately before the violation of custody or access rights, ceasing to apply when the child reaches the age of sixteen [7]. From this perspective, it establishes that the transfer or retention of a child is considered unlawful when there is a violation of a right of custody attributed by law of the State where the child had his/her habitual residence immediately before the transfer or retention, and this right was being effectively exercised at the time of the transfer or retention. Such right of custody may result from an assignment by operation of law, a judicial or administrative decision or an agreement in force under the law of that State [7].

As for its provisions, the Convention requires, in its Article 6, that each Contracting State designate a (ii) CA to carry out the functions imposed by the document. These Central Authorities play a crucial role in promoting cooperation between Contracting States, facilitating the prompt return of children and the implementation of the other objectives of the Convention. Among their main functions, according to Article 7, are the location of children who have been abducted or unlawfully retained, the acceptance and transmission of requests

for return, the encouragement of amicable solutions to abduction, custody and visitation disputes, and the facilitation of the safe return of children. Thus, the establishment of these Authorities allows injured parties to have a specific service to which they can turn in each country in the event of child abduction, both preventively and post-abduction, at which time the Authority may even contact foreign Central Authorities to exchange useful information on the case [7].

In turn, (iii) the return of children, as provided for in the Convention, emphasizes the importance of urgency and speed in these actions. According to Article 8 of the Convention, this process may be initiated by any person, institution or entity that alleges that a child has been unlawfully removed or retained and may therefore submit a request to the CA of the State of habitual residence of the child or to the CA of another Contracting State. If the CA receiving the request identifies that the child is in another Contracting State, it must immediately and without delay forward the request to the corresponding CA. The CA of the place where the child is located, in turn, must take all necessary measures to ensure the voluntary return of the child [7].

In the event that a child habitually resident in a Contracting State is unlawfully removed or retained in another State, the State of refuge must order the immediate return of the child, provided that the request is made within one year of the unlawful removal or retention, subject to certain exceptions provided for in the Convention. If the return proceedings take more than six weeks, a status report may be requested to justify the delay. Until it is decided that the child should not be returned under the Convention, the judicial or administrative authorities of the signatory State are prevented from deciding on the merits of custody rights. These return proceedings are not conditional on the existence of a court order, since the main objective of the Convention is to re-establish the situation prior to the unlawful removal or retention of the child<sup>2</sup>.

Additionally, the drafters of the Convention, aware of the complexities and nuances involved in some cases, have included specific exceptions to ensure that the return of the child to his or her habitual residence truly furthers the objectives of the Convention. These exceptions apply in situations where the requesting parent was not exercising custodial rights at the time of the removal or retention, or where he or she consented or subsequently agreed to the removal or retention. Other exceptions cover scenarios in which the return of the child poses a serious risk of exposing the child to physical or psychological harm, or would place the child in an intolerable situation. Furthermore, if the child is old enough and mature enough to express an objection to the return, that objection may be considered. The same applies where more than a year has passed and the child has adapted to the new environment, or where the return would be contrary to the protection of the human rights and fundamental freedoms of the requested

---

2UN. Convention on the Civil Aspects of International Child Abduction. UNGA: October 25, 1980, articles 11 and 12.

State<sup>3</sup> [7].

In addition to the provisions on the return of children, the Convention also addresses (iv) visitation rights. In this regard, it is important to distinguish between custody rights and visitation rights, as defined in Article 5 of the Convention: custody rights – also called guardianship – include authority over the care of the child, in particular the right to decide on the place of residence; on the other hand, visitation rights refer to the permission to take the child to a place other than that where he or she usually resides, for a specified period<sup>4</sup>. In this case, the right to custody arises from the absence of cohabitation between the parents and the consequent impossibility of both living with the child. Custody means responsibility for the direct care of the child, requiring continuous contact for its exercise. Therefore, this right can be exercised by either parent, grandparents, an institution or the State. The right to visitation, in contrast, consists of the right of the parent who does not have custody of the child, implying an effective exercise of custody for a limited time, that is, while the child remains under his or her direct care. Thus, the right to visitation is the natural counterpart of the right to custody [8, 18].

Within the scope of the Hague Convention, it is important to emphasize that the judicial or administrative authorities of the State to which the child has been displaced cannot decide on custody issues until it is determined that the conditions for the immediate international return of the child are not met, in accordance with its Article 16<sup>5</sup>. However, according to Article 21, any party wishing to ensure the exercise of visitation rights may apply to the Central Authority for assistance. Although the violation of visitation rights does not automatically trigger the obligation to return the child, as occurs with custody rights, a court may, at its discretion, order the return of the child to facilitate visits or impose specific conditions on these rights, even if a previous order has already been made. In this way, this can be considered a double right: it applies not only to the child, but also to the other parent and other family members, so that the family bond is not lost, since cohabitation is a basic relationship for the development of the human being, protecting the healthy physical and mental development of children [16].

With regard to (v) the general provisions of the Convention, it states that it is not necessary to provide any security or bond to ensure payment of the costs involved in the proceedings. Article 24 requires that the application or document sent to the Central Authority be in the original language and be accompanied by a translation into the official language of the requested State. If this is not feasible, the translation may be made into French or English. This detail is crucial to facilitate communication and understanding between the Contracting States, ensuring that the proceedings are conducted efficiently

and transparently. Article 26 specifies that each CA must bear its own costs when applying the Convention, so that the administrative costs involved in handling the cases in both countries should not be imposed on the requesting parent. Therefore, the Convention exempts the requesting parent from the costs of legal proceedings and the participation of lawyers [7].

In conclusion, the CHSIC was revolutionary and innovative in that it departed from the traditional pattern of treaties that dealt only with the recognition and enforcement of court decisions. Instead, it focused on “custody rights” and involved a partnership with central government authorities, promoting bilateral cooperation. Since its inception, the Convention has led to the recovery of thousands of children and contributed to the development of other international treaties focused on the protection and welfare of children. At the same time, it has contributed to the creation of systems of cooperation between signatory countries, expanding mutual assistance between States in these complex and ongoing cases.

Despite its success, the Convention is not without significant criticisms and limitations. One of the main criticisms is the lack of sanctions for countries that do not comply with its provisions. The lack of an enforcement mechanism allows signatory nations to partially or fully violate the rules without facing consequences, which undermines the effectiveness of the treaty. This gap leaves room for countries, based on their own interests, to refuse to return abducted children, undermining the Convention’s main objective of ensuring the prompt return of children to their country of habitual residence [1, 2].

Furthermore, the wording of certain clauses is considered to be too subjective, which can lead to abusive interpretations. For example, Article 20 of the Convention allows the requested State to refuse to return the child if this would be contrary to the fundamental principles of human rights and fundamental freedoms of its legal system. While the inclusion of human rights criteria is commendable, the broad scope of this provision may allow States to use their own, and sometimes abusive, interpretations to justify the retention of a child. Each country has different understandings of human rights, which can include widely varying standards and practices, such as the criminalization of homosexuality or discriminatory treatment between men and women [1, 22].

Another critical point is the applicability of the exceptions provided for in Article 13(b), which allow the retention of the child in the requested State if there is a serious risk that his/her return would expose him/her to physical or psychological danger. The assessment of this risk is generally carried out by the authorities of the country where the child is retained, which can lead to biased decisions that justify the non-return of the child. However, the lack of a uniform standard for deliberation on the return of retained children prevents the construction of a cohesive and fair understanding between the signatory nations, which can result in contradictory and unfair decisions. To mitigate this problem, it would be ideal for the

3UN. Convention on the Civil Aspects of International Child Abduction. UNGA: October 25, 1980, Article 13..

4UN. Convention on the Civil Aspects of International Child Abduction. UNGA: October 25, 1980, Article 5.

5UN. Convention on the Civil Aspects of International Child Abduction. UNGA: October 25, 1980, Article 16.



assessments to be carried out by experts from both the requesting State and the requested State, ensuring a more balanced and fair analysis. Thus, the lack of clear provisions and unified criteria for the application of these exceptions generates an inconsistent application of the treaty, with potential decisions that do not necessarily serve the best interests of the child [4, 12].

Therefore, while the Hague Convention represented a significant step forward in the protection of children against international abduction, there is a clear need for revisions and updates. Improving the definition of objective criteria for the application of exceptions and establishing sanctions for non-compliance with the treaty's provisions are essential steps to ensure that the Convention continues to be an effective tool in the protection of children's rights and the fair resolution of international custody disputes. In this context, the following section examines the case of *X vs. Latvia*, considered by the ECtHR in 2013.

### 3. The Case of *X vs. Latvia*: The ECtHR Case Law in Protecting the Best Interests of the Child

As mentioned above, the case law of the European Court of Human Rights (ECtHR) has played a crucial role in the interpretation and application of the Hague Convention on the Civil Aspects of International Child Abduction. In the absence of a specific supervisory body for this Convention, decisions of national courts based on the CHSIC are often referred to the ECtHR, resulting in a rich body of decisions in Strasbourg on child abduction cases [10].

Until 2010, the ECtHR had repeatedly stated that the ECHR should be interpreted in light of the HCHS. This position reinforced the duties of States to return abducted children in accordance with the HCHS, to decide cases promptly and to implement return decisions effectively. An emblematic case of this period is *Ignaccolo-Zenide vs. Romania* [19], 2000, where the court highlighted the positive obligation of contracting states, according to Article 8 of the ECHR<sup>6</sup> [6], to take steps to reunite a father with his child, interpreting these obligations under the auspices of the CHSIC. Therefore, the court's decisions emphasized the importance of speed in actions, aligning with the requirements of the CHSIC [10].

In 2010, the Grand Chamber of the ECtHR handed down its first decision in a child abduction case, *Neulinger and Shuruk vs. Switzerland* [20]. This judgment, decided by a majority of 16-1, marked a significant change in the Court's approach. In

this judgment, the Court stressed that Article 8 ECHR should be interpreted in light of both the CHSIC and the UNCRC. The *Neulinger* decision introduced the requirement for an in-depth examination of the family situation as a whole in return cases. This new approach, which appeared to diverge from the strict application of the CHSIC, generated substantial criticism. The main criticism was that the decision could weaken the CHSIC's rapid return mechanism, as national courts would need to carry out a more detailed analysis of the circumstances of each case, potentially delaying returns [10, 18].

In response to criticism, the Grand Chamber reviewed some of the principles set out in *Neulinger* in the 2013 case *X vs. Latvia* [21]. This case involved a girl born in Australia in 2005 to a Latvian mother and an Australian father. In 2008, the mother abducted the child and took her to Latvia. The father then applied to return the child to Australia under the Hague Convention. The Latvian first instance court ordered the return of the child, and the mother's appeal was dismissed by the Court of Appeal. Despite having applied for a stay of the return order for six months, the father travelled to Latvia and took the child back to Australia in 2009 [10].

The mother claimed that the proceedings in the Latvian court were unfair, violating Article 6 of the European Convention on Human Rights (ECHR) [6]<sup>7</sup>, and that the court had misinterpreted and misapplied the Hague Convention, disregarding crucial evidence on the child's best interests. She had submitted a psychological report indicating that she would be at risk of psychological trauma if the child were to be removed from her and returned to Australia. The mother also claimed that she was the child's sole guardian at the time of the removal. The ECtHR Chamber initially found, by 5 votes to 2, that there had been a violation of Article 8 of the ECHR, applying the *Neulinger* test and ruling that the Latvian courts had failed to adequately consider a number of factors when assessing the child's best interests. According to the Court, the Latvian courts' approach lacked an in-depth analysis of the family situation, disregarding the psychological certificate submitted by the mother. In view of these procedural deficiencies, the case was remitted to the Grand Chamber.

The Grand Chamber, by a narrow majority of 9 to 8, upheld the violation of Article 8 but provided significant clarifications on the relationship between the Hague Convention and the ECHR. In this regard, it emphasised that, in the context of international child abduction, the obligations imposed by Article 8 of the ECHR must be interpreted in the light of the Hague Convention and the UNCRC. The Court further em-

<sup>6</sup>Article 8 of the ECHR, which refers to the right to respect for private and family life, states: "1. Everyone has the right to respect for his or her private and family life, home and correspondence. 2. There may be no interference by public authorities in the exercise of this right except where such interference is provided for by law and constitutes a measure which, in a democratic society, is necessary in the interests of national security, public safety, the economic well-being of the country, the maintenance of order and the prevention of criminal offences, the protection of health or morals, or the protection of the rights and freedoms of others."

<sup>7</sup>Article 6 of the ECHR provides that everyone has the right to a fair and public trial within a reasonable time by an independent and impartial tribunal. This article ensures that courts can rule on both civil disputes and criminal charges. The trial must be public, except in specific cases involving morality, public order, national security, the interests of minors or the protection of the privacy of the parties. The article also provides that anyone accused of a criminal offence is presumed innocent until proven guilty according to law, and guarantees minimum rights to the accused, such as being informed in detail of the charges, having time and facilities to prepare his or her defense, having legal assistance, questioning witnesses for the prosecution and defense, and having access to an interpreter if necessary.

phasised that the objectives of prevention and prompt return of the Hague Convention correspond to a specific conception of the best interests of the child. However, it stressed that the return of an abducted child cannot be ordered automatically or mechanically, and that national courts must genuinely consider the exceptions provided for in the Hague Convention, such as serious risk of harm to the child (Article 13(b)) and provide detailed justifications for their decisions. This approach requires courts to carry out an effective assessment of each case, taking into account all the relevant circumstances and giving adequate reasons for their decisions to ensure that human rights and fundamental principles of child protection are respected [10].

Furthermore, the Court specified that the interests of the child cannot be understood in the same way in all legal contexts: an application for return under the Hague Convention is distinct from custody proceedings, and courts must assess the best interests of the child taking into account the exceptions of the Hague Convention, such as the risk of serious harm and the passage of time (Articles 12 and 13). For the Court, this analysis must be carried out in the light of Article 8 of the ECHR, which imposes specific procedural obligations on national authorities to consider substantial allegations of serious risk to the child in the event of return and to provide specific, detailed and adequately reasoned reasons in their decisions. Thus, a refusal to consider relevant objections under the exceptions of the Hague Convention, or an insufficient statement of reasons, runs counter to the requirements of Article 8 and the objectives of the Hague Convention [10].

With this decision, the Grand Chamber sought to harmonize the interpretation of the ECHR with the Hague Convention, establishing a balance between the summary return mechanism and the best interests of the child, recognizing the need for a detailed and contextualized analysis in each case of international child abduction [3]. This decision is significant because, although the Grand Chamber reaffirmed some elements of the Neulinger judgment, it also introduced important clarifications and adjustments. Indeed, in both Neulinger and X, the Grand Chamber concluded that the return of the child would violate Article 8 of the ECHR, which protects the right to respect for private and family life. Previously, the Court had held that Article 8 should be interpreted in light of the Hague Convention. In Neulinger, the Court added that the interpretation of Article 8 should also take into account the Convention on the Rights of the Child. This dual interpretation was maintained in X, requiring courts to balance the effectiveness of the Hague Convention's return mechanism with the need to protect each individual child. This has given national courts a broader and more nuanced perspective on child abduction cases than had prevailed before 2010, when the Court referred exclusively to the Hague Convention [10].

In the X case, the ECtHR clarified and distanced itself from some of the statements made in Neulinger in relation to child abduction cases. The Court specified that the best interests of the child cannot be understood in the same way regardless of

whether the court is examining a return application under the Hague Convention or an application for custody or parental responsibility. This new perspective, which assesses the best interests of the child in light of the type of application, was not as clear in the Neulinger judgment. In the X judgment, the Court confirmed that the return mechanism under the Hague Convention is consistent with Article 8, accepting that the Hague Convention is based on the best interests of children at the group level, assuming that return will be in the interests of the individual child. However, the Court also stated that exceptions to return may be justified under the exception clauses in the Hague Convention, which must be interpreted strictly [10].

Therefore, by recognizing the need for a detailed and contextualized analysis of each case, the Court balanced the effectiveness of the Hague Convention's early return mechanism with the protection of the best interests of the child. This more nuanced and detailed approach helps to ensure that the human rights of children and their families are respected, while maintaining the effectiveness of international mechanisms for dealing with child abduction. Thus, the decision not only strengthens the protection of children's rights in international abduction cases, but also provides clear guidance for national courts in applying the relevant international conventions.

## 4. Conclusion

The history of children is marked by centuries of invisibility and social marginalization, until the belated recognition of their status as vulnerable beings distinct from adults in the 18th century. Before that, they were often treated as replaceable property or miniature adults, subjected to barbaric practices such as infanticide and abuse, without access to justice or a meaningful voice. The turning point came with milestones such as the Geneva Declaration of 1924 and the subsequent Convention on the Rights of the Child of 1989, which established the fundamental rights of children and recognized them as active subjects with their own interests [11]. In 1980, in a scenario marked by increasing global mobility and increasing transnational custody conflicts, the CHSIC emerged, establishing a mechanism for the expeditious return of abducted children to their country of habitual residence, except in limited circumstances [13]. In this context, this article analyzed the effectiveness of the CHSIC in protecting children's rights and guaranteeing their best interests. To this end, it included, in addition to the study of the provisions of the Convention and its main criticisms, the study of the case X vs. Latvia, decided by the ECHR in 2013.

In this regard, it argued that the CHSIC introduced an innovative approach in response to the growing problem of international child abduction by a parent or guardian, focusing on cooperation between signatory States through designated Central Authorities to facilitate the prompt return of abducted children to their country of habitual residence. The Convention also established clear custody and visitation rights, and

criteria for determining the wrongfulness of the removal or retention of a child. However, while it has been effective in recovering abducted children and promoting international cooperation, the Convention faces significant criticism. The absence of sanctions for countries that fail to comply with its provisions compromises its effectiveness, allowing for subjective interpretations and arbitrary decisions. Similarly, exceptions for non-return of children, based on physical or psychological risks, are applied inconsistently across States, requiring clearer and more uniform criteria to ensure fair decisions in the best interests of the child.

In the meantime, the case law of the ECtHR plays a key role in the interpretation and application of the CHSIC. Until 2010, the Court had often aligned its decisions with the principles of the Hague Convention, emphasizing the prompt resolution of child abduction cases and the effective enforcement of return orders. However, the case of *Neulinger and Shuruk v. Switzerland*, decided by the Grand Chamber in 2010, marked a significant shift by introducing a more detailed analysis of family impacts in return applications, aligning Article 8 ECHR not only with the CHSIC but also with the UNCRC. The subsequent case, *X vs. Latvia*, from 2013, reinforced these principles by addressing an international abduction involving a child born in Australia. The Grand Chamber's decision highlighted the need to consider the best interests of the child in a detailed and contextualised manner, underlining that the automatic return of abducted children cannot be presumed, especially where there is a serious risk of psychological harm. By balancing the effectiveness of the early return provided for in the Hague Convention with the protection of children's individual rights under Article 8 of the ECHR, the ECtHR has set out clear guidelines for national courts to deal with child abduction cases, reaffirming the importance of a reasoned and reasoned approach in judicial decisions.

In this way, the harmonization of the Hague Convention and the UNCRC is a significant step forward in the field of international law, especially in complex cases of child abduction. The case law of the ECtHR, exemplified by the case of *X vs. Latvia*, illustrates that it is possible to reconcile these seemingly divergent legal instruments to achieve a common goal: ensuring the well-being and best interests of the children involved. While the Hague Convention establishes robust procedures for the prompt resolution of cross-border disputes, the UNCRC complements these efforts by providing a normative framework that prioritizes the individual rights of the child, including the right to be heard and to be protected from physical or emotional harm. Therefore, this study has demonstrated that the effectiveness of the Hague Convention depends not only on its rigorous implementation, but also on its compatibility with other instruments that broaden its applicability and ensure comprehensive protection of children's rights in global contexts. This integrated approach not only strengthens the legitimacy of international law in cross-border family matters, but also reinforces the collective commitment

to promoting a safe and stable environment for all children, regardless of their nationality or place of residence.

## Abbreviations

|       |  |
|-------|--|
| HCCH  | Hague Conference on Private International Law                          |
| CHSIC | Hague Convention on the Civil Aspects of International Child Abduction |
| ECtHR | European Court of Human Rights   |
| ECHR  | European Convention on Human Rights                                    |
| UNCRC | United Nations Convention on the Rights of the Child                   |
| UN    | United Nations   |
| CA    | Central Authority  |
| UNGA  | United Nations General Assembly  |

## Author Contributions

Estefany Rocha Monteiro is the sole author. The author read and approved the final manuscript.

## Conflicts of Interest

The authors declare no conflicts of interest.

## References

- [1] ALMEIDA, Wilson de Jesus Beserra de; OLIVEIRA, Érico; WANG, Yong. The limitations of the Hague Convention for the resolution of disputes resulting from international child abduction. *Brazilian Journal of Law*, v. 13, n. 2, May-Aug. 2017. <https://doi.org/10.18256/2238-0604.2017.v13i2>
- [2] ARAÚJO, Nadia de; VARGAS, Daniela. Commentary on RESP 1,239,777: The dilemma between prompt return and delay in the evidentiary process in the Hague Convention on the civil aspects of international child abduction. *Brazilian Journal of Family and Succession Law*, no. 28, June, 2012.
- [3] BEAUMONT, Paul et al. Child Abduction: Recent Jurisprudence of the European Court of Human Rights. *International and Comparative Law Quarterly*, vol. 64, no. 1, 2015. <https://doi.org/10.1017/S0020589314000566>  
Accessed on: June 30, 2024.
- [4] BOTINHA, Sergio Pereira Diniz. Private International Law and Interjurisdictional Child Abduction. *Legal Content*, Brasília-DF: September 3, 2013. Available at: <http://www.conteudojuridico.com.br/?artigos&ver=2.45015&seo=1>. Accessed on: October 6, 2016.
- [5] COLE-ALBÄCK, Aline. A brief history of children's rights. Available at: <https://www.birthto5matters.org.uk/wp-content/uploads/2021/04/Childrens-rights-for-Birth-to-Five-Matters.pdf>  
Accessed on: June 30, 2024.

- [6] COUNCIL OF EUROPE. European Convention on Human Rights. Strasbourg, 1950. Available at: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf) Accessed on: June 30, 2024.
- [7] FREEMAN, Marilyn; TAYLOR, Nicola. Research Handbook on International Child Abduction. Cheltenham: Edward Elgar Publishing Limited, 2023. Available at: <http://dx.doi.org/10.4337/9781800372511> Accessed on: June 30, 2024.
- [8] GARCÍA PASTOR, Milagros. The legal situation of children whose parents do not live together: Personal Aspects. Madrid: Ed. Mc Graw-Hill, 1997.
- [9] GARABEYLÍ, Tahira. Historical Overview of the Concept of Children's Rights. Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi, v. 24, no. 2, pp. 1121-1167, 2022. <https://doi.org/10.33717/deuhfd.1182550> Accessed on: June 30, 2024.
- [10] KVISBERG, Torunn E. Child Abduction Cases in the European Court of Human Rights – Changing Views on the Child's Best Interests. Journal of Human Rights and Social Studies, v. 2, n. 2, pp. 90–106, 17 Sep. 2019. <https://doi.org/10.18261/issn.2387-3299-2019-02-02> Accessed on: June 30, 2024.
- [11] LOWE, N.; EVERALL, M.; NICHOLS, M. International Movement of Children: Law, Practice and Procedure. Bristol: Family Law, 2004.
- [12] MOSELEY, Ray. Mother Of Abducted Sons Battles Germany's Sense Of Justice. Chicago Tribune, April 6, 1997. Available at: [http://articles.chicagotribune.com/1997-04-06/news/9704060239\\_1\\_hague-convention-habitual-residence-abducted](http://articles.chicagotribune.com/1997-04-06/news/9704060239_1_hague-convention-habitual-residence-abducted) Accessed on: June 30, 2024.
- [13] OFFICE OF THE HIGH COMMISSIONER OF HUMAN RIGHTS (OHCHR). Legislative history of the Convention on the Rights of the Child. 2007. Available at: <https://www.ohchr.org/Documents/Publications/LegislativeHistorycrc1en.pdf> Accessed on: June 30, 2024.
- [14] PARKES, Aisling. Children and International Human Rights Law: The Right of the Child to be Heard. Routledge Research in Human Rights Law. 1st ed. 2013. Routledge.
- [15] PÉREZ-VERA, Elisa. Proceedings of the 14th Session of the Hague Conference, October 1980. Offprint from the Acts and Documents of the Fourteenth Session (1980), volume III, Child abduction. Available at: [http://www.hcch.net/index\\_en.php?act=publications.details&pid=2779](http://www.hcch.net/index_en.php?act=publications.details&pid=2779) Accessed on: July 1, 2024.
- [16] RODRÍGUEZ JIMÉNEZ, Sonia. The international suspension of minors by their own priests. Its destipification in Mexico. Mexico: Instituto de Investigaciones Jurídicas, 2012. Serie Doctrina Jurídica, n. 641.
- [17] SCHUZ, Rhona. The Hague Child Abduction Convention: A Critical Analysis. Hart Publishing: 2013, p. 8-9. ISBN 9781474200318, 9781849460170.
- [18] SILBERMAN, Linda. Custody Rights do not Inherently Include the Right for a Parent to Relocate with a Child In SILBERMAN, Linda The Hague Convention on Child Abduction and Unilateral Relocations by Custodial Parents: A Perspective from the United States and Europe – Abbott, Neulinger, Zaragoza'. Oklahoma Law Review, v. 63, n. 4, 2011, pp. 733–49.
- [19] ECHR. Ignaccolo-Zenide vs. Romania. Application No. 31679/96, 2000.
- [20] ECtHR. Neulinger and Shuruk vs. Switzerland. Application No. 41615/07, 2009.
- [21] ECHR. X vs. Latvia. Application no. 27853/09, 2013.
- [22] TODD, Julia A. The Hague Convention on the Civil Aspects of International Child Abduction: Are the Convention's Goals Being Achieved? Indiana Journal of Global Legal Studies, Vol. 2, Iss. 2, Article 10, 1995. Available at: <http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1050&context=ijgls> Accessed on: June 30, 2024.
- [23] VANDENHOLE, Wouter; LEMBRECHTS, Sara; ERDEM TÜRKELLI, Gamze. Introduction: Three Decades of Children's Rights Law. In: ERDEM TÜRKELLI, Gamze; VANDENHOLE, Wouter. Advanced Introduction to Children's Rights. Elgar Advanced Introductions series, 10 Jun. 2022. Chapter 1. <https://doi.org/10.4337/9781786433138> Accessed on: June 30, 2024.
- [24] WEISBERG, D. Kelly. Evolution of the Concept of the Rights of the Child in the Western World. 21 ICJ Rev. 43, 1978. Available at: [http://repository.uchastings.edu/faculty\\_scholarship/1271](http://repository.uchastings.edu/faculty_scholarship/1271) Accessed on: June 30, 2024.
- [25] SHAPIRA, A. Private International Law: Aspects of Child Custody and Child Kidnapping Cases. Netherlands: Martinus Nijhoff, 1989. Recueil des Cours vol. 214.

## Biography

**Estefany Rocha Monteiro** is a lawyer who graduated from FGV-SP (Fundação Getúlio Vargas – São Paulo) in 2023. She holds an honorary doctorate in Human Rights from the Inter-American Institute for Teaching and Research in Human Rights in Mexico City and a postgraduate degree in Human Rights from the Human Rights Center of the University of Coimbra.