

# Legal Insights: International Child Abduction

***This article was written almost 2 years ago and unfortunately, I have not seen any changes at the international airport of Sint Maarten regarding travelling in and out of the country with my almost 3-year-old son.***

----

***In the last six months that I have been living on Sint Maarten, my child, now 11 months old, has travelled from and into Sint Maarten on various occasions alone with his father, my mother and me. I prepared all the necessary documents to show that the person travelling with my child was permitted to do so, in accordance with our custody arrangements.***

Not even on one occasion did the immigration personnel working at the airport in Sint Maarten request to see any of these documents. This merits my conclusion that it is relatively easy to abduct children from or into Sint Maarten using the international airport as point of entry or exit.

When referring to international child abduction, one would think about a stranger that wants to do all sorts of evil things to children. However, it is a fact that most (international) child abductions are committed by parents.

When starting as a lawyer, one of my first court cases was an injunction in a case of international child abduction. The mother had decided to stay in Curaçao with a four-year-old, where the family of both parents lived, without the consent of the father.

In that case, the judge ordered the mother to hand over the child to the father, so the father could return with the child to their habitual country of residence. As I was representing the mother, I was not particularly pleased with this decision. A decision whereby the judge had ordered the mother to return (with) the child to the country of habitual residence of the child would have been more humane in my opinion.

There is a convention on the civil aspects of International Child Abduction to which a good number of countries is affiliated, but Sint Maarten is not one of these countries. There is also a convention regarding the protection of children, widely known as The Hague Convention of 1996, that can be of use in the matters regarding international custody cases. Sint Maarten is not affiliated to this convention either.

The Court of Justice decided in the past, that from a perspective of concordance and legal unity within the region, it would be preferable to assume that this last convention belongs to the unwritten interregional private law of Aruba. The court will probably be of the same opinion regarding Sint Maarten.

The idea behind both Conventions is that the judge from the country where the child habitually resides, is better equipped to rule in the best interest of the child. So, in cases where the conventions are applicable, the judge may decide that the child must return to the place of habitual residence.

Sint Maarten not being part of these conventions, limits the tools available to the judges on Sint Maarten, in cases where children have been transferred to another country.

Furthermore, if a child with habitual residence has been transported wrongfully to another country, the judge in this other country may not order the return of this child to Sint Maarten as Sint Maarten is not affiliated to these conventions.

The lack of proper scrutiny at Princess Juliana International Airport on Sint Maarten, by neglecting to request the proper documents from persons travelling with children, means that international child abduction is not being actively prevented in Sint Maarten.

Furthermore, not being part of the conventions makes it difficult for parents in Sint Maarten to take measures when international child abduction happens.