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CYPRUS

HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION

Introduction

The Convention on the Civil Aspects of International Child Abduction (hereafter the Convention) was adopted on October 24, 1980, by the 14th Session of the Hague Conference on Private International Law and was signed on October 25, 1980.¹

The Convention's key objective, as reflected in its Preamble and article 1, is the protection of the best interests of children under the age of 16 who have been wrongfully removed or retained in any contracting state and to ensure their prompt return. It also seeks to ensure that rights of custody and access under the national laws of a contracting state are effectively respected in other contracting states.

The Convention requires that contracting states designate Central Authorities to discharge the duties imposed upon them, such as discovering the whereabouts of a child who has been wrongfully retained or removed, securing his return, and exchanging information related to the social background of the child and others. It also requires that Central Authorities closely cooperate with each other to achieve the goals of the Convention.

Cyprus, as a non-Member of the Hague Conference, acceded to the Convention by virtue of Decision No. 39284 of the Council of Ministers, issued on May 12, 1993, and ratified the Convention in 1994, as discussed below. Cyprus's accession to the Convention is effective only between Cyprus and those contracting states which have declared, or will declare, their acceptance of the accession.² The Convention entered into force in Cyprus on February 1, 1995, and between the United States and Cyprus on March 1, 1995.

I. Domestic Laws and Regulations Implementing the Hague Convention

Cyprus ratified the Convention by Law No. 11(III) of 1994.³ Law No. 11 is cited as 1994 Ratification Law of the Convention on the Civil Aspects of International Child Abduction. The Law includes the text of the Convention in English and Greek. Pursuant to article 169.3 of the Cyprus Constitution, the Convention has acquired superior force to any domestic law since its publication in the Official Gazette.

Cyprus, as required by article 6 of the Convention, designated the Ministry of Justice and Public Order as the Central Authority to exercise the duties and rights arising from the Convention.

¹ TIAS 11670.

² <http://www.hcch.net/e/status/stat28e.htm>.

³ ΕΠΙΣΗΜΕ ΕΦΗΜΕΡΙΔΑ ΤΗΣ ΚΥΠΡΙΑΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ (ΕΕΚΔ) [Official Gazette of the Republic of Cyprus], Part I, at 181 (1994).

II. Domestic Law Regarding Child Abduction and Parental Visitation

A. Child Abduction

The Criminal Code of Cyprus contains several articles that may be applicable to cases involving child abduction and retention.⁴ Article 185 applies to cases that involve taking a child, whereas article 246 deals specifically, as its title indicates, with kidnapping from a lawful guardian. Both articles apply to children under the age of 14. However, article 246 raises the cut-off age for female children to the age of 16. Article 185 on child stealing reads as follows:

Any person who, with intent to deprive any parent, guardian, or other person who has the lawful care or charge of a child under the age of 14 years, of the possession of such a child:

(a) forcibly or fraudulently takes or entices away, or detains a child

(b) receives or harbors the child, knowing him to have been taken or enticed away or detained

is guilty of a felony, and is liable to imprisonment for 7 years. It is a defense if the accused person claims in good faith a right to the possession of the child, or in the case of an illegitimate child is his mother or claims to be his father. Article 246 reads as follows:

Any person who takes or entices any minor under 14 years of age if a male, or under 16 years of age, if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such a minor or person from lawful guardianship.

Article 248 deals with punishment of kidnapping:

Any person who kidnaps any person from the Republic or from lawful guardianship is guilty of a felony, and is liable to imprisonment for 7 years, and is also liable to a fine.

Article 250 deals with secret and wrongful confinement of a person and reads as follows:

Any person who kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, is guilty of a felony and is liable to imprisonment for 7 years.

B. Parental Visitation

The relations of parents and children are regulated by Law No. 216, the Parents and Children Relations Law of 1990 and 1995,⁵ as amended.⁶ Parental care is a right and a duty of both parents, who

⁴ The Criminal Code, ch. 154 as amended.

⁵ EEKD, *supra* note 3, Part I, at 2030 (1994).

⁶ Law No. 2, 1997 and Law No. 21(I), 1998.

can exercise it jointly.⁷ Parental care includes the right to name a child, care for him, administer his property, and represent the child in every transaction related to his person or property.⁸ Care of a child is defined as including, the bringing up of the child, supervision, education, and training, including the designation of the child's place of residence.⁹ All parental decision must be in the interests of the child. The Family Court of the district where the child resides, which is the court that has jurisdiction in cases involving relations between parents and children, must also apply the same standard when the decision of custody and parental care are at issue.¹⁰ The court may also ask the opinion of the child, depending on the child's maturity, prior to rendering a ruling pertaining to parental care. Every court decision on parental care must respect the equality of the parents and must not discriminate on the basis of sex, language, religion, beliefs, citizenship, and national or social origin or property.

The court regulates the exercise of parental care in cases of divorce, separation, annulment of the marriage, or void marriage.¹¹ The court, based on an application by the parents, may also decide on the exercise of parental care, if the parents disagree and if the interest of the child requires that a decision be made.¹² Exercise of parental care may be assigned to one of the two parents, or both jointly. In the latter case, parents must come to an agreement as to the place of residence of the child. The court has the power to assign the exercise of parental care to a third person. In this respect, prior to reaching a decision, the court will take into consideration the child's relationship with his parents, with siblings, if any, and of any agreement between the parents that relates to this issue. In such cases, "the main criterion shall always be the interest of the child."¹³

The Law clearly provides for the right of personal communication between a non-residential parent and a child.¹⁴ The court decides on how the right to personal communication will be exercised in case the parents cannot reach an agreement. The standard of care that the parents are required to show during the exercise of parental care is the same care that they show for their own affairs.¹⁵

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

A. Right to Seek Return

If the custody rights of a person have been violated by the wrongful removal and retention of a child by another, that person is entitled to the return of the child based on the Hague Convention. One of the ways to achieve this is to file an application through the designated Central Authority. In the case

⁷ *Id.* at art. 5 (1)(a).

⁸ *Id.* at art. 5(1)(b).

⁹ *Id.* at art. 9(1).

¹⁰ *Id.* at art. 6(2)(b).

¹¹ *Id.* at art. 14(1).

¹² *Id.* at art. 7.

¹³ *Id.* at art. 14(3).

¹⁴ *Id.* at art. 17(1).

¹⁵ *Id.* at art. 13(1).

of Cyprus, the designated Central Authority, as required by article 6 of the Convention, is the Minister of Justice and Public Order. The Minister is empowered to exercise any authority vested under the Convention. The second way is for the agreed person to proceed through the court system. These two ways are not mutually exclusive. The Ratification Law states that “any judicial process pursuant to the provisions of the Convention commences with the filing of an application by summons supported by an affidavit as provided by the Rules on Civil Procedure, *mutatis mutandis*.”¹⁶

Cyprus has a two-level system of courts, first instance courts and the Supreme Court. The main first instance courts are the District courts, which are made up of district judges, senior district judges, and presidents. The Supreme Court stands as the court of last resort in issues involving constitutional and administrative law.

The judicial system of Cyprus also provides for four Family Courts as first instance courts.¹⁷ For this purpose, Cyprus is divided into four provinces, and each Family Court is located in a province. Issues related to Family Courts are regulated by Law No. 23/1990 on NOMOS YOU PRONOEI GIA TEN IDRYSE, SYNTHESE, DIKAIODOSIA KAI TIS EKSOUSIES TON OIKOGENEIAKON DIKASTERION [Law Providing for the Establishment, Composition, Jurisdiction, and the Authorities Vested in the Family Courts],¹⁸ as amended. In any dispute, except in case of divorce, a Family Court is composed of a single secular judge of the family court. Decisions of the first instance Family Courts are subject to appeal before the second instance Family Courts. The latter are composed of three judges of the Supreme Court, who are appointed by the Supreme Court for a period of 2 years.

Pursuant to the above Law, Family Courts, in general, may exercise all the duties assigned to them, based on article 111 of the Constitution, on this Law and on any other law. Family Courts also have territorial jurisdiction to hear cases if one of the parties has his residence or his business within the province where the Family Court is located and the dispute concerns a minor and the minor resides in the province of the Family Court.

In 1998, Law No. 23/1990 was amended by Law No. 26(I) of 1998. Article 2 of the Law uses very explicit language as to the jurisdiction of Family Courts. It states that Family Courts have subject matter jurisdiction especially in “issues involving marital relations which are initiated in judicial proceedings arising from bilateral or multilateral conventions to which Cyprus has adhered” and also in “issues related to parental care, maintenance, recognition of a child, adoption, property issues between the spouses and any other marital or family dispute provided that the parties or one of them is a resident of the Republic.” Residence is defined as a uninterrupted stay of more than 3 months.

B. Case Law

In 1996, the District Court of Nicosia decided a case involving the wrongful removal of a minor, whose father was a citizen of Cyprus and whose mother was a citizen of the United States.¹⁹ Both parents were awarded temporary custody by a New York court order. The child lived with the mother, while the

¹⁶ *Supra* note 3.

¹⁷ Other first instance courts are the Assize courts, military courts, industrial disputes courts, and the Rent Control Tribunals.

¹⁸ *Supra* note 3, Part I, No. 2485 (1994).

¹⁹ District Court of Nicosia, Appl. No. 405/96 (Dec. 18, 1996), available at <http://www.hiltonhouse.com/cases/Cy-cyprus.txt> (unofficial text).

father had visitation rights. In April 1996, the father brought the child to Cyprus in violation of custody orders.

In examining the facts of the case and in evaluating the evidence, the District Court first analyzed the inquiry as to whether there was a wrongful removal of the minor from the United States to Cyprus, pursuant to article 3 of the Convention. Upon examination of certain factual and legal elements, the Court held that the removal of the minor was in breach of custody assigned to the mother based on a judgment issued by the Family Court in New York. It also held that the mother was indeed exercising custody over the child prior to her being removed. Subsequently, the Court examined whether the prerequisite of article 12 of the Convention had been met, that is, whether a period of less than a year had elapsed from the date the child was wrongfully removed. Again, it answered the question in the affirmative.

Furthermore, the Court inquired whether it should use its discretion to refuse to order that the child be returned. In this respect, the Court noted that the child did not possess the necessary maturity because of her young age (7 years of age) to allow her views to be taken into account. It also noted that the child did not refuse to return to the United States, but she merely “expressed her desire to stay in Cyprus.” Moreover, the Court in examining the question as to whether or not the mother had acquiesced to her daughter’s staying in Cyprus held that the mother had not.

Finally, the Court dealt with a jurisdictional issue. The advocate of the respondent had raised the argument that the Nicosia District Court lacked jurisdiction because the Ratification Law clearly states that the Family Court has jurisdiction on the basis of article 111 of the Cyprus Constitution and laws 23/90 and 88/94.

The Nicosia District Court rejected the claim that the Family Courts had jurisdiction over the case. The court made a distinction between the subject matter that falls within the jurisdiction of the Family Court and the case under consideration. It clearly pointed out that this case involved the wrongful removal and retention of the minor from the United States to Cyprus and that it was called upon to decide whether or not it should order that the child be returned to the United States. Therefore, the court continued, based on article 16 of the Convention, which prohibits judicial authorities from deciding on the merits of rights of custody, and article 19, which states that any decision made “shall not be taken as a determination on the merits of any custody issue,” that it, not the Family Courts, had jurisdiction to deal with the case.²⁰

Subsequently, the court ordered that the child be returned to her mother in New York and that the father pay transportation expenses.

III. Law Enforcement System

In Cyprus, orders issued by the Family Courts on whether a child should be returned or not are immediately enforceable after being served to the respondent. Their execution is effected by the Central Authority, that is, the Minister of Justice and Public Order, as stated above. The latter is assisted either by the police or another government agency, such as the Welfare Department.

²⁰ It has not been possible to ascertain whether the case was appealed because of lack of jurisdiction. However, the recently enacted Law No. 21, 1998 leaves no ambiguity that the Family Courts have subject matter jurisdiction in cases involving international abduction and retention of children.

IV. Legal Assistance Programs

No legal assistance is provided in civil cases under the judicial system of Cyprus. However, in cases arising under the Hague Convention, petitioners who opt to proceed through the Central Authority do not pay any legal fees because the filing of the application is undertaken by the Ministry of Justice and Public Order.

V. Conclusion

Since Cyprus became a contracting state of the Hague Convention in 1994, it has designated the Ministry of Justice and Public Order as the Central Authority to handle cases involving international abduction of children. Cyprus's well-developed judicial system and especially its law related to children, which is based on best interest of the child principle, provide the requisite foundation for effective application of the provisions of the Hague Convention.

Prepared by Theresa Papademetriou
Senior Legal Specialist
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