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MONACO

HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION

Introduction

The 1980 Hague Convention on the Civil Aspects of International Child Abduction [hereinafter the Convention] was incorporated into Monegasque domestic law by Ordinance No. 10-767 of January 7, 1993,¹ with an effective date of February 1, 1993. Monaco, which was not a member of the Hague Convention Conference on Private International Law, acceded to the Convention in accordance with article 38.² The instruments of accession were deposited on November 12, 1992, with the Ministry of Foreign Affairs of the Kingdom of the Netherlands. The accession has effect only between Monaco and the contracting states that have accepted the accession. The accession of Monaco was accepted by the United States on March 5, 1993, and the Convention became effective between the two countries on June 1, 1993.³ The United States had no case pending with Monaco as of June 2003.⁴

I. Domestic Laws and Regulations Implementing the Hague Convention

Article 2 of the ordinance⁵ designates the *Direction des Services Judiciaires* as the Central Authority.⁶ Because of the size of its territory and the uniqueness of its administration and justice, Monegasque authorities perceived the designation of a Central Authority as less indispensable than larger nations where the petitioner is more likely to face problems regarding the courts' territorial competence. However, the Central Authority still has its importance, as it will be the first to receive the application for return.⁷ Upon receipt, the Central Authority will check that the application satisfies Convention criteria and is accompanied by the proper documentation. At this time, all measures necessary to ensure the return of the child or the effective exercise of visitation rights will be taken. However, these measures will be

¹ JOURNAL DE MONACO [Official Gazette of Monaco], Jan. 22, 1993, at 90.

² The Convention was open for signature to the state members of the Hague Conference on Private International Law. However, Article 38 provides that any other state may accede to the convention by depositing the instruments of accession with the Ministry of Foreign Affairs of the Netherlands.

³ Article 38 provides that the Convention enters into force as between the acceding state and the state that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

⁴ http://travel.state.gov/2003_June_Hague_attach.html.

⁵ *Supra* note 1.

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⁷ Letter of April 26, 1999, from the Director of The *Direction des Services Judiciaires* in response to an inquiry from the Law Library of Congress.

decided on a case-by-case basis and will depend on the specific necessities of each instance since no implementing measures to the Convention have been taken and no specific procedure has been set forth.⁸

The *Direction des Services Judiciaires* felt that domestic laws already in place offer all the necessary tools for the implementation of the Convention. In addition to the investigations which can be carried out by the *Services de la Sureté Publique* (Public Safety Services), one may resort to the procedure of educational assistance before a specialized judge, the *juge tutélaire*, who deals with family problems, including guardianship of children. The Code of Civil Procedure contains provisions covering legal aid, and the Penal Code contains provisions covering parental child abduction and withholding access rights from a person entitled to such rights.⁹ These provisions are examined in greater detail below.

II. Domestic Laws Regarding Child Abduction and Parental Visitation

A. Child Abduction

The abduction of a child is punishable by up to 20 years in prison in certain cases.¹⁰ In addition, refusal by the person in charge of a child to present the child to the person(s) entitled to claim him is punishable by a minimum imprisonment of 5 years and a maximum imprisonment of 10 years.¹¹

Furthermore, when the custody of a child has been awarded by a court decision, withholding access rights from the person entitled to these rights, or abduction of the child from the person who has custody (even without fraud or violence by the father, mother or any other person), is punishable by imprisonment up to 1 year, a fine between €2250 and €9000 (US\$2,825 and \$11,300), or both.¹²

B. Parental Visitation

In case of divorce or separation, the judge determines which parent will be granted custody. The judge has full authority to decide visitation rights and to set the contribution of each parent for the education and support of their children. The Code Civil further states that, irrespective of the judge's decision on custody, the father and mother maintain the right to monitor the education of the children and their support. They must contribute to their children's support according to their means.¹³

The best interests of the child are the prime consideration in all decisions affecting children. The judge may use inquiries by social welfare agencies, expert psychological reports, and the views of the child when allowed by the law.

⁸ *Id.*

⁹ *Id.*

¹⁰ CODE PÉNAL (C. PÉN) arts. 280, 290 and 292.

¹¹ *Id.* art. 289.

¹² *Id.* art. 294.

¹³ CODE CIVIL (C. CIV.) art. 206-20.

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

The lowest tribunal in the system is that of the *Juge de Paix* (Justice of the Peace). The court, in which the judge sits alone, hears minor civil (up to €4600) and criminal cases.¹⁴

The next court in the hierarchy is the *Tribunal de Premiere Instance* (Court of First Instance). It is the court of general competence.¹⁵ This court functions with a panel of judges presided over by the President. The court hears civil, criminal, commercial, and administrative cases. The President of the Court of First Instance presides over emergency procedures known as *référé*s. The president may order *en référé* any provisional measures whose aim is to prevent imminent harm or to end manifestly illegal behavior.¹⁶

The *juge tutélaire* is a judge from the Court of First Instance, specialized in family matters.¹⁷ Under the educational assistance procedure, this judge has exclusive competence to take all necessary measures to protect the well-being of children whose health, security, morality or education is threatened. He may order any type of investigation he feels is necessary to help him reach his decision. Petitions before the *juge tutélaire* may be filed by the mother, father, legal guardian of the child, the minor himself or the *procureur général* (general prosecutor). In addition, in case of divorce or separation, he has full authority to modify a custody order if a change in circumstances has occurred: for example, to organize visitations rights and to modify the amount of alimony set for the child.¹⁸

Appeals of decisions of the Court of First Instance and of the *juge tutélaire* lie in the *Cour d'Appel* (Court of Appeals).¹⁹ The Court of Appeals sits in panel with a minimum of three members. It re-examines the facts and the legal points of a case. The court reviews the files as presented by the lower court and orders additional investigation if necessary.

The supreme judicial court is the *Cour de Révision*. It decides whether the rule of law has been correctly interpreted and applied by the Court of Appeals.²⁰ In practice, the Monegasque judiciary consists of French judges detached to the Monegasque courts. No court decision concerning the application of the Convention could be found as Monegasque court reports are nearly inaccessible.²¹

¹⁴ CODE DE PROCEDURE CIVILE (C. PRO. CIV.), arts.6 to 19.

¹⁵ *Id.* art. 21.

¹⁶ *Id.* arts. 20 and 414 - 421.

¹⁷ *Id.* art. 832.

¹⁸ C. CIV. art. 317 and following & C. PRO. CIV. arts. 833 and following.

¹⁹ C. PRO. CIV. art. 22.

²⁰ *Id.* art. 23.

²¹ Thomas H. Reynolds & Arturo A. Flores, FOREIGN LAW, CURRENT SOURCES OF CODES AND LEGISLATION IN JURISDICTIONS OF THE WORLD, Vol. II A, Monaco.

IV. Law Enforcement System

To be enforceable, a judgment must contain the *formule exécutoire* (enforcement formula), and it must have been served on the defendant.²² The enforcement formula requires, in the name of the Prince, the sovereign of Monaco, all *huissiers de justice*,²³ the general prosecutor, and the officers of the public force to lend their assistance to the enforcement of the judgment when requested.²⁴

In the absence of voluntary compliance with a judgment or court order, one needs to resort to the *exécution forcée* (forced compliance) and request the assistance of the public authorities as specified in the enforcement formula.

V. Legal Assistance Programs

Monaco made the following reservation to article 26 of the Convention:

In conformity with article 26, paragraph 3, of the Convention, the Principality of Monaco declares that it shall not be bound to assume any costs referred to in Article 26, paragraph 2, resulting from the participation of legal counsels or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Legal aid is available to a person who can show that he "is not able to pay for legal expenses without drawing from resources which are necessary for his and the family's livelihood."²⁵ Applications and justifications must be addressed to the general prosecutor.²⁶ Decisions are generally made within 15 days of the application date by a body (*bureau d'assistance judiciaire*) composed of the general prosecutor, a representative from the treasury and an attorney designated for a year by the President of the Court of First Instance.²⁷ The applicant is notified of the decision within 3 days, and it cannot be appealed.²⁸

Legal aid covers the following expenditures:²⁹ court fees, expenses incurred by witnesses who have been authorized by the court, remuneration of experts, emoluments of *officiers ministériels*,³⁰ and attorneys' fees.

²² C. PRO. CIV. arts. 470 & 478.

²³ The *huissiers de justice* have the exclusive rights to notify all procedural acts in relation to legal proceedings, and they are responsible for the enforcement of court orders and judgments.

²⁴ C. PRO. CIV. art. 471.

²⁵ *Id.* art. 38.

²⁶ *Id.* art. 40.

²⁷ *Id.* art. 39.

²⁸ *Id.* art. 42.

²⁹ *Id.* art. 44.

³⁰ This expression covers various categories of practitioners who have obtained from the administration the exclusive right to perform certain legal acts and/or execute certain legal instruments.

VI. Conclusion

Although the Principality of Monaco did not establish specific procedures for the implementation of the Convention after its incorporation into domestic law, the Monegasque court structure and its substantive laws offer all the necessary tools that are needed to effectively meet the Convention's objectives.

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