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REPUBLIC OF GEORGIA

HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION

Introduction

The Republic of Georgia, which became independent from the Soviet Union in 1991, is a non-Member State to the Convention on the Civil Aspects of International Child Abduction. The Republic of Georgia cannot become a Member of the Convention, because it did not participate in the Hague Conference on Private International Law at the time of its 14th Session as required by article 37 of the Convention. Georgia acceded to the Convention in 1997. The Parliament of Georgia ratified the Convention on July 24, 1997, and the act of ratification entered into force in Georgia on October 1, 1997. The accession of Georgia has been accepted by the following countries: Argentina, Australia, Austria, Bosnia and Herzegovina, Canada, Chile, China (Macao Special Administrative Region), Czech Republic, Finland, Germany, Greece, Hong Kong, Hungary, Ireland, Israel, Italy, Kingdom of Netherlands, New Zealand, Norway, Poland, Portugal, Serbia and Montenegro, Slovak Republic, Spain, Switzerland, and the United Kingdom.

In accordance with article 38 of the Convention, Georgian accession to the Convention is effective only in the relationship between Georgia and those contracting states that have declared their acceptance of the accession. Additionally, on January 1, 2000, the Convention entered in force between the Republic of Georgia and two former Soviet states, Belarus and Turkmenistan. The United States has not recognized participation of the Republic of Georgia in the Hague Convention.

I. Domestic Laws and Regulations Implementing the Hague Convention

Georgia acceded to the Hague Convention at the time of its international recognition and admission to European and international organizations and institutions. Georgia's accession to the Convention, however, did not influence the development of the Georgian legal system. The issue of international child abduction is not an acute problem for Georgia because of its long years of international isolation, the domination of conservative Soviet traditions in family relations, internal armed conflicts, absence of new legislation, and lack of resources for enforcement of already passed laws. As of January 2003 (latest data available), Georgia had no open abduction cases and received no incoming return applications. 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 Georgia's participation in the Hague Convention.¹

After the Convention was ratified by the Georgian Parliament, the Minister of Justice of the Republic of Georgia issued an executive instruction assigning the International Law Department of the Ministry of Justice to be the Central Authority, with the responsibilities prescribed in article 7 of the Convention.² According to domestic 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. It appears that there is no cooperation between Ministry of Justice and child welfare services. Because Georgia is a federal state with two autonomous provinces, the Ministry of Justice has nominal

¹ HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW. Convention Status Report, available at <http://www.hcch.net/e/conventions/menu28e.html>, visited Nov. 24, 2003.

² LEGAL ACTS OF GEORGIA, 1998, No. 2-3, at 37.

jurisdiction over all the country; therefore, the Convention formally extends to all Georgian territories as required by article 40. However, because of strong separatist movements in both provinces and ongoing civil war in Abkhazia, acts of federal authorities are recognized in autonomous provinces selectively, and the enforcement of legal acts is almost non-existent.

In an attempt to join European and international institutions, the Parliament of Georgia ratified 171 international agreements and conventions during 1995-1998. The Convention on the Civil Aspects of International Child Abduction is among them. Most of these documents will be implemented in accordance with the Law on International Private Law of 2001,³ which establishes the priority of concluded international legal agreements over domestic legislation and provides for the resolution of arising conflicts according to the norms provided by an international treaty. However, the enforcement of the concluded agreements remains weak. Georgian President Eduard Shevardnadze who was ousted by a mob from the office on November 23, 2003, stated in one of his addresses to the nation that the implementation of laws and court decisions is the weakest point in the activities of the Georgian government.⁴

Even though the legislation of the Republic has been significantly amended during the last 3 years, and such important documents as amendments to the Family and Marriage Code and new Criminal Code were adopted, it appears that these documents have little effect in regard to enforcement of the Convention on the Civil Aspects of International Child Abduction.

II. Domestic Laws Regarding Child Abduction and Parental Visitation

A. Child Abduction

The Criminal Code of Georgia adopted on July 22, 1999, does not recognize parental abduction as a crime. The Law considers as an abduction, the kidnapping of a child by a person who is not child's parent or legal guardian without the consent of the parents or legal guardians, regardless of the purpose of this action. In order to be prosecuted under to the Criminal Code, the abduction of a child should be committed for mercenary purposes or for other base motives. In such cases, the abduction will be punishable by 5 years in prison. The same action committed for other purposes or motives is punishable by 1 year in prison or by corrective labor for the same term. The abduction may be open or hidden and may be a result of deceit, misuse of trust, or restraint of the child. Under the Law, a child is any person under 14 years of age. 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 Law determines "mercenary purposes" as intending to receive material profits from the abduction, i.e., ransom or taking a child's clothes. Base motives are those that contradict moral principles, for example, taking revenge on a child's parents. If a childless woman abducts a child with the purpose of educating him and creating a good family environment for him, such an abduction does not qualify as an abduction from base motives.⁵ However, the Criminal Code states that such action will be considered as an abduction committed under softening circumstances.⁶

³ SAKARTVELOS-REPUBLIKA [Georgian Government published daily newspaper, official gazette], 2001, No. 13, at 7.

⁴ *Shevardnadze's State of Nation Address*. SAKARTVELOS - REPUBLIKA, Feb. 17, 1999, at 1, translated by the FBIS, electronic version, document ID: FTS19990301000810.

⁵ BULLETIN OF THE USSR SUPREME COURT, No. 2 (1974) at 10.

⁶ CRIMINAL CODE OF THE REPUBLIC OF GEORGIA, art. 24, 361.

Parental kidnapping is not considered a criminal offense in Georgia. Only those who abduct somebody else's child may bear criminal responsibility for a child's abduction. Hence, biological and/or adoptive parents may not be prosecuted as kidnappers or child abductors. In cases of disagreement among divorced or separated parents, the abduction of one's own child from the other parent or from an orphanage or another special institution is not considered to be an abduction under Georgian criminal legislation. It may be labeled as an arrogation, which is the "unwarranted exercise in violation of a legally established order, of one's actual or supposed right, causing substantial harm to citizens or to the state or social organizations."⁷ Arrogation is punishable by correctional work for a term up to 6 months, or by a fine, or by a social censure. The Law also prohibits prosecuting close relatives of a child (for example, grandparents) for abduction, if they acted for the sake of the child, even if the interests of the child were misunderstood.⁸

Furthermore, Georgian criminal legislation does not provide for punishment for the removal of a child from the country or for retaining a child outside Georgia with intent to obstruct the lawful exercise of parental rights. Retainment is not considered as a separate felony.

Acts, such as parental child abduction, occur very seldom in Georgia. If a foreigner whose home country recognizes the participation of Georgia in the Convention commits such a crime, the child is subject to return. All other cases fall under the laws of the respective state. In such cases, the International Law Department at the Ministry of Justice of Georgia, which was designated as a National Central Authority to discharge the duties imposed by the Convention, must cooperate with foreign authorities in order to find the child, to prevent possible harm to the child, and to secure the child's return. Abilities of the Ministry of Justice to locate an abducted child are limited because under Georgian law only children who are staying without parental supervision are subject to mandatory registration with local social service agencies.⁹

B. Parental Visitation

Family legislation in Georgia is based on the Code of the Georgian Soviet Socialist Republic on Marriage and Family of 1969, which still is currently in force. Since 1991, when Georgia gained its independence, the Code was substantially amended. Amendments reflect major European civil and family law institutions mixed them with ethnic traditions. The major principle of Georgian family law is that decisions relating to a minor should be based on his best interests. According to the Code, all children under 16 years of age are considered minors. The Law on State Support of Children and Youth adopted in December 1999, is aimed at the protection of children's rights. However, this act does not regulate issues related to parental abduction.

Under Georgian law, both parents have equal rights and duties with regard for their offspring, even after divorce; however, court-awarded custody to one of them is allowed in case of a dispute. Unresolved disputes may be taken to the agency of guardianship and curatorship, and/or to the court depending on the particular situation. Parents may recover custody of their children unless the court decides that this would harm the child. In accordance with tradition, custody almost always is awarded to the mother of the child; the father sometimes receives the right of access as determined by the court.

⁷ *Supra* note 6.

⁸ COMMENTARIES TO THE CRIMINAL CODE OF THE REPUBLIC OF GEORGIA. Approved by the Ministry of Justice of the Republic of Georgia. Tbilisi, 2002, at 472.

⁹ Instruction of the Ministry of Education No. 23 of September 11, 2001, LEGAL ACTS OF GEORGIA, 2002, No. 5, at 19.

However, there is no means of enforcing court decisions and as stories in local newspapers reflect, a father's right to visitation is often violated by mothers and other relatives who have been awarded custody of the child.¹⁰

In the case of the dissolution of a marriage the courts decide which of the parents should get custody of the child. If parents are absent, the issue of custody for minors will be resolved by the guardianship agencies of local public education departments. These agencies decide disputes about the exercise of family rights; have the power, taking into consideration the interests of the child, to deprive access to parents living at a distance; should be, but apparently are not always, a party to custody suits; and may commence actions that would deprive a parent or parents of their parental rights.

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

The court system in Georgia is based on provisions of the Constitution and the Law on the Judiciary. The Constitution states that judicial power is independent and is exercised only by the courts (articles 82-91). The courts are the Supreme Court of Georgia and district and city courts at the lower levels of state administration. Justice is administered in Georgia by a trial of civil disputes and a trial of criminal cases. Lawful penalties are applied to those found guilty of crimes and those found not guilty are acquitted. Declaratory statements are elicited from the court through non-contentious procedures. A number of minor administrative infractions are tried by a single judge and not by a collegiate court.

Except for the courts of arbitration, which have exclusive jurisdiction in commercial disputes between legal entities, no other special courts exist in Georgia. All cases related to implementation of international obligations, as well as civil and family related matters, are handled by regular courts of law. Occasionally, cases of domestic child abduction are brought to the court; however, because of national traditions, such cases are usually resolved by family elders. No 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 very low number of cases of international parental abduction in Georgia may be attributed in large part to the pervasive influence of cultural and religious traditions that have determined the homogenous features of Georgian society and have prevented bi-national marriages. Other reasons include the difficulty of international travel to Georgia and the bureaucratic difficulties related to acquiring a valid travel passport for children.

Because there have been no requests for return of children and no court decisions regarding the problem of parental abduction that have been reported, one may conclude that this issue is not thought to be of great importance in Georgia. However, when enforcement of the Convention is required, some difficulties may arise because of the Ministry of Justice's lack of experience in dealing with family related issues. Because both the Ministry of Justice and the Ministry of Education, which supervises local guardianship and curatorship agencies and whose personnel is 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. Even though the Convention is a direct implementing document and the Georgian Constitution provides priority for and direct application of international legal norms, Georgian courts have relatively little experience in dealing with the application of international legal norms and may

¹⁰ *Georgia: UNICEF Official Comments on Family Related Court Rulings*. Moscow, Interfax in English. Published by FBIS. Document ID: FTS 19990212001179.

have problems with their enforcement.

V. Legal Assistance Programs

There is little available legal assistance in Georgia: *pro bono* work is not practiced by attorneys, and legal aid services are just being established. The best sources of assistance and information are officers of the guardianship agencies. Presently the American Bar Association is involved in bi-lateral projects aimed at creating legal aid clinics in Georgia.

VI. Conclusion

The Hague Convention prescribes basic principles for the resolution of disputes in regard to parental abduction of children. These principles serve as the basis for national legislation in all participating states. For Georgia, the Convention provides a new approach: the rejection of traditional provisions in favor of the recognition and enforcement of foreign decisions. The Convention also emphasizes the importance of fostering cooperation among the Central Authorities in each country in order to facilitate the prompt return of children. The Georgian legal system still has not elaborated national norms that correspond with the provisions of the Convention. However, citizens of the Republic of Georgia already have the right and the possibility of using an internationally recognized mechanism for the return of a child in case of abduction and the guarantee of the protection of the rights of all interested parties if the child was taken to one of the few countries that recognizes Georgia's accession to the Convention.

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