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REPUBLIC OF CROATIA

HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION

Introduction

The Republic of Croatia, which is one of the former Yugoslavia successor states, declared its independence from Yugoslavia in 1991. Croatia became a party to the Hague Convention on the Civil Aspects of International Child Abduction on December 1, 1991, after ratification of the Convention by the Croatian legislature *Sabor* on September 27, 1991.¹ Through a letter received by the depositary on April 5, 1993, Croatia declared itself bound by the Convention. Croatia is a non-Member State of the Convention on the Civil Aspects of International Child Abduction, because it did not participate in the Hague Conference on Private International Law at the time of the 14th Session, as required by article 37 of the Convention. Because no objections were received from the contracting states, it appears that Croatian accession has been accepted by all parties to the Convention.

I. Domestic Laws and Regulations Implementing the Hague Convention

The Republic of Croatia acceded to the Hague Convention with the purpose of international recognition and improvement of its image on the international arena. Croatia's accession to the Convention affected the development of the national legal system, because the necessity to bring domestic legislation in accordance with the Convention's requirements influenced amendments to civil and criminal legislation and invigorated the judiciary to cooperate with foreign institutions. As in other newly independent states of the former Yugoslavia, the Constitution of Croatia provides for the priority of international obligations over domestic regulations and concluded international agreements have direct impact and do not require the adoption of additional implementing legislation.²

The basic principles of Croatian legislation in regard to family relations and child protection are determined by the Constitution of the Republic, which puts the family under special protection of the state. The Constitution provides for legal regulation of marriage, legal relations in marriage, common-law marriage, and families. It declares state protection of maternity, children, and young people and makes the parental duty to bring up, support, and educate children a constitutional principle. This principle is implemented through the recognition by the state of its special mission to interfere into family relations and defend children and parents when they need the support of government authorities.³

These principles are detailed in the Family Law of the Republic of Croatia of 1999, which is the applicable law in all parental abduction cases.⁴ The Family Law regulates entrance into marriage, personal rights and duties of the spouses, relationships between children and their parents, rights and duties within those relationships, adoption, fostering, financial support between children and parents, and the court procedures in cases of marriage related disputes. The Family Law promotes the principle of

¹ NARODNE NOVINE [Croatian official gazette], 1991, No. 121, Item 4496.

² CONSTITUTION OF THE REPUBLIC OF CROATIA, adopted December 19, 1990, art. 141.

³ *Id.* arts. 61 & 63.

⁴ NARODNE NOVINE, 1999, No. 74, Item 3142.

equality between parents and protects the interests of all family members on equal footing. The Law on Foreigners, which entered into force on January 1, 2004, guarantees foreign citizens the same treatment in the field of family relations and dispute settlement as to Croatian citizens. That brought Croatian family legislation in accordance with European standards. Amendments to the Family Law adopted in September 2003, expanded the definition of the family and parenthood. Under these amendments, a woman who was an egg donor received the right to contest the motherhood of the woman who gave birth to the child and request parental rights in regard to the child. Family rights were extended to unmarried couples if they lived together for at least 3 years and had a child together. Simultaneously, adopted Same-Sex Marriage Law gives full set of family rights, including the right of guardianship over children to members of same-sex unions if they live together for a period of 3 years or more.

The problem of parental child abduction, especially international abductions, became a regional problem for Croatia, because of the break up of the former Yugoslavia, ethnic migration, and numerous interethnic marriages during the socialist period. Croatia has concluded a number of agreements on related issues with the neighboring states; however, the lack of resources for enforcement of already passed laws and procedural underdevelopment make the resolution of this problem a lengthy process. As of November 2003 (latest data available), Croatia had no open abduction cases and received no incoming return applications under the Convention. Also, the Permanent Bureau on the Guide to Good Practice of the Convention reported that it did not receive any submission or comment in regard to Croatia's participation in the Hague Convention.⁵

The Law of the Republic of Croatia on Acceding to the Convention on Civil Aspects of International Child Abduction, adopted simultaneously with the instruments of ratification, assigns the Ministry of Labor and Social Welfare of Croatia to be a Central Authority, with the responsibilities prescribed in article 7 of the Convention.⁶ According to the implementing legislation, the Central Authority is obliged to provide general information to the applicant; however, it is not clear what kind of information and/or services are available. The Ministry focuses its work on preventive measures in protecting children from illegal removal and retention and promoting public awareness. Croatia is a unitary state and the Ministry of Labor and Social Welfare has jurisdiction all over the country, including all administrative districts and localities; therefore, the Convention extends to all Croatian territory as required by article 40. Being, in an organizational sense, a Central Authority of all the subordinated national centers for social welfare in administrative districts of Croatia, the Ministry coordinated their work and focused on training the local staff in 2003. Several 2-day workshops were organized for family legal protection team leaders of staff workers from local centers for social welfare.⁷ District centers are responsible for the execution of the Ministry's instructions and conducting all practical work aimed at the implementation of the Convention's provisions. It appears that cooperation between the Ministry of Labor and Social Welfare and justice authorities is not efficient enough, and Croatian judges lack experience in dealing with international proceedings.⁸

⁵ HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW. Convention Status Report, available at <http://www.hcch.net/e/conventions/menu28e.html>, visited Nov. 24, 2003.

⁶ *Id.*

⁷ See news reports at the Ministry's website, at www.mrss.hr.

⁸ ANSWERS TO THE QUESTIONNAIRE ON PREVENTIVE MEASURES prepared by the Ministry of Labor and Social Welfare of the Republic of Croatia for the Hague Conference on International Private Rights, May 15, 2003, available at www.hcch.net.

II. Domestic Laws Regarding Child Abduction and Parental Visitation

A. Child Abduction

Croatian regulations regarding the issuance of documents for travel abroad serves as a deterrent to a potential abductor. In order to obtain travel documents for a minor, both parents are required to provide their written consent. If one parent does not give a permission, the decision on the travel document for the child is made by the center for social welfare where the child permanently resides. The law requires that the well-being of the child be taken into consideration. Despite the fact that Croatian citizens may enter the Republic of Slovenia, Italy, and some parts of Bosnia and Herzegovina without passports, although passing the border control, children are always required to have their own passports.

The custodial parent who learns about an attempt to abduct his child or has suspicion that the non-custodial parent is attempting to leave the country with the child, has the right to approach the police in order to prevent it from happening. According to the prescribed procedure, the police must alert the border control whose duty is to stop that parent. This action is based on situations where there is a suspicion of someone committing the punishable act of child abduction. However, these measures are not effective since the border control is not as strict, corruption of the authorities issuing travel documents is notorious, and the other parent has minimal possibilities to react in a timely manner.

Croatian legislation provides for preventive measures in protecting children from illegal removal and retention, but they are not unified in order to be applicable to the Convention. Kidnapping of a child regardless of the reason is recognized as a crime in Croatia; however, there is no proscribed division of missing children into various categories, according to the reasons for disappearance. According to the Criminal Code of the Republic of Croatia adopted in 1997, child abduction or abduction of a dependent, as well as the failure to take the measures to protect the child or the dependent, is punishable by a fine or imprisonment for a period of up to 3 years. Commentaries on the Criminal Code issued by the Ministry of Justice of the Republic of Croatia specify that the jurisdiction of this article extends to a non-custodial parent abducting the child from a custodial parent or from another custodial person or an institution to which care and protection of the child has been given. The abduction may be open or hidden, and be a result of deceit, misuse of trust, or of restraining the child.⁹ Under the Law, a child is any person under 14 years of age, and an individual in the age of 14 - 18 years is a minor. The child's consent, regardless of his understanding of the significance of the unlawful activity, does not eliminate the criminal responsibility of the abductor. The Criminal Code provides for another special offence, violation of family obligations. Violators of custody rules can be accused of committing this crime also.

In cases of abduction of a child or a minor by one of the parents and in cases of kidnapping of a child by unknown persons, the police consider such cases in the same manner as all other missing children cases and undertake all measures and actions for the quick and successful discovery of a child or a minor. Statistics of such cases are gathered and kept by the Ministry of Internal Affairs. The handling of cases of missing children is regulated by the Law on Bodies of Internal Affairs and subordinate acts of legislation which regulate the work of law enforcement authorities. There is no coordination between the Central Authority and Ministry of Internal Affairs, which does not receive information concerning abduction of children by parents. This approach together with the responsibility divided between several government agencies limits the ability of Croatian authorities to find an abducted child. There is no specific database on abducted children, and all information about missing children is stored in the

⁹ *Criminal Code of the Republic of Croatia*, ch. 6, Narodue Novine, Nov. 27, 1968, with amendments published in Narodue Novine, 2002, No. 12.

centralized database of the Ministry of Internal Affairs on missing persons. Croatia does not participate in the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of May 20, 1980, which regulates the enforcement of judicial and administrative decisions on custody and access. In case of abduction, the level of search (local, national, international) depends on information gathered during the search. For example, if there is relevant information that a missing child is abroad, the Ministry of Internal Affairs can issue an international search warrant. If one of the parents abducted the child, a court ruling on who is given custody over the child is required for issuance of a search warrant.

B. Parental Visitation

Family legislation in Croatia is based on the 1999 Family Law of the Republic of Croatia. The major principle of Croatian family law is that decisions relating to a minor should be based on his best interests; however, no specific act regulates issues related to parental visitation. Under Croatian law, both parents have equal rights and duties in regard to their children even after divorce. However, in case of a dispute, the Law allows the center for social welfare, which is the district office of the Ministry of Labor and Social Welfare and serves as a guardianship agency, and the court to award custody to one of the parents. The center for social welfare has an exclusive custody in cases when the child is born to a single parent or in the de-facto relationships, and in the intervening situations in cases set for the divorce proceeding. In this case a temporary decision on the custody of the child is made, pending the legal judgement of the court in the divorce proceeding when the custody of the dependent child is decided. If the parents are absent, the issue of custody for minors will be resolved by the center for social welfare also. Centers for social welfare decide disputes about the exercise of family rights; have the power to deprive access to parents living at a distance depending on the interests of the child; are party to custody suits; and may commence actions that would deprive a parent or parents of their parental rights.

The decision made by the center for social welfare regarding the custody of a child serves as an enforcement enabling the custodial parent to gain an immediate custody of the child. Since such decisions are made by the center for social welfare, courts do not issue temporary decisions on the custody of a child while the divorce proceedings are still under way. The enforcement of this decision largely prevents the removal or retention of a child since a non-compliance with this decision is a punishable criminal act. Parents may recover custody of their children unless the court decides that this would harm the child.

III. Court System and Structure – Courts Handling the Hague Convention

The structure of the judicial system in Croatia is determined by the Law on the Courts and is based on the idea of independent courts. In Croatia, the judiciary is built upon the courts of general jurisdiction, which judge in all disputes, except in those where law explicitly determines jurisdiction of another court. These special courts are police, administrative, and commercial courts, which have no jurisdiction over family and/or criminal matters.

Courts of general jurisdiction are organized hierarchically in three instances and are divided into regions. Lower courts are municipal courts, which serve as courts of first instance in civil and criminal cases. Most of the cases are tried by a single professional judge. A panel of three judges or jurors administer cases in county courts, which are almost exclusively second instance courts and courts of appeal. The Supreme Court is the court of full jurisdiction with respect to court decisions, and it can void them, confirm them, or revise them. The Supreme Court is the highest court in Croatia, and as the last instance it decides on extraordinary legal remedies against valid court decisions of the lower courts. The Supreme Court is also the appellate court in all cases where municipal court was the first instance. All

Croatian judges are appointed for life by the State Judiciary Council, an independent state institution formed of Parliament members, representatives of judicial authorities, prominent public figures, and members of Croatian Bar Association. Minister of Justice names the presidents of the courts from the appointed judges and the Chief Justice of the Supreme Court is elected by the Parliament according to the proposition of the Cabinet.

Cases of domestic child abduction rarely are brought to the courts. No pending cases of international child abduction or application of the Convention on the Civil Aspects of International Child Abduction have been reported.

IV. Law Enforcement System

The small number of international parental abduction cases in Croatia may be attributed in large part to the influence of cultural traditions that have determined the features of Croatian society, bureaucratic difficulties related to acquiring a valid travel document for children, and the ignorance of the general population of the issue. The Ministry of Labor and Social Welfare of the Republic of Croatia is promoting a number of public awareness campaigns popularizing its involvement and assistance in the fight against parental abduction of children.

International observers conclude that the enforcement of the Convention might be difficult, because of the lack of experience of the Ministry of Labor and Social Welfare in dealing with legal resolutions of family related disputes and almost absent cooperation with judicial authorities.¹⁰ Because both the Ministry of Justice and the Ministry of Labor and Social Welfare, which supervise local custodianship and whose personnel are more familiar with the related work, are empowered with the administrative authority to order the return of an abducted child, close interagency cooperation may be required.

Croatian courts have relatively little experience in dealing with the application of international legal norms and may have problems with their enforcement. National authorities recognize inconsistency in the courts' practice of handling international legal proceedings due to professional unpreparedness of judges.¹¹ As a rule, Croatian courts reject requests for the return of a child from abroad if a parent of the child residing in Croatia did not participate in person or via a representative in court proceedings in the country in which the application has been made. Because Croatian legislation does not envision the possibility of issuing court orders in civil and family cases out-of-hours or *ex-parte*, there is a problem with timely enforcement of custody related decrees. The Family Law allows the application of urgent actions in passing down decisions in child support cases only, and there is no time limit for passing a decision by a municipal court, which makes parental abduction cases last long and contradict the requirements of the Convention.

V. Legal Assistance Programs

Legal assistance in Croatia could be received through the attorneys licensed to practice law in this country. *Pro bono* work is practiced by attorneys, although not very widely. In 2003, the Ministry of Labor and Social Welfare together with the Faculty of Law of the University of Zagreb conducted a short term seminar for law students on application of the Convention and child abduction prevention measures.

¹⁰ Human Rights Watch, WORLD REPORT 2003: CROATIA, available at www.hrw.org.

¹¹ *Supra* note 8.

The Ministry of Labor and Social Welfare remains, probably, the best source of assistance and information; however, there is no webpage, brochure, or similar material containing the information or advice on measures available to parents. Within their authority, officers of the Ministry of Labor and Social Welfare warn the parents against unlawful removal or retention of a child, quoting existing regulations which give the right of mutual support of their children to both parents. The same information is given to the parents when they approach the police.

VI. Conclusion

The Hague Convention on Civil Aspects of International Child Abduction prescribes basic principles of resolution of disputes in regard to the parental abduction of children. Unlike in other participating states, in Croatia these principles did not become the basis for national legislation, and the Croatian legal system has not yet elaborated national norms that correspond to the provisions of the Convention. The national judiciary continues to reject foreign decisions in favor of traditional domestic laws. The cooperation of Central Authorities in the Member States with the Ministry Labor and Social Welfare of the Republic of Croatia is not as effective as it could be expected, because of the lack of cooperation between this administrative agency, the courts, and the enforcement authorities. Also, information about the possibility of applying the Convention's provisions available to Croatian citizens is minimal. At the same time, the Convention is of great significance for Croatia, whose citizens have the right and possibility of using an internationally recognized mechanism for the return of a child in cases of abduction and the guarantee of the protection of the rights of all interested parties if the child was taken to one of the countries that participates in the Convention.

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