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SAINT KITTS AND NEVIS

HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION

Introduction

Saint Kitts and Nevis, (formerly named Saint Christopher and Nevis), acceded to the Hague Convention on the Civil Aspects of International Child Abduction [hereinafter the Hague Convention] on May 31, 1994. The United States accepted the accession of Saint Kitts and Nevis on March 13, 1995.¹

I. Domestic Laws and Regulations Implementing the Hague Convention

Saint Kitts and Nevis has not yet enacted legislation to implement the Hague Convention.² Such legislation is necessary in order for the Hague Convention to have the force of law in Saint Kitts and Nevis since treaties are not self-executing in that country.

II. Domestic Laws Regarding Child Abduction and Parental Visitation

The Offenses Against the Person Act contains the offense of child-stealing. Under the relevant section of the Act, anyone who detains a child under the age of 14 with the intent to deprive his parent of lawful care or charge of him is liable to imprisonment for up to 3 years. However, this section does not apply to anyone who has claimed any right to “possession” of the child or a parent of the child.³

Saint Kitts and Nevis does not appear to have a law guaranteeing parental visitation rights. The Matrimonial Causes Act gives the Supreme Court broad powers to make orders for the custody, maintenance, and education of children in proceedings for divorce, nullity, or judicial separation.⁴ The Probation and Child Welfare Board Act gives the Board the power to apply to the High Court to have parental rights vested in it if a child’s parent or parents are unfit to care for the child or if they consistently fail to discharge their parental rights and duties without reasonable cause.⁵ It appears that if the Board takes custody of a child, it can establish the conditions for visitation between the child and his parent or parents.⁶

¹ Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, art. 1, T.I.A.S. No. 11,670, 1343 U.N.T.S. 89. For an online text, *see for example* www.hcch.net or the United States Department of State (DOS) Bureau of Consular Affairs website, at http://travel.state.gov/hague_childabduction.html.

² Information obtained from Ms. Karen Hughes, Department of Justice and Legal Affairs, Saint Kitts and Nevis.

³ Offenses Against the Person Act, I Saint Christ.-Nevis-Anguilla Rev. Laws, ch. 56, § 51 (1961).

⁴ Matrimonial Causes Act, I Saint Christopher.-Nevis-Anguilla Rev. Laws, ch. 50, § 25 (1961).

⁵ Probation and Child Welfare Board Act, 1994, 1994 Saint Christopher and Nevis Laws, No. 6, § 6(2).

⁶ *Id.* § 5.

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

Along with Antigua and Barbuda, Dominica, Grenada, Saint Lucia, Saint Vincent and the Grenadines, Anguilla, the British Virgin Islands, and Montserrat, Saint Kitts and Nevis is a Member State of the Eastern Caribbean Supreme Court (ECSC). The ECSC was established under the West Indies Associated States Supreme Court Order created by the United Kingdom⁷ that was supplemented by domestic legislation.⁸ The ECSC has two divisions. The High Court of Justice-Trial Division has permanent representation in each Member State. The Court of Appeal is an itinerant body that hears appeals from the High Court of Justice-Trial Division and the lower Magistrates' Courts. The Court of Appeal has four justices and the High Court of Justice-Trial Division has 13 judges.

The Judicial Committee of the Privy Council is the highest court of appeal for all British Overseas Territories and the former colonies that have chosen to retain that tribunal in their judicial hierarchies since attaining independence. At the present time, Saint Kitts and Nevis is still a participating state. However, Saint Kitts and Nevis has signed an agreement with other Caribbean states to create a new Caribbean Court of Justice. The Caribbean Community Secretariat hopes to have the Caribbean Court of Justice replace the London-based Privy Council by the end of 2004. Saint Kitts and Nevis is reportedly drafting implementing legislation.⁹

IV. Law Enforcement System

As was previously noted, Saint Kitts and Nevis has not enacted legislation to implement the Hague Convention. In acceding to the Convention, Saint Kitts and Nevis designated the Attorney General, or a designees of his choosing, to be the Central Authority.¹⁰

V. Legal Assistance Programs

Saint Kitts and Nevis does not appear to have a law establishing a legal aid program. In acceding to the Convention, Saint Kitts and Nevis declared that it would not be “bound to assume any costs resulting under the Convention from the participation of legal counsel or advisors or from court proceedings.” The declaration made by Germany in accepting the accession notes that this reservation was apparently based upon the absence of legal aid in Saint Kitts and Nevis.¹¹

VI. Conclusion

Since Saint Kitts and Nevis has not yet enacted legislation to implement the Hague Convention, the courts of that country have not yet been in a position to rule upon Hague Convention applications for

⁷ 1967 S.I. No. 223.

⁸ West Indies Associated States Supreme Court (Saint Christopher & Nevis Act) 1975, 1975 Saint Christ.-Nevis Laws, No. 17.

⁹ “*Caribbean Court of Justice Trust Fund revised agreement takes effect*,” BRITISH BROADCASTING SERVICE WORLDWIDE MONITORING, Feb. 24, 2004.

¹⁰ *Supra* note 1.

¹¹ *Id.*

the return of an abducted child and there are no reported cases from the country in which the courts have ruled on any applications filed outside the Hague Convention.

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