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MALTA

HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION

I. Domestic Laws and Regulations Implementing the Hague Convention

The Republic of Malta consists of six small islands located in the Mediterranean Sea between Sicily and Libya. It is one of the most densely populated countries in the world. The Hague Convention on the Civil Aspects of Child Abduction¹ was ratified in Malta by the Child Abduction and Custody Act 1999,² which entered into force on August 1, 2000. The Convention came into force between Malta and the United States of America on February 1, 2003.

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

The Maltese Criminal Code³ provides for two offenses of abduction. The first offense consists of cases where there is violence and the intent to abuse or marry the abducted person.⁴ The second offense addresses the abduction of minors under 18 years of age where there is intent to traffic them to exploit them for the production of goods or provision of services.⁵ In cases of abduction, if there has been no impact on public order or any instance of public violence, it appears that criminal proceedings can only be instituted upon the complaint of a private party.⁶ As such, it appears that one parent can begin proceedings against the other provided a complaint is lodged with the police.⁷

To prevent child abduction from occurring, the Maltese Code of Organization and Civil Procedure⁸ provides that a warrant of prohibitory injunction may be issued to prevent a child being taken out of Malta. Once the warrant has been filed, it is distributed to the Comptroller of Customs, the Chairman of the Malta International Airport, the Principal Passports office, and the Commissioner of Police. The warrant remains in force until revoked by a court order. It appears that the courts can also order the confiscation of the passport of a potential child abductor.⁹

¹ Hereinafter The Convention.

² Child Abduction and Custody Act 1999, c. 410, Act XIII of 1999, as amended.

³ The Criminal Code, c. 9.

⁴ *Id.* § 199.

⁵ *Id.*

⁶ *Id.* §§ 543 and 544.

⁷ *Id.* and *see also*: Malta, Questionnaire on Preventive Measures, at ftp://ftp.hcch.net/doc/prevmeas_mt.doc. (Last accessed Jan.7, 2004).

⁸ The Code of Organization and Civil Procedure, c. 12.

⁹ Malta, *supra* note 7.

B. Parental Visitation

In Malta, it is considered important that a parent with visitation rights be allowed to exercise them. To ensure this, if the parent with custody of the child intends to relocate, they are required to notify the other parent of that intent. Once the parent has been notified of the custodial parent's intent to relocate, they have a limited time in which they can contest the request. Any decisions made on this issue are always made in the best interests of the child.

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

A. Family Proceedings Generally

The Child Abduction and Custody Act 1999 provides that the First Hall of the Civil Court has the jurisdiction to hear cases concerning child abduction which have the right of appeal to the Court of Appeal.¹⁰ If he sees fit, the Minister of Justice can make an order allowing any other court to have jurisdiction to hear applications under the Convention. Orders may be issued by the court, both ex parte and out of hours, to safeguard the interests of the child.

B. Under the Convention

When an application has been made under the Convention to the First Hall of the Civil Court, the court may give interim directions to ensure that the welfare of the child is protected or to prevent any “change in the circumstances relevant to the determination of the application.”¹¹ The court has the authority to make a declaration that the removal of a child from, or retention of a child outside, Malta is wrongful.¹²

To prevent the spirit of the Convention from being frustrated by any contrary custody orders issued in Malta, the Child Abduction and Custody Act 1999 provides that any custody order that is inconsistent with a custody decision or order for the return of an abducted child will cease to have effect.¹³ Furthermore, “a custody decision given in or entitled to recognition in Malta is not a ground of the Maltese Court to refuse to return a child, although the Maltese Court may take account of the reasons for that decision.”¹⁴

¹⁰ *Supra* note 2, § 6.

¹¹ Child Abduction and Custody Act 1999, c 410, Act XIII of 1999, as amended, § 7.

¹² *Id.* § 10.

¹³ *Id.* § 27.

¹⁴ *Supra* note 9.

IV. Law Enforcement System

The Central Authority in Malta is the Director of the Department of Family Welfare.¹⁵ Applications made under the Convention are received and processed by the Central Authority and filed to the competent court by the Office of the Attorney General. A form for applications under the Convention is available from the Department of Family Welfare¹⁶ which requests information about:

- the identity of the child and his parents
- the identity of the applicant information
- the place where the child is thought to be, including any details about the abductor
- the date and circumstances of the wrongful removal or retention
- the factual or legal grounds justifying the request
- any civil proceedings in progress

If the child has been removed from Malta during custody proceedings the court can, upon an application for the return of the child, declare the removal to be unlawful if “it is satisfied that the applicant has an interest in the matter and that the child has been taken from or sent or kept out of Malta without the consent of the person having the right to determine the child’s place of residence.”¹⁷

V. Legal Assistance Programs

Malta has made a reservation as mentioned in article 26 of the Convention that the costs of applications under the Convention are not provided for by any authority in Malta.

VI. Conclusion

Overall, Malta has a variety of preventive measures in place to help stop the abduction of children from within its territory. Its robust notification procedure ensures that if an abduction has occurred, the relevant individuals at port entry and exit points are informed.

The overriding principle when dealing with matter affecting children appears to be that whatever is in the best interest of the child will prevail.

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¹⁵ Child Abduction and Custody Act 1999, c 410, Act XIII of 1999, as amended, § 5. The contact information of the director is: Director, Department of Family Welfare, Social Work Centre, St. Joseph High Road, Santa Venera, Malta. Tel: + (356) 2144 3415 3415/2144 1311. Fax: + (356) 2149 0468.

¹⁶ Department of Family Welfare, available at http://www.msp.gov.mt/documents/family/child_abduction.pdf (last accessed Jan. 7, 2004).

¹⁷ *Supra* note 9.