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HUNGARY

HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION

Introduction

The Republic of Hungary is an independent, democratic state based upon the rule of law. The Hague Convention on the Civil Aspects of International Child Abduction of October 25, 1980, was signed by Hungary on January 9, 1986. It was ratified on July 1, 1988 and entered in force on August 1, 1988.¹ The legal framework for the implementation of the international treaties ratified by Hungary is provided in the Constitution.²

Hungary assumed an obligation under article 2 of the Convention to make it and its principles widely known and to disseminate it to the largest possible extent.³ Governmental and Non-Governmental Organizations (NGOs) have made significant efforts in that regard to make the Convention widely known in Hungary, have issued several publications containing the text of the Convention, and have published independent studies about it.⁴

I. Domestic Laws and Regulations Implementing the Hague Convention

Legal regulations pertaining to children were changed considerably by Hungary's accession to the Convention, which was promulgated by Parliament in the Act LXIV of 1991.⁵ This Act regulates under a consolidated structure the obligations related to the support and protection of children. Later, the Child Protection Act (hereinafter, the Act) on the protection of children and on the public guardianship administration was adopted⁶ to ensure that a system be created to provide equal opportunities for every child in need of assistance. Under this system, the activities of the institutions that support or, in certain instances, replace the family, build on each other. The Child Protection Act focuses on the formation of a sustainable system concentrating on family care and places emphasis on the efficient co-operation of municipal, state, and NGOs.

The Hague Convention, among other things, places Hungary under an obligation to return a child who has been wrongfully removed to Hungary. Moreover, the provisions also ensure that assistance can be obtained from the authorities if one's child is wrongfully removed from Hungary to another state that is party to the Hague Convention. In compliance with the provisions, the Central Authority designated

¹ The Hague Convention on International Child Abduction, at http://www.hcch.net/e/members/no_hu.html.

² Constitution of the Hungarian People's Republic, ch. 12, art. 8.

³ *Supra* note 1.

⁴ The Civil Office of the Hungarian National Assembly, at http://www.mkogv.hu/parl_en.htm.

⁵ Act LXIV of 1991 Hungarian Rules of Law in Force, available at http://www.law.harvard.edu/library/ref/ils_ref/annotated/foreignG.php#Hungary (subscription service); also LEXIS at <http://www.lexis.com/xlink?source=intlaw;hulaw> (subscription service).

⁶ Act XXXI of 1997, available at *id.*

for Hungary is the Department of Private International Law (DPIL) within the Ministry of Justice.⁷ The DPIL is primarily responsible for receiving and transmitting communications concerning return of children who have been wrongfully removed.⁸

A. Wrongful Child Abduction

The Act contains a number of conditions that must be met in order for a child to be regarded as wrongfully removed to Hungary:

- Before the wrongful removal, the child must have been habitually resident in a Convention state other than Hungary;
- The parent who wants the child to be returned must have custody of the child under the laws of the country in which the child was habitually resident before the wrongful removal. It is important to be aware that the child may also be regarded as wrongfully removed if the parents have joint custody of the child and one of the parents takes the child to Hungary without the other parent's consent;
- The removal of the child to Hungary must be in breach of the rights of custody in the country in which the child was habitually resident before he was taken to Hungary;
- The parent who wants the child to be returned must have exercised his rights of custody before the wrongful removal. However, this does not mean that the child must necessarily have lived before the wrongful removal with the parent who wants the child to be returned.⁹

The rules on child abduction also apply if a child is wrongfully retained in Hungary. This may be the case if the parents originally agreed that the child was going to Hungary on vacation, and one of the parents refuses to return the child to his habitual residence at the end of the vacation.¹⁰

B. Child Abduction Proceedings

A parent who believes that his child has been wrongfully removed to Hungary usually institutes the abduction proceedings. This is done by applying to the Central Authority in his country of habitual residence.¹¹ This Central Authority transmits the application for return of the child to the DPIL. The application must be accompanied by various documents, such as the marriage certificate, separation or divorce documents, a decision relating to custody of the child, the child's birth certificate, and a photo of the child. The application must also be translated into Hungarian.¹²

⁷ Hague Conference on Private International Law at http://www.hcch.net/e/members/no_hu.html. See also Igazságügyi Minisztérium at <http://www.im.hu>.

⁸ *Id.* at <http://www.im.hu>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

When the DPIL receives an application for the return of a child, the application is sent to the court where the child is staying in Hungary. If it is not possible to locate the child, the DPIL will ask for the assistance of local law enforcement in finding the child. It is up to the court to decide whether it is a case of child abduction. During the proceedings, the DPIL will often handle the contact between the foreign Central Authority and the court.¹³

Decisions regarding abduction and enforcement of child custody decisions in Hungary are initially brought before the Supreme Court of the Republic of Hungary [hereinafter the Court].¹⁴ In child abduction proceedings decisions on custody of the child are not determined. The point of applying the Hague Convention is to ensure that custody decisions are made in the state where the child was habitually resident before the removal.¹⁵

If the Court decides that the child has been wrongfully removed, the child will be returned immediately to the State from which he was wrongfully removed.¹⁶ However, the Court may, in certain exceptional circumstances, decide that the child is not to be returned to the State where he was living before the wrongful removal. This is the case if:

- the application is received after more than 1 year has elapsed since the wrongful removal,
- there is a grave risk that the child's return would expose him to harm,
- the child is over the age of 14 and objects to being returned, or
- the return would not be permitted by the fundamental principles of Hungary relating to the protection of human rights and fundamental freedoms.¹⁷

II. Domestic Laws Regarding Child Abduction and Parental Visitation

A. Child Abduction

In Hungarian law, a child is a person below the age of 18 years, unless married;¹⁸ however, if a person is over the age of 16, the guardianship authority¹⁹ may issue a marriage license, which also means that adulthood has been attained.²⁰ Hungarian criminal law has penalized the crime of parental

¹³ *Id.*

¹⁴ Supreme Court of the Republic of Hungary, available at <http://www.ib.hu>.

¹⁵ *Supra* note 6.

¹⁶ *Supra* note 7.

¹⁷ *Supra* note 6. See also *Act IV of 1952* on marriage, family and custody in unified structure with *Decree-Law 23 of 1952* on its entering into force and its enforcement as well as with *Decree 7/1999 (VI. 21.)* issued by the Ministry of Justice concerning its enforcement and decree *4/2002 (VI. 14.)* issued by the Ministry of Justice, available at <http://www.im.hu> and *South Eastern European Women's Initiative* at <http://www.seeline-project.net/FamilyLaw/HungaryFL.htm>.

¹⁸ *Supra* note 5, art. 1, The Family Act.

¹⁹ *Id.*

²⁰ *Supra* note 5, art. 15, Decree Law on register of marriages, procedures of marriages and taking names.

kidnapping.²¹ Additionally, it penalizes the crimes of violation of personal freedom and of smuggling people. The Ministry of Justice and the DPIL are primarily responsible for prosecuting the crimes of parental kidnapping, dissolving the family status, and illicitly transferring of children abroad.²²

B. Parental Visitation

Under the Civil Procedure Code, in case of an annulment or a dissolution of marriage, the court must rule on the placement and maintenance of children who are under the legal age, even if there is no claim to this effect.²³ As a general rule, parents decide on the placement of their child. In the absence of agreement by the parents, the court decides the issue and places the child with the parent who can best ensure the child's physical, intellectual, and moral development. If placement with either of the parents endangers the child's best interests, the court can place him with other persons.²⁴

If the child's custody was granted to one of the parents, either due to the parents' agreement or court's ruling, the custody is exercised by that parent, except if the court orders joint custody at the request of the parents or approved the parents' agreement to this effect.²⁵

After the child's placement, separated parents exercise their rights jointly on major issues that have a bearing on the child's upbringing, even in the lack of joint custody, unless the custody rights of the separated parent are limited, discontinued, or abolished by the court.²⁶ These issues include: deciding on or changing the name of a child, designation of residence, and the choice of school and university.²⁷

The court can authorize the non custodial parent to exercise the rights of property administration and legal representation in the child's property affairs, and, if the child's interests so require, can limit or even withdraw custody rights to which the parent would otherwise be entitled.²⁸

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

There are no specific family courts in the Hungarian legal system. Under the Civil Procedure Act,²⁹ proceedings concerning the invalidity of marriage; the establishment of its validity, existence, or non-existence; and divorce and trials concerning paternity and origin, as well those concerning the

²¹ *Supra* note 5, art. 11 of the Criminal Code.

²² *Supra* note 7.

²³ Code of Civil Procedures, chapters XV and XV (2001), art 3.

²⁴ *Supra* note 17.

²⁵ *Supra* note 1, art. 67.

²⁶ *Supra* note 1; *see also* Act XXX1 of 1997.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Act III of 1999* on Code of Civil Procedures, chapters XV and XVI, available at <http://www.seeline-project.net/FamilyLaw/HungaryFL.htm>.

dissolution of parental supervision, are considered special procedures.³⁰ As previously stated, decisions regarding the enforcement of decisions in child abduction proceedings may be brought before the Supreme Court of Hungary.³¹ In child abduction proceedings no decision is made on who is to have the custody of the child in future since, in compliance with the Convention, the primary focus is to allow any decision concerning the custody of the child to be made in the state where the child was habitually resident before the wrongful removal. Consequently, no custody decisions can be made by Hungarian courts in child abduction proceedings.³²

IV. Law Enforcement System

Under the Constitution, the courts are responsible for the administration of justice with the Supreme Court exercising control over the operation and judicial procedure of all other courts.³³

In the field of police cooperation and the fight against child abduction, amendments to the criminal law³⁴ that aim at aligning Hungarian legislation with regard to the trafficking of human beings and organized criminal groups, entered into force in April 2002.³⁵ In anticipation of the conclusion of a cooperation agreement with Europol in April 2002,³⁶ a specialized attaché of the Ministry of the Justice was posted to the Hague to act as a liaison officer when the agreement is concluded.³⁷

Hungary has made further progress in aligning itself with the EU legislative requirements in the field of criminal matters. Amendments to the Criminal Procedural Code on issues, such as extradition and sentenced persons, entered into force in June 2002.³⁸

V. Legal Assistance Program and Information Resources

Currently, Hungary relies upon NGOs to assist the courts and law enforcement in the realm of child abduction. The Office for the Program of Protecting the Rights of Women and Children³⁹ is the largest private, government-recognized organization whose primary focus is on providing efficient protection of women's and children's rights in legal procedures.⁴⁰ Working in cooperation with the

³⁰ *Id.*

³¹ *Supra* note 7.

³² *Supra* note 1, ch. X, art. 50.

³³ *Supra* note 1, ch. X., art. 45.

³⁴ *Supra* note 7.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ See Extradition and Surrender Procedures Across the EU, at http://europa.eu.int/comm/justice_home/fsj/criminal/extradition/wai/fsj_criminal_extradition_en.htm.

³⁹ See Child Focus at http://www.childfocus.be/1/html/daphne_hungary_noes.htm

⁴⁰ *Id.*

Ministry of Health, Social and Family Affairs⁴¹ and the International Legal Department of the Ministry of Justice, police, and judicial authorities, the Office handles national and international parental abduction petitions and provides information, legal representation, and mediation assistance for the custodial parent, independent of his citizenship, in the processing of his case with the judicial authorities⁴²

VI. Conclusion

Hungary continues to meet the conditions specified in the Hague Convention and has made considerable progress in the implementation of reforms to combat international child abduction.

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⁴¹ *Id.* See also *Supra* note 7, and The Ministry of Health, Social and Family Affairs at http://www.eszcsn.hu/eszcsn/eszcsn_angol.head.page?nodeid=18.

⁴² *Supra* note 7.