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**LUXEMBOURG**

**HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION**

**Introduction**

The Hague Convention on the Civil Aspects of International Child Abduction was signed by the Grand-Duchy of Luxembourg on December 18, 1984. It was ratified on October 8, 1986, with the reservation according to article 42 of the Convention, that the Grand-Duchy of Luxembourg 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 court proceedings, except insofar as those costs are covered by the Luxembourg system of legal aid and advice. The Convention entered in force for the Grand-Duchy on January 1, 1987.<sup>1</sup>

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

In accordance with article 6, paragraph 1, the Grand-Duchy has designated as the Central Authority the State Procurator-General, Bâtiment de Justice, 1450 Luxembourg, 12, Côte d'Eich.

According to the Constitution of the Grand-Duchy of Luxembourg,<sup>2</sup> the Convention became part of the legal system of the Grand-Duchy upon its approval by Parliament, its ratification, and its publication. The courts will apply it whenever called upon to do so.

**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 is the District court (Tribunal d'arrondissement) where the child resides or is found, and this court is also competent in proceedings under the Hague Convention. The proceedings are governed by the provisions of the Code of Civil Procedure.<sup>3</sup>

Child abduction may also be prosecuted under articles 368-et. sea (Abduction of Minors) of the Criminal Code.<sup>4</sup> Abduction of a minor is punishable by imprisonment from 1 to 5 years and a fine from €251 to € 5,000 (US\$316 to \$6,332). For abduction of a minor below the age of 16, the punishment is imprisonment from 5 to 10 years. If a minor younger than age 16 consented and voluntarily followed the abductor, the punishment is imprisonment from 6 months to 3 years and a fine from €251 to €2,000.

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<sup>1</sup> Law of May 16, 1986, on the Approval of the Convention, MEMORIAL A-41, May 24, 1986, p. 1379, rectified in MEMORIAL A-63, Aug. 20, 1986, p.1808, further rectified in MEMORIAL A-79, Oct. 6, 1986, p. 2064.

<sup>2</sup> Constitution of the Grand-Duchy of Luxembourg of Oct. 17, 1868, consolidated text of June 2, 1999, MEMORIAL A-63, June 8, 1999, p.1401, art. 37. Central Service of Legislation, 2001.

<sup>3</sup> New Code of Civil Procedure, Law of Aug. 11, 1996, Decree of Aug. 3, 1998, MEMORIAL A-64, Aug. 17, 1998, p.1106, arts.1108-1116. Consolidated text of Nov. 1, 2003.

<sup>4</sup> Criminal Code, Law of June 16, 1879, consolidated text of Nov. 1, 2003, Ministry of Justice, Luxembourg,2003.

If the abduction is committed by the father, mother or others to take the minor from the person who has custody or in breach of a judicial order, the punishment is imprisonment from 8 days to 2 years and/or a fine from € 251 to €2,000.

### **B. Parental Visitation**

For a decision relating to parental visitation, the competent court will be the District court where the child resides or is found. This court will also be competent in proceedings under the Hague Convention. The proceedings are governed by provisions of the Code of Civil Procedure.<sup>5</sup>

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

General trial courts in civil matters are the District courts (Tribunaux d'arrondissement), one in each territorial district. Appeal against their decisions goes to the Court of Appeal (Cour d'appel), which also has specified trial jurisdiction. Decisions of the Court of Appeal, as well as those of the District courts, are subject to annulment by the Court of Cassation (Cour de cassation) for breach of law. Trial courts in child-return proceedings, visitation, and enforcement of related orders under the domestic Luxembourg law, as well under the Hague Convention, are the District courts.<sup>6</sup> In criminal matters, the structure is identical.

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

The District courts enforce their decisions. Decisions not subject to further remedy are immediately enforceable. This is done by court bailiffs and the police.

### **V. Legal Assistance Programs**

The office of the State Procurator-General is entrusted with legal assistance under the Hague Convention. Further assistance can be obtained from the court in legal proceedings.<sup>7</sup>

### **VI. Conclusion**

The Grand-Duchy of Luxembourg is in full compliance with the Hague Convention. The powers under the Convention are exercised by the Central Authority, the State Procurator-General, and the pertinent courts.

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<sup>5</sup> *Supra* note 3.

<sup>6</sup> *Id.*

<sup>7</sup> Law of Aug. 18, 1995, on Legal Assistance, MEMORIAL A-81, Oct. 3, 1995, p. 1913, and Regulation of Sept. 18, 1995, on Legal Assistance, *id.* at 1916.