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## CZECH REPUBLIC

## HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION

**Introduction**

The Hague Convention on the Civil Aspects of International Child Abduction was signed by the Czech Republic on December 28, 1992. It was approved by Parliament and ratified, and the instrument of ratification was deposited with the government of the Kingdom of the Netherlands on December 15, 1997, with the reservation according to article 42 of the Convention, that the Czech Republic will not be bound to assume any costs referred to in article 26, paragraph 2, of the Convention, resulting from the participation of legal counsel or advisers or from Czech court proceedings, except insofar as those costs may be covered by its legal system of legal aid and advice. The Convention entered in force for the Czech Republic on March 1, 1998.<sup>1</sup>

**I. Domestic Laws and Regulations Implementing the Hague Convention**

In accordance with article 6, paragraph 1, the Czech Republic has designated as the Central Authority the Central Agency for International Legal Protection of Youth, Benesova 22, 602 00 Brno, Czech Republic. The Agency will represent the applicant under a power of attorney in proceedings under the Convention before Czech courts. The proceedings are exempt from the payment of court fees.

According to the Constitution of the Czech Republic,<sup>2</sup> the Convention became part of the legal order of the Republic upon its approval by Parliament, its ratification and publication, and the courts will apply it whenever called upon.

**II. Domestic Laws Regarding Child Abduction and Parental Visitation****A. Child Abduction**

For a decision relating to the wrongful removal and retention of a child, the competent court will be the District Court of the place where the child resides by parental agreement, decision of the court, or any other reason.<sup>3</sup> This court will also be competent in proceedings under the Hague Convention. The proceedings are governed by the provisions of the Code of Civil Procedure.

Child abduction may be prosecuted under article 216 (abduction) of the Criminal Code,<sup>4</sup> which provides that whosoever takes a child (a person under 18 years of age) away from the care of the person who has the duty under the law or under an official decision to care for the child will be punished by a

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<sup>1</sup> Announcement of the Ministry of Foreign Affairs of Mar. 5, 1998, No. 34, COLLECTION OF LAWS.

<sup>2</sup> Constitution of the Czech Republic of Dec. 16, 1992, No. 1 of 1993, as amended by Constitutional Law of Oct. 18, 2001, No. 39, COLLECTION OF LAWS, arts. 49 (a) and 52.

<sup>3</sup> Code of Civil Procedure, Law of Dec. 4, 1963, No. 99, COLLECTION OF LAWS, CONSOLIDATED TEXT OF FEB. 22, 2001, No.69, COLLECTION OF LAWS, as amended, arts. 9, 88a and c. 176-177.

<sup>4</sup> Criminal Code, Law of Nov. 29, 1961, No. 140, COLLECTION OF LAWS, CONSOLIDATED TEXT OF SEPT. 18, 2002, No.412, COLLECTION OF LAWS, as amended.

fine or imprisonment for up to 3 years. A parent who, for example, takes a child abroad against the will of the other parent, claiming that it is only a temporary excursion, may be prosecuted under article 209 (abuse of the rights of others) of the Criminal Code.<sup>5</sup> The punishment is a fine or imprisonment of up to 2 years.

### **B. Parental Visitation**

For a decision relating to parental visitation, the competent court will be the District Court where the child resides by parental agreement, decision of the court, or any other reason.<sup>6</sup> This court will also be competent in proceedings under the Hague Convention. The proceedings are governed by provisions of the Code of Civil Procedure.

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

General trial courts in civil matters are the District Courts; one is located in each territorial district. Appeal against their decisions goes to the Regional Courts, which also have specified trial jurisdiction. Appeal against decisions of the Regional Courts in their trial jurisdiction goes to the Courts of Appeal. A further appeal against decisions of the Regional Courts as Courts of Appeal and against decisions of the Courts of Appeal goes to the Supreme Court. Trial courts in child return proceedings, visitation, and enforcement of related orders under domestic Czech law, as well as under the Hague Convention, are the District Courts.<sup>7</sup>

In criminal matters, the structure is identical; however, because the Supreme Court deals only with petitions alleging violations of law by lower courts and prosecutors, the Courts of Appeal are the final courts of criminal appeal.<sup>8</sup>

### **IV. Law Enforcement System**

The District Courts enforce their decisions. They are immediately enforceable. With regard to decisions relating to child return, visitation, and related matters, the court may first request the obligated party to carry out the court decision voluntarily and call upon the pertinent municipal or district office of Legal Protection of Children for its assistance. If there is no result, the court may impose successive fines of 2000 crowns each (US\$1= 28 crowns) on the obligated party. It may, however, acting in cooperation with the above referred to offices, order the immediate enforcement of its decision by the proper state organs (court bailiffs and the police). The court acts appropriately according to the circumstances of the case.<sup>9</sup> In Hague Convention proceedings requiring the return of the child or visitation by the left behind parent, the court will proceed as above. For determinations as to the custody of the child, the court will apply articles 15-20 of the Hague Convention.

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<sup>5</sup> *Id.*

<sup>6</sup> *Supra* note 3.

<sup>7</sup> *Supra* note 3, arts. 7-12.

<sup>8</sup> Code of Criminal Procedure, Law of Nov. 29, 1961, No. 141, COLLECTION OF LAWS, CONSOLIDATED TEXT OF FEB. 8, 2002, No. 43, COLLECTION OF LAWS, as amended, arts. 13, 252, 266.

<sup>9</sup> *Supra* note 3, arts. 171, 272-273a.

## **V. Legal Assistance Programs**

General care and protection of children, both socially and legally, are regulated by chapter 2 of the Family Code and are entrusted to the Office of Legal Protection of Children within the district and municipal administration created by social security legislation.<sup>10</sup> The Office supervises the healthy development of children and their education and protects their legitimate interests, including property interests. Any person may contact the office in these matters and request assistance.

## **VI. Conclusion**

The Czech Republic is in full compliance with the Hague Convention. The compliance is insured by the Central Authority of the Czech Republic, the Central Agency for International Legal Protection of Youth, which holds the power of implementation and which exercises its legal powers on behalf of the Ministry of Justice in matters pertaining to the Convention.

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<sup>10</sup> Family Code of Dec. 4, 1963, No. 94, COLLECTION OF LAWS, CONSOLIDATED TEXT OF SEPT. 11, 1998, No. 210, COLLECTION OF LAWS, as amended, arts. 27(4), 41-50. Law on the Jurisdiction of Offices of Social Security of the Czech Republic of June 27, 1988, No. 114, COLLECTION OF LAWS, as amended by Law of Mar. 26, 1991, No. 144, AND LAW OF NOV. 14, 2002, No. 518, COLLECTION OF LAWS, arts. 15 and 19.