

LAW LIBRARY OF CONGRESS**REPUBLIC OF MACEDONIA****HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION****Introduction**

Republic of Macedonia ratified the Hague Convention on International Child Abduction on December 1, 1991. Macedonia is one of the former republics of the Federal Republic of Yugoslavia that gained its independence from Yugoslavia over a decade ago. Macedonia does not have a law that would specifically regulate the applicability of the Hague Convention to the Republic of Macedonia and establish procedures that need to be followed by the government authorities, as well as Macedonian citizens, in order to apply the Convention domestically. Therefore, in order to determine how the Convention could be applied to Macedonia, one has to look at the Macedonian Constitution, as well as other pertinent laws.

I. Domestic Laws And Regulations Implementing The Hague Convention

As in many other European Constitutions,¹ the Constitution of the Republic of Macedonia contains a provision that states that international obligations entered into by Macedonia have universal domestic application and are a part of the domestic legal system. International treaties that Macedonia entered into are equal to Constitutional laws and have a superior status in the domestic legal system. In other words, international treaties that have been ratified by Macedonia are self-executing and cannot be repudiated or altered by an internal Macedonian law. Any internal law that does not comply with international obligations ratified by Macedonia is invalid. This is a legal principal that is fundamentally different from the legal doctrine that dictates that the newer law would prevail (a doctrine followed by, e.g., the United States). However, in order to attain the status of the superior or Constitutional law, an international obligation in question should comply with the requirements of the Macedonian Constitution.² Given the fact that few Macedonian laws directly address issues regulated by the Convention, the provisions of the Convention should be regarded as the internal law of the Republic of Macedonia and construed as such. The Convention could be relied upon in any legal action commenced in Macedonia with regard to child abduction and other related issues.

As a tribute to its Socialist past, the Constitution of the Republic of Macedonia contains a provision that states that the state takes particular care and protection of the family.³ It is stated in the Constitution that Macedonian laws regulate legal relationships in the family and marriage. The Constitution of the Republic of Macedonia determines the rights and duties of the parents in caring for the upbringing of their children. According to the Law on the Family, parenthood could be established by birth or adoption. Under the Macedonian laws, parents have a duty to care for the upbringing, care, health, preparation for independent life and work, education, training and development of work capabilities of their children.

The Constitution also provides for the special assistance from the state to the parentless children.

¹ KONSTITUTSIA ROSSIISKOI FEDERATSII [Constitution of the Russian Federation] [Konst. RF (1993), translated in VLADIMIR V. BELYAKOV & WALTER J. RAYMOND, CONSTITUTION OF THE RUSSIAN FEDERATION (1994).

² Macedonian Constitution, art. 118, available at <http://mlrc.org.mk/list.htm>.

³ *Id.* art. 40.

In accordance with the principle that both parents are responsible for the raising and development of their children, the parents have equal rights and duties in regard to their children. If one of the parents is deceased or unknown, or his parental rights were taken away, the parental right is exercised by the other. While exercising parental rights, parents have to act in conformity with the needs and interests of the children. In case of disagreement between the parents in the exercise of the parental right, the Center for Social Work decides the issue.

The principle of responsibility of both parents for their children is reflected in the proceedings for marital disputes. At the reconciliation hearing, as well as during the divorce proceedings, when the marital partners have common minor children, the court is obligated to cooperate with the social work organs in reaching an agreement for maintaining, educating, and supporting the children. When a marriage is dissolved by mutual agreement and there are minor children, an agreement on the manner of exercising the parental rights is submitted for the records of the competent court. When assessing the agreement, the court is obliged to obtain an opinion from the competent social work organ, and if it determines that the agreement is contrary to the interests of the children, it will refuse to grant the divorce.

The Law on the Family foresees the possibility, if this is required by the interests of the child, for the parents to entrust the child to a third person or to place him in an appropriate institution. If the parents, or the parent, who has custody of the child, are absent from their residence for a long period of time for justified reasons and they do not take the children along, the children may be entrusted to another person, provided that the Center for Social Work previously approves such an accommodation.

A. Return Requested From Abroad

Under the Law on Internal Affairs of Macedonia, the Ministry of Internal Affairs will be the main point of contact for a foreign person or government from another country applying for the return of a minor. As described in the pertinent provisions of the law, the Ministry will cooperate and exchange information with foreign police and administrative bodies, as well as organizations from other countries and international organizations.⁴

B. Return Requested From Macedonia

When a return is requested from Macedonia, pertinent provisions of the Law on General Administrative Procedures will apply.⁵ This Law states that when legal assistance is being asked from foreign agencies, Macedonia is to follow the provisions of international agreements that are valid for the particular situation.

II. Domestic Laws Regarding Child Abduction And Parental Visitation

Macedonian laws provide for parental visitation and alimony after the divorce of the parents of a child.⁶ The typical issues that arise after the divorce are the physical custody of a child, parent's ability to maintain relations with a child, and the support that a child will need to receive after the parents are divorced. Under Macedonian law, the court order will state who should get legal custody over a child

⁴ Law on Internal Affairs, art. 44, available at <http://mlrc.org.mk/list.htm>.

⁵ Law on General Administrative Procedure, art. 38(1), available at <http://mlrc.org.mk/list.htm>.

⁶ Family Law Report, available at <http://www.seeline-project.net/FamilyLaw/YugoslaviaFL.htm#4.5>.

after the divorce has been granted. The courts must try to consider the best interest of the child (best interest rule) in decisions concerning custody. Macedonian courts are authorized to make one of the following decisions: one of the parents could be awarded child custody; if there are several children, siblings may be separated and custody will be given to both parents; or parental rights may be terminated and children will be transferred to a third party (e.g., foster parents). However, no matter what decision is made by the court, the court must apply the “best-interest” test in every case. Court orders awarding parental custody are not final and could later be challenged and reversed. The request to terminate a court order may come from either parent or the Center for Social Welfare.

Macedonian law also states that a parent who was not awarded custody of a child still has a right to maintain a relationship with his children. Generally, it is up to the former spouses to set up conditions for visitation. However, if they fail to reach an agreement, the court would make an appropriate decision. Under Macedonian laws, parents also have a duty to provide support to their children after the divorce. The court must decide on the level of support, particularly in regulating the duties of the parent who didn’t get custody.

When issuing the divorce decree, the court shall decide on the maintenance, education, and support of the children. If the parents have not reached an agreement on this, or if their agreement does not conform to the interests of the children, the court will obtain an opinion from the Center for Social Work and investigate all circumstances. The court will decide whether the children will remain with one parent, some will remain with the mother and some with the father, or all of them will be entrusted to a third person or institution. The parent who does not win custody has the right to maintain personal relations with them, unless the court determines otherwise, considering the interests of the children.

The Criminal Code sanctions the maltreatment and neglect of children in several articles. Murdering a child at birth (article 127) is prohibited, as is causing a child to commit suicide and assisting in suicide (when this act is done to an adolescent) (article 128 (2)); kidnapping (when this act is done to an adolescent) (article 141 (2)); sexually attacking a child (article 188); raping a child through the abuse of position (when this act is done to an adolescent) (article 189 (2)); seducing, prostituting, and permitting sexual acts to transpire (article 192); cohabitating with an adolescent person (article 197); abducting an adolescent (article 198); changing a family condition (article 199); neglecting and mistreating an adolescent (article 201); neglecting obligations to support children (article 202); neglecting family obligations (article 203); having incestuous relations (article 194); serving alcoholic drinks to an adolescent (article 204); intermediating prostitution (if it is done to an adolescent female person) (article 191); showing pornographic material (article 193); and abandoning a helpless child (article 200).

The Criminal Code forbids the sale, trade, and kidnapping of persons, including minors. Forcing an adolescent into a slave relationship or transporting him as a slave (article 418) is punished with at a minimum of 5 years in prison. Anyone who unlawfully transfers other people across the border of the Republic of Macedonia or who (out of self-interest) assists another person in unlawfully crossing the border will be punished with 6 months to 5 years of imprisonment (article 402). If an adolescent is abducted (article 141), the perpetrator will be punished with at least 3 years in prison. Article 198 of the Criminal Code prohibits taking an adolescent away from his parents, guardian, or the institution or a person to whom he has been entrusted; preventing him from being with a person who has legal custody over him; or obstructing the implementation of a decision regarding custody. The punishment for these crimes is 1 year of in prison. If the act has been carried out from self-interest or from other indecent motives or with the use of force, threats, or lies, or if because of this the health, upbringing, support, or education of the adolescent is seriously threatened, the perpetrator will be punished by 3 months to 5 years in prison.

III. Court System And Structure – Courts Handling The Hague Convention

The Law on Courts provides the following court system. Macedonian judiciary is composed of 27 Basic Courts, 3 Appellate Courts, a Supreme Court, and a Constitutional Court. No specialized courts currently exist. By July 1996, over 660 judges had been appointed to the bench under the Law on Courts. The signing of the Stabilization and Association Agreement had a positive impact on the improvement of the level of harmonization of current legislation with EU legislation. Articles 68 and 74 of the SAA attach particular importance to the reinforcement of law enforcement institutions and institutions of justice and single out the improvement of the effectiveness and training of the legal professions as an area for cooperation. Apart from the need to train judges and prosecutors in performing their functions, it will also be necessary to train new and experienced judges and prosecutors, with respect to new laws, Constitutional principles and international agreements signed and ratified by the former Yugoslav Republic of Macedonia.

IV. Law Enforcement System

Under the Convention, a member state should designate a Central Authority to discharge the duties that are imposed on the state by the Convention. In 1997, Republic of Macedonia created an office of the Public Attorney (Ombudsman) and the Department for Protection of Children's Rights. The Public Attorney is a Constitutional institution authorized to protect the Constitutional and legal rights of the citizens, when these rights are violated by the state administration bodies and other bodies and organizations with public competences.⁷ The Department For Protection Of Children's Rights is functioning as part of this institution. Law on the Public Attorney prescribes the competence and the functioning of the Public Attorney office.

The Department For Protection Of Children's Rights undertakes its activities in accordance with the competencies and functioning of the Public Attorney prescribed by the Law. The Department For Protection Of Children's Rights primarily works on specific cases for protection of the children's rights following a submitted complaint. A violation of a right is most often addressed through a recommendation, submitted to the competent bodies for the adequate solution of the problem. The Department is also continuously following the legislation and its implementation; it submits proposals for changes and amendments to the laws and better implementation of the existing legislation and the Convention on the Rights of the Child. It is continuously monitoring the status of the rights of children through regular visits and direct contact with the children, and it submits proposals for the improvement of their position to the competent bodies. The Department also monitors the rights of children with special needs in special institutions through regular visits and direct contact.

If the competent bodies do not act on the requests, recommendations, suggestions, or other measures undertaken in accordance with the Law, then the Government of the Republic of Macedonia is informed, as is the Parliament of the Republic of Macedonia through a special report. The Department can also publicly declare that the rights of children are being violated by the competent state bodies in order to put pressure to respect the rights of children. At least once a year a report is submitted to the Parliament of the Republic of Macedonia on the work of the Public Attorney.

Following the initiative of the Department, a new Law on Child Protection was passed. This Law states that persons up to 18 years of age are considered children, and they enjoy special protection guaranteed by law by the state (persons up to 18 years of age) in accordance with the Convention on the Rights of the Child. The Department has also proposed opening a shelter for street children who usually

⁷ Law on the Public Attorney (Ombudsman), art. 2, available at http://www.omineurope.info/uk/getetz_macedonia_uk.htm.

have parents, but are abused by their parents. The Department also succeeded in establishing a shelter for the victims of human trafficking, a crime which involves a number of children. This shelter was formed under the Ministry of Internal Affairs and is already functioning.

The Parliament introduced the new Ombudsperson Law⁸ during the session of September 10, 2003, implementing Amendment XI of the Constitution. Under the new legislative solutions, the jurisdiction and responsibilities of the Ombudsperson are significantly increased to include:

- the possibility to undertake actions and measures for protection against unlawful postponement of court procedures or irresponsible flagrant performance of court duties
- the possibility, at any given time, without prior notification or consent, to enter the premises of the state authorities or other institutions with public authorization and carry out direct surveying of the projects under their jurisdiction; this also applies to the so called "closed" institutions (where the persons have legally limited freedom of movement), as well as to freely interview such persons
- the possibility to have immediate audience with the highest state officials
- the possibility to have access to the most confidential information (the institutions have the responsibility to supply all the evidence, data, and information, regardless of the degree of confidentiality)
- the possibility to initiate legislative changes and amendments for the authorized applicants and to make suggestions to the Constitutional Court to examine the accordance of the laws and other regulations and legislative acts with the Constitution, etc.

V. Legal Assistance Programs

The Office of the Ombudsman works with the Center for Social Work, which supervises the exercise of parental rights and makes decisions on the exercise of parental right. In order to provide financial security for the child, the right to a child supplement has been foreseen when the income of the parent is under a specific level. According to the Law on the Family, either the court or the Center may take a child away from the custodial parent(s) if the child is neglected or a serious threat exists for its proper development and upbringing. An appeal can be lodged against such rulings to the Ministry of Labor and Social Policy. If the Ministry confirms the ruling, the person who has a legal interest has the right to initiate an administrative dispute before the competent court. In the cases when a parent abuses his parental right or neglects his parental duties, the court can take away the parental right from that parent, with a ruling in an out-of-court procedure, after obtaining an opinion from the Center for Social Work.

VI. Conclusion

In accordance with the Law on the Public Attorney, the state administration bodies and other bodies and organizations with public authorities are obliged to act upon the requests of the Public Attorney and the Department For Protection Of Children's Rights and to implement their recommendations, opinions and suggestions in their actions. However, there is still a lack of complete awareness about the role and function of the Public Attorney and the Department For Protection Of Children's Rights, because

⁸Official Gazette of the Republic of Macedonia 60/03, available at http://mhc.org.mk/eng/a_izveshtai/a_2003-09mi.htm.

certain competent state administration bodies do not act upon Department's requests, suggestions, and recommendations. In certain cases, the difficulties for a consistent implementation of children's rights are comprised in the limited material resources of the state, due to which the Department is not able undertake any specific measures except to request that the competent bodies give priority to children's rights when allocating and using their resources.

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