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THE NETHERLANDS

HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION

Introduction

The Hague Convention on the Civil Aspects of International Child Abduction (the Convention) was ratified for the Kingdom of the Netherlands on June 12, 1990, and entered into force on September 1, 1990.¹ The text of the Convention was published in the Bulletin of Netherlands Treaties.² With respect to cases of child abduction, the Netherlands can also apply the European Convention regarding the Recognition and Execution of Decisions concerning Custody over Children, which was implemented at the same time as the Hague Convention.

I. Domestic Laws and Regulations Implementing the Hague Convention

The Convention was implemented by the Law of May 2, 1990.³ This Law not only implements the Convention but also is applicable to those cases relating to the international abduction of children that are not covered by the Convention.⁴ The designated Central Authority dealing with the duties which are imposed by the Convention is part of the Ministry of Justice.⁵

When the Central Authority decides not to deal with a request for the return of a child, or when it decides to halt the discussion of a case, this decision is immediately communicated to the applicant. The applicant can request that the Central Authority document the reasons for its decision in a decree. Within 1 month after receiving the decree, the applicant may submit a petition against the decree to the District Court in The Hague, which will hear the case.⁶ This Court is empowered to quash the decision of the Central Authority, allowing the applicant to pursue the matter in the Juvenile District Court (*infra* Part III).

The Central Authority informs the person with whom the abducted child resides by registered letter of the request for the return of the child and of the grounds on which the request is based. The Authority also notifies the person of its plans to obtain a court order for the return of the child, unless the request is voluntarily complied with within a reasonable time. This notification is not carried out if, due to the circumstances of the case, it appears unlikely that the person with whom the child is staying will not comply voluntarily or because of the urgency of the case.⁷

¹ Law of May 2, 1990, Staatsblad [official law gazette of the Netherlands, Stb.] 201.

² TRACTATENBLAD VAN HET KONINKRIJK DER NEDERLANDEN 139 (1987).

³ Law of May 2, 1990, Stb. 202, as amended.

⁴ *Id.* art. 2.

⁵ *Id.* art. 4.

⁶ *Id.* art. 6.

⁷ *Id.* art. 10.

The local authorities, the civil registration service, and the public prosecutor's office will assist the Central Authority by supplying the Authority with all information needed and copies of all registries at no cost.⁸

II. Domestic Laws Regarding Child Abduction and Parental Visitation

A. Child Abduction

Under Dutch Penal law, the person who intentionally removes a minor from the custody of the person or persons exercising legal authority over that child, or from the supervision of a person legally vested with such supervision, is liable to a fine or a term of imprisonment for a maximum term of 6 years. If the abduction is a ruse, or if an act of violence or threat of violence has been used, or if the minor is under the age of 12, a maximum 9 year prison term or a fine may be imposed.⁹

A person is liable to a fine or imprisonment for a maximum term of 3 years if he intentionally hides, or conceals from the investigation by judicial officers or police officers, a minor who has been removed or had himself removed from the custody of the person or persons exercising legal authority over him or from the supervision of a person legally vested with such supervision. In case the minor has not reached the age of 12, a maximum 6 year prison term or a fine may be imposed. This provision is not applicable to the person who:

- without delay, communicates the minor's whereabouts to the Child Care Protection Board
- has been granted funding pursuant to the Law on Assistance to Young Persons¹⁰ and acts in accordance with certain articles of the Law
- acts for the purpose of providing conscientious aid to the minor.

B. Parental Visitation

Family relations and the resulting rights and obligations, whether the parents are married or not, as well as custody, separation, divorce, and visitation rights, are regulated by numerous provisions in the Civil Code. During marriage, both parents exercise parental authority jointly. After a divorce, the parents can ask the court for continuing joint parental custody. If the parents have not requested joint custody, the court decides which of the parents will be entrusted with custody.¹¹ Parents who are not married and have not lived together can jointly exercise parental custody if they have registered their combined request in the "Custody Registers."¹²

The parent who does not have custody has reciprocal right to see and meet the child. The court mandates the rules for this access, including the frequency of the visits. The court is also competent to deny the parent this claim. It will do so only if:

⁸ *Id.* at arts. 8 and 9.

⁹ The Penal Code of the Netherlands of Mar. 3, 1881, as amended, art. 279.

¹⁰ Law of Aug. 8, 1989, Stb. 358, as amended.

¹¹ Civil Code of the Netherlands, Book I, art. 251.

¹² *Id.* art. 244 and 252.

- The contact would be seriously disadvantageous to the child.
- The parent is considered clearly unsuitable or unable to have contact with the child.
- A child who is 12 years of age or older has serious objections to the visitation rights of his non-custodial parent.¹³

The parent who has custody over the minor has the obligation to inform the non-custodial parent about important circumstances concerning the person and the property of the child.¹⁴ The rules about visitation and information can be amended by the court if circumstances change.¹⁵

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

Justice is administered in criminal and civil cases by 61 Sub-District Courts, 19 District Courts, 5 Courts of Appeal, and the Supreme Court of the Netherlands. All courts are presided over by judges appointed for life who retire on reaching a certain age set by law. There is no trial by jury. The Sub-District Courts and the District Courts are Courts of First Instance. Either party may then lodge an appeal with, respectively, either a District Court or Court of Appeal. Each Court of Appeal has jurisdiction over a number of District Courts, each of which in turn has jurisdiction over a number of Sub-District Courts. The Supreme Court of the Netherlands is the highest court in the country in civil and criminal matters. The Supreme Court can also pass judgment in cases that have been heard by courts in the Netherlands Antilles and Aruba, islands of the Caribbean, which are autonomous parts of the Kingdom of the Netherlands.

The Juvenile Judge of the District Court in whose jurisdiction the child has been retained is authorized to take all cases into consideration with respect to the application of the Convention. If it cannot be determined where the child is kept, the Juvenile Judge in the District Court in The Hague is authorized to hear the case.¹⁶ The judge who deals with the request of the return of a child must handle the case speedily; the court proceedings are closed. A decision will not be made before the child has been given the opportunity to express his opinion.¹⁷ If the child is not able to come to the court, the judge may interview the child at another location.¹⁸ At the request of the applicant or by virtue of his own office, a judge may order that the child be placed under temporary custody with a specially assigned institution.¹⁹

An appeal of the final decision of the District Court must be made to the Appellate Court within 2 weeks of the decision.²⁰ The highest instance for decisions made by the Appellate Court is the Supreme Court.

¹³ *Id.* art. 377a

¹⁴ *Id.* art. 377b.

¹⁵ *Id.* art. 377e.

¹⁶ *Supra* note 3, art. 11.

¹⁷ *Id.* art. 13, § 2.

¹⁸ Law on Civil Procedure, Sept. 16, 1896, Stb. 156, as amended, art. 802.

¹⁹ *Supra* note 3, art. 13, § 4.

²⁰ *Id.* art. 13, § 7.

IV. Law Enforcement System

If the judge approves an applicant's request, he orders the handing over of the child to the person who has the custody of the child, or, in case that is not immediately possible, the child is temporarily placed in the custody of a specially designated institution. The judge can order that each person who is responsible for the international abduction of the child make a payment of money for the costs incurred as a consequence of the abduction and the subsequent return of the child. The payment is to be made to the Central Authority or to the person who has custody of the child. Each of the persons involved in the abduction is liable for the full amount.²¹ The Prosecutor's Office will assist with the enforcement of the decisions.

The Juvenile Judge of the District Court in whose jurisdiction the child has been retained is authorized to take all circumstances into consideration with respect to visitation procedures.²² A judge who must decide on a petition concerning the custody of a child for whose return an application has been made with the Central Authority puts his decision on custody on hold until an irrevocable decision has been made with respect to the return of the child.²³ If a judge in a custody case has good reason to believe that the child has been internationally abducted, he must wait a reasonable time before making a decision on custody.

V. Legal Assistance Programs

Anyone who brings suit in the Netherlands with respect to the application of the Convention or with respect to the Law that implements the Convention may be entitled to legal assistance if the person's resources are insufficient to pay for the litigation.²⁴ The matter is governed by the Law on Legal Assistance.²⁵ However, it should be noted that the Netherlands made a reservation with regard to the second paragraph of article 26 of the Convention. The reservation states that the Netherlands will not be bound to assume any costs referred to in that paragraph resulting from the participation of legal counsel or advisors from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

VI. Conclusion

By the Law of May 2, 1990, the Netherlands implemented the Hague Convention on the Civil Aspects of International Child Abduction and the European Convention with respect to the Recognition and Execution of Decisions Concerning Custody over Children. Both Conventions can be applied to the international abduction of children.²⁶ The Law of May 2, 1990 is also applicable to those cases relating to the international abduction of children that are not covered by the Conventions. The implementing legislation has fully adhered to the principles contained in the Conventions, which require expeditious procedures, the establishment of a central authority insuring compliance, and strict procedural rules.

²¹ *Id.* art. 13, § 5.

²² *Id.* art. 11.

²³ *Id.* art. 15.

²⁴ *Id.* art. 16.

²⁵ Law of Dec. 23, 1993, Stb. 775, as amended.

²⁶ *Supra* note 2.

According to information obtained from the Dutch Central Authority in 2002, a total of 58 cases were activated by the Authority towards foreign Central Authorities, of which four were towards the United States, and 46 cases from foreign Authorities; three were from the United States to the Dutch Central Authority. In 2003, the Central Authority has so far dealt with a total of 110 cases.

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November 2003