

The Brussels II bis Regulation, International Child Abduction and Mediation

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PLAN

- I. What is the Brussels II bis Regulation?
- II. What does a procedure look like?
- III. At which point is Mediation most effective?
- IV. Which State has jurisdiction to inact an agreement in an order?
- V. How is this agreement enforced?

I. The Brussels II bis Regulation

- ▶ Council Regulation (EC) No 2201 /2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000
- ▶ All Member States except Denmark
- ▶ Entered into force on the 1st March 2005
- ▶ Completes the Hague Child Abduction Convention of 1980

II.

How would a procedure look like?

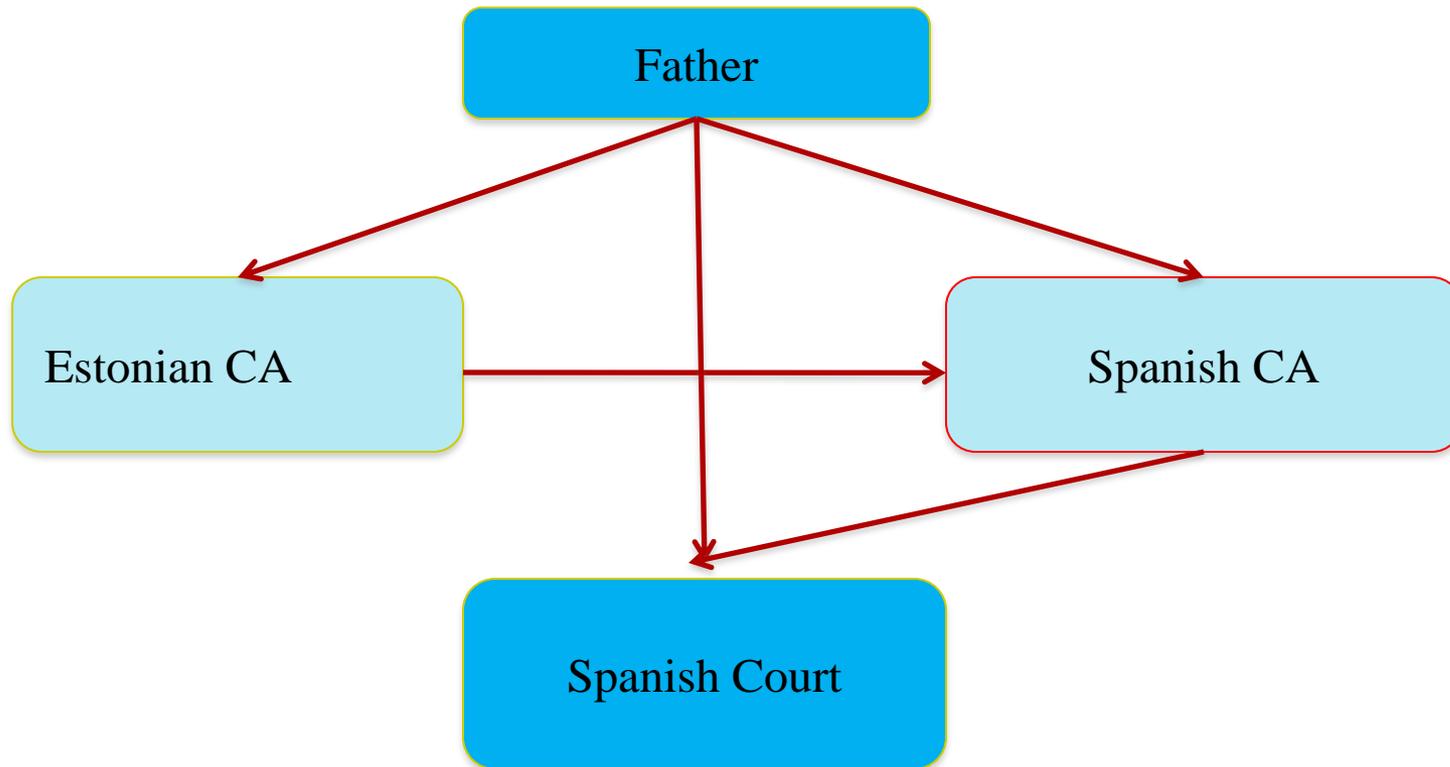
II. Example

Jaak and Carmen have their habitual residence in Estonia where they live with their 6 year old son Markus.

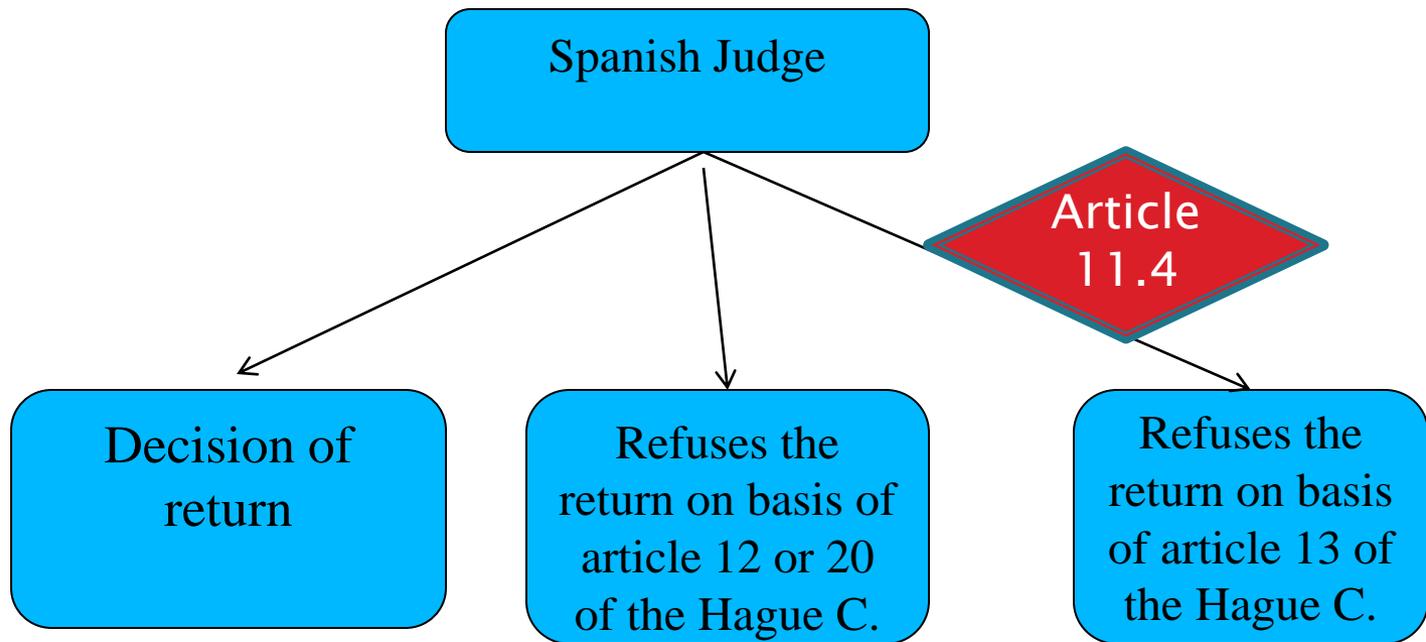
After having spend the holidays in Spain, Carmen decides to stay in Madrid with Markus.

Jaak doesn't agree with that and starts a procedure in order to obtain the return of Marcus based on the Brussels II Regulation.

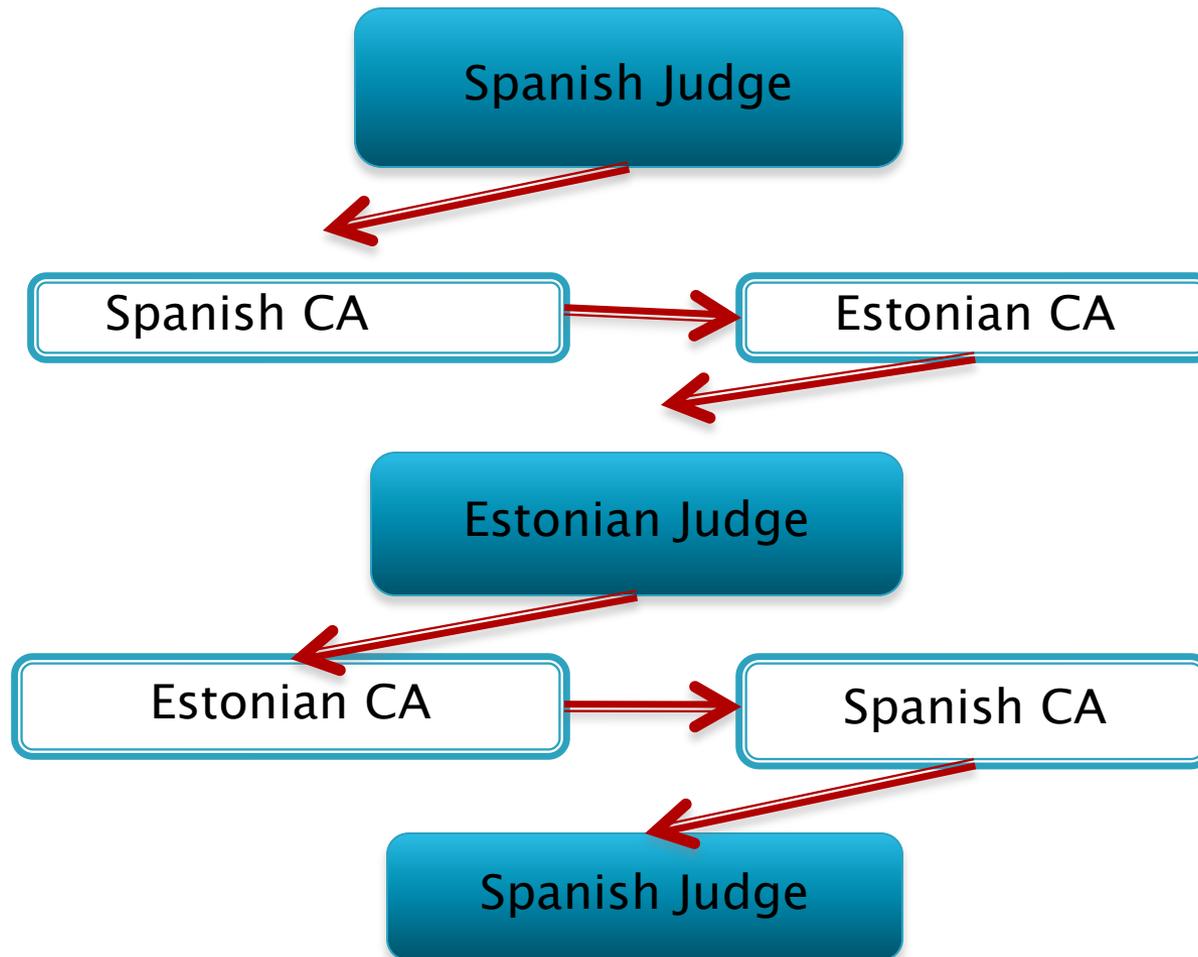
Begining of the procedure



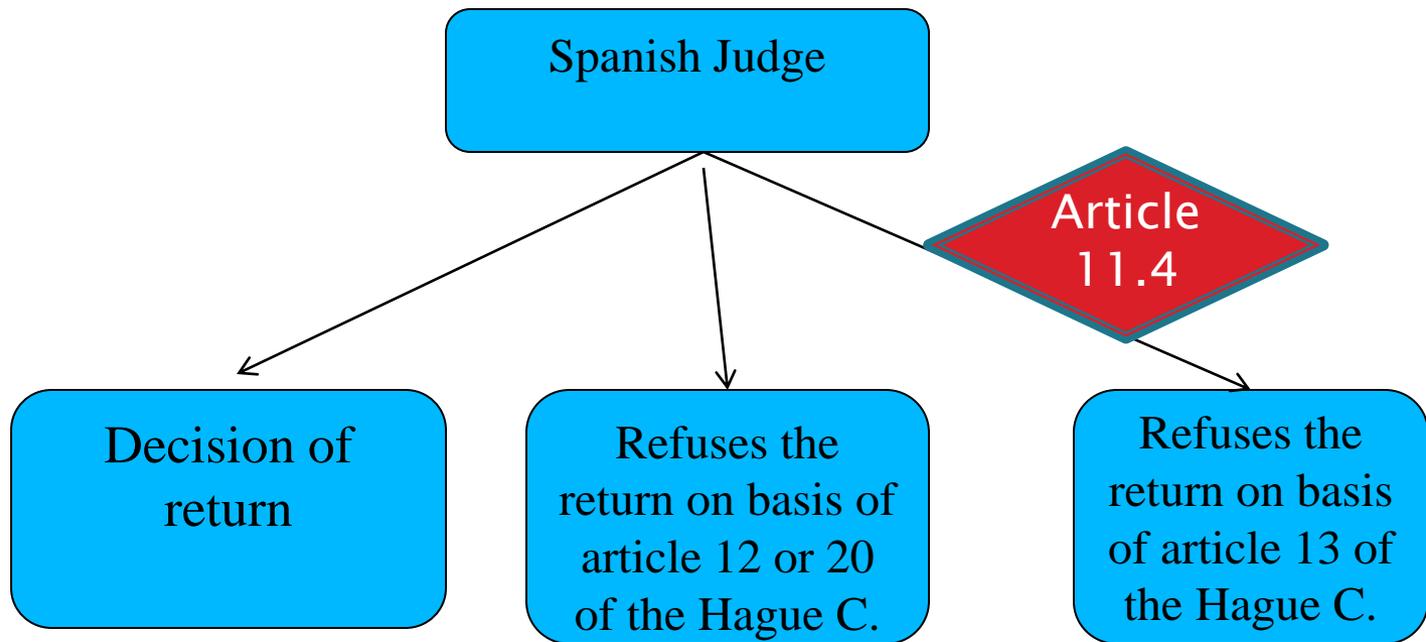
Possible decisions of the spanish judge according to the Hague Convention



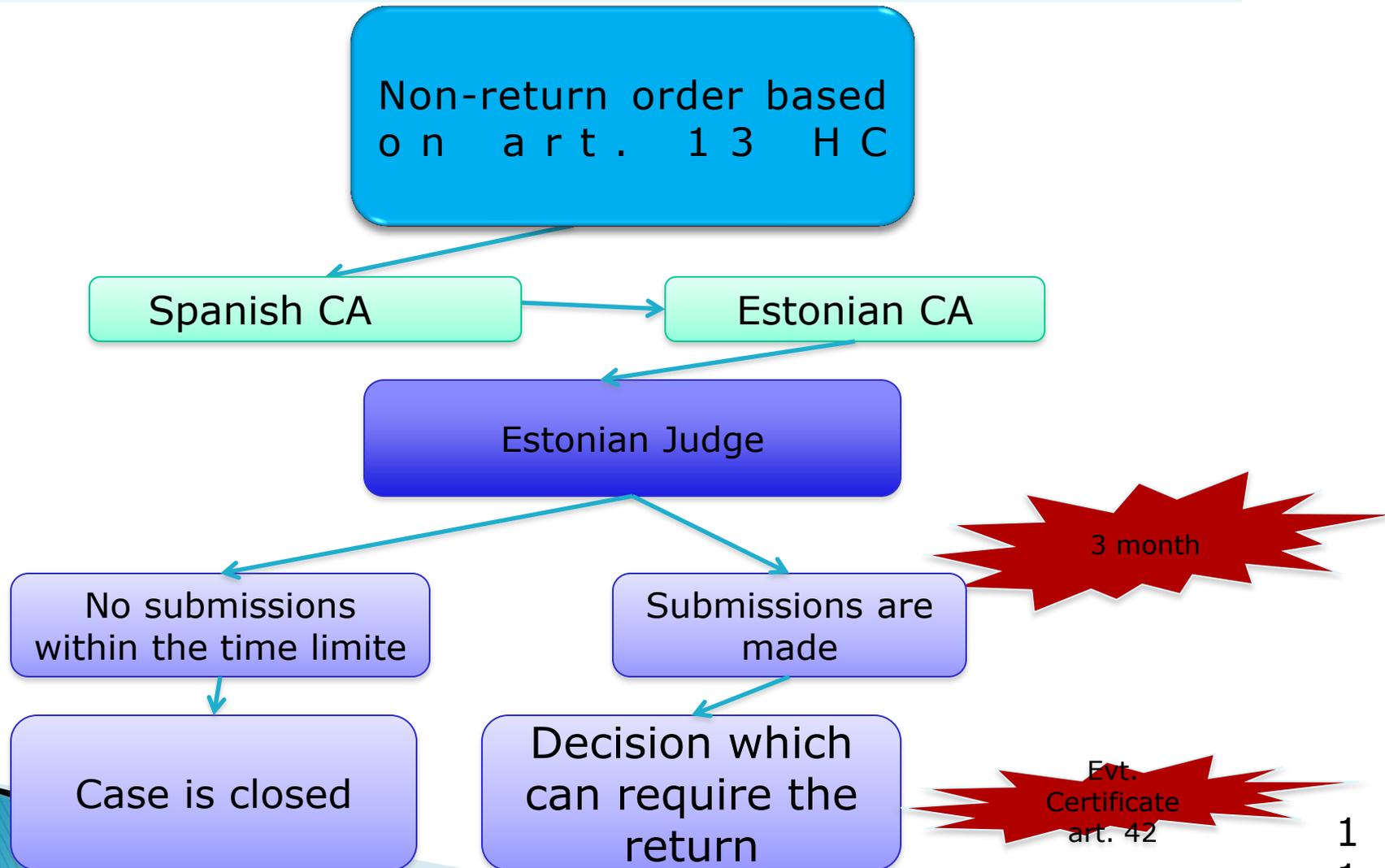
Application of article 11. 4 of the Regulation



Possible decisions of the spanish judge according to the Hague Convention



Procedure based on art. 11.6



III.

**At which stade a mediation
would be the most advisable?**

IV.

Which State has jurisdiction to act the agreement into an order?

Article 8 Brussels II bis Regulation

- ▶ The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.

Article 10 Brussels IIbis Regulation

In case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another Member State and:

- ▶ (a) each person, institution or other body having rights of custody has acquiesced in the removal or retention;

or

- ▶ (b) the child has resided in that other Member State for a period of at least one year after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child and the child is settled in his or her new environment and at least one of the following conditions is met:
 - (i) within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, no request for return has been lodged before the competent authorities of the Member State where the child has been removed or is being retained;
 - (ii) a request for return lodged by the holder of rights of custody has been withdrawn and no new request has been lodged within the time limit set in paragraph (i);
 - (iii) a case before the court in the Member State where the child was habitually resident immediately before the wrongful removal or retention has been closed pursuant to Article 11(7);
 - (iv) a judgment on custody that does not entail the return of the child has been issued by the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention.

V.

How is this agreement enforced?

Article 28

- ▶ A judgment on the exercise of parental responsibility which is enforceable in a Member State can be enforced in another Member State when it has been declared enforceable there.
- ▶ The exequatur will be refused if (art.23)
 - (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child;
 - (b) if it was given, except in case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the Member State in which recognition is sought;

Article 41

- ▶ The rights of access granted in an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin.
- ▶ The judge of origin shall issue the certificate only if:
 - (c) the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity.

Article 42

- ▶ The return of a child entailed by a judgment given pursuant to Article 11(8) in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin.

Article 42 ...

- ▶ The judge of origin shall issue the certificate only if:
- ▶ (a) the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity;
- ▶ (b) the parties were given an opportunity to be heard; and
- ▶ (c) the court has taken into account in issuing its judgment the reasons for and evidence underlying the order issued pursuant to Article 13 of the 1980 Hague Convention.