

LAW LIBRARY OF CONGRESS

DENMARK

HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION

Introduction

The provisions concerning the implementation of the 1980 Convention on the Civil Aspects of International Child Abduction (hereinafter the Convention) are contained in the Danish Law, known as “the International Child Abduction Act” (hereinafter the Act).¹ In conformity with the relevant provisions of the Convention, the Act does not apply to children who have reached the age of sixteen.

I. Domestic Laws and Regulations Implementing the Hague Convention

The Central Authority is the Civil Law Directorate of the Danish Ministry of Justice, which discharges its duties in accordance with the rules set out in the Convention.

Section 10 of the Act prescribes rules on the return of a child to the person who has the legal custody of the child. Section 11 of the Act contains provisions on the denial of a request for the return of the child. Accordingly, a request for the return of a child, who has been unlawfully removed or retained may be denied if:

- at the time of the application for proceedings one year has passed since the child was removed or retained and the child has already settled in his new environment;
- there is a serious risk that the return of the child harms the child's psychological or physical health or otherwise the child will be subjected to a situation which cannot be acceptable;
- the child himself opposes the return and he has reached such age and maturity that his wishes should be respected; and
- the return of the child is incompatible with the fundamental principles regarding the protection of human rights and freedom as cherished in Denmark.

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

Chapter 23 of the Danish Penal Code prescribes rules concerning the crime against family. According to the provisions of Chapter 23:215, the removal of a child under eighteen years of age by one parent from the jurisdiction of a person who has the custody of the child is punishable by the penalties prescribed in section 261 of the Penal Code. The penalty according to section 261 is imprisonment of up to four years. In minor offenses, a milder punishment will be imposed. However, in certain aggravated cases the punishment may be from one year to as much as twelve years imprisonment.

¹ Law Nr. 793, November 27, 1990. (see Karnovs Lovsamling, 1995, vol. 3, pp. 4911 ff.).

B. Parental Visitation

The answers to questions relating to a child's custody and the right to visitation are contained in the Danish Law on Parental Custody and Visitation.² Accordingly, a child born to a married couple enjoys the custody of both parents. The custody continues until the child is eighteen years old. The mother of an illegitimate child is the sole custodian of the child, unless an agreement has been reached by the parents to the effect that both parents should have the custody of the child. Parents who are separating or divorcing may conclude a similar agreement for the custody of the child. When the custody is disputed, the district court makes the decision on questions of custody and visitation. Under all circumstances, such decisions must be made with due consideration to what is in the best interest of the child. If a child has reached the age of twelve, he must be heard before a decision on the custody or visitation is made. However, if the circumstances indicate that questioning the child would be harmful to the child's mental health, the child does not need to be interviewed.

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

The matters concerning the custody of a child are handled by the district court, which in principle is the district in the area where the parties reside. The matters regarding the return of a child are dealt within *fogderetten* (a bailiff's court which enforces the judgements, both domestic and foreign) in the place where the child has been retained. The decisions of both courts can be appealed to the regional court of appeals. The highest instance is the Danish Supreme Court.

IV. Law Enforcement System

As was stated above, the questions relating to the enforcement of the Convention rules are dealt with by *fogderetten*. The court must handle the matter of a child's return as quickly as possible. If a case has not been resolved within six weeks, the applicant is entitled to question the court as to the reason for the delay (the Act, sections 12-15). However, if appropriate, the court may arrange a meeting with the abductor to negotiate voluntary return of the child before making a decision. Moreover, the court must obtain information about the child's wishes before making a final decision in the case if the child has reached the age and maturity where due consideration should be given to his wishes (the Act, section 16).

Upon application to it, the court may decide that the child should temporarily stay with one of the parents or, if there is a possibility that the child will be removed, the court may issue an interim order to place the child in the temporary custody of social services (the Act, section 17).

According to section 19:1 of the Act, if an application for the enforcement of the Convention has been made, no decision on the question of custody can be made in Denmark before the matter of the return of the child is decided by the *fogderetten*. Moreover, if the Central Authority informs the court dealing with a custody case that the child concerned has been unlawfully brought to or retained in the country, the court shall not make a decision in the custody case even if no application has yet been submitted to the *fogderetten* for the return of the child. In such cases, a reasonable time must be given for the filing an application in the "fogderetten" for the return of the child (section 19:2).

² Law No. 387, June 14, 1995. (see Karnovs Lovsamling, 1995, vol.3, pp. 4870 ff.).

V. Legal Assistant Programs

The Danish rules on legal assistance are contained in the 1997 Ordinance on Legal Aid.³ A person covered by the 1980 Convention can obtain legal aid in Denmark. However, it should be noted, firstly, that the grant of legal aid is subject to a means test. Secondly, Denmark has made a reservation to article 26 of the Convention to the effect that except for the legal aid that covers the court and attorney expenses, no other expenses involved in the process of the return of a child is compensated.

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³ Ordinance No. 866, November 25, 1997. (see Karnovs Lovsamling, 1997, vol.7, pp.10544-10545).