

## **On the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction**

### *I Implementing legislation*

(a) The implementing legislation is necessary to bring the Convention into force in Latvian domestic law.

(b) The necessary legislation has been enacted and is in force since 23 October 2001. It is the Law „On the Hague Convention on the Civil Aspects of International Child Abduction” which has been adopted by the Parliament of the Republic of Latvia on 4 October 2001. Article 2 of the above-mentioned Law has been amended by Parliament on 16 April 2003. The amendment was made on the subject of reorganization of the Central Authority. In the issue of reorganization the Secretariat of Minister for Special Assignments for Children and Family Affairs (hereinafter – the Secretariat) has been established by order of the Government of the Republic of Latvia on 1 January 2003, and the National Centre for the Protection of the Rights of the Child has been subjoined to it. The Secretariat has inherited all functions, rights and obligations of the National Centre for the Protection of the Rights of the Child. Now the Central Authority under Article 6 of the Convention is the Secretariat. The amendment to Article 2 of the above-mentioned Law is in force since 22 May 2003.

### *II Locating children*

Under Article 7 of the Convention the Secretariat will co-operate with Central Authorities of other Contracting States and will promote co-operation with the competent authorities of other Contracting States to discover the whereabouts of a child who was wrongly removed or retained, to secure the prompt return of children and to achieve the other objects of the Convention. The Secretariat will take all appropriate measures to secure the implementation of the objects of the Convention within the territory of the Republic of Latvia.

There is no special procedure to discover the whereabouts of a child who was wrongly removed or retained in the Republic of Latvia. This procedure is the same as the procedure of the location of any missing person irrespective of his or her age. The competent authorities responsible for the location of missing persons (children) are the State Border Guard and the State police. The State Border Guard clarifies whether a person (child) has entered or departed the territory of the Republic of Latvia. The State Police is responsible for the location of a missing person (child) interior of the country.

### *III Central Authority*

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(c) The functions set out in Article 7 of the Convention for the greatest part will be fulfilled by the Children Rights Protection, Coordination and Supervision Division of the Children Rights Protection Department of the Secretariat.

#### IV Judicial procedures

(a) The jurisdiction to consider applications for return orders and questions of access under the Convention is given to courts. Under Article 24 of the Civil Procedure Law of the Republic of Latvia applications are considered by the district (city) court. If parents have disagreements on the rights of custody or the rights of access, they can submit their applications to the district (city) court.

(b) Article 6 of Protection of the Rights of the Child Law provides that in lawful relations that affect a child, the rights and best interests of the child shall take priority. Article 64.<sup>1</sup> of the same Law provides that the Ministry of Justice shall ensure that court work is organised so that priority consideration shall be applicable in the adjudication of matters associated with the protection of the rights and the best interests of the child.

(c) In all cases subject to the Convention the Central Authority and other involved governmental agencies will provide legal consultations in broad outline free of charge. Foreign applicants can also receive legal aid from solicitors for pay and if necessary they can use services of sworn translators and notary for pay on the same conditions as the inhabitants of Latvia. Under part 4 of Section 43 of the Civil Procedure Law a court or a judge, upon considering the material situation of a natural person, shall exempt him or her partly or fully from payment of court costs into State revenues, as well as postpone payment of court costs adjudged into State revenues, or divide payment thereof into instalments.

#### V Enforcement procedures

(a) There is no special procedure for the enforcement of return orders. A return order given by court can be executed by sworn bailiffs in co-operation with representatives of Orphans (Parish) court, State police and if necessary, social service. The procedure for the enforcement of the decision of court is regulated by the Civil Procedure Law.

(b) There is no special procedure for the enforcement of contact/access orders. A contact/access order given by court can be executed by sworn bailiffs in cooperation with representatives of Orphans (Parish) court. The procedure for the enforcement of the decision of court is regulated by the Civil Procedure Law.

#### VI Substantive law

(a) The legal criteria by which custody and contact determinations are made are given in the part I "Family Law" of the Civil Law of the Republic of Latvia.

*The essential features of the Family Law, concerning the effects of marriage and parenthood, parental custody and childcare*

Under Article 85 of the Civil Law spouses have equal rights in settling family matters. The court is entitled to solve major disagreements if spouses cannot settle them.

The names of parents are put down in the birth certificate of the child. If the child is born in marriage (not later than 306 days after the annulment or the dissolution of marriage or the death of the child's father), he (she) is acknowledged as born in marriage and spouses are his (her) parents. Parents and the child himself after coming of age can argue this fact in court. In cases of illegitimacy parenthood can be admitted voluntarily or determined by a court. In cases of voluntary admitting parenthood both parents submit their application to the registry office. If the child has reached the age of 12, in case of admitting parenthood his (her) consent is required. If mother cannot participate in submission of application due to mental illness, death or other essential circumstance, also the Orphans (Parish) courts consent is required.

Under Article 177 of the Civil Law a child is in parental custody until he (she) becomes of age (reaches the age of 18, but in particular cases mentioned by law earlier, but not before the age of 16). Both parents have equal rights in carrying out parental custody. If the parents have disagreement on fulfilling their parental rights, Orphans (Parish) courts are entitled to settle the disagreement.

If the parents live separately and cannot agree, where the child (children) should live, the court is entitled to make a decision on the issue, based on the child's best interests. The child's opinion must be considered, if he (she) has reached the age of 7 (Article 180 ? 182 of the Civil Law).

If the parents live separately, the parent with whom the child lives realizes parental rights by oneself. The parent who lives separately, has an obligation to participate in supporting those children, who are living with another parent. Each parent has a right of access to his (her) children who are living with another parent. If the parents cannot reach an agreement about the time and the place of contact with the child, Orphans (Parish) court is entitled to help them to reach an agreement. If amicable resolution of disagreement is not reached, the court is entitled to make decision about the time and the place of contact with the child.

In case when one of the parents according to law have lost his (her) parental rights, the other parent fulfills his (her) parental rights alone. The parent can lose his (her) parental rights by judgement in a civil case, if he (she) misuses his (her) parental rights or treats the children violently or otherwise unlawfully. If both parents have lost their parental rights, Orphans (Parish) court has obligation to appoint a guardian immediately. Usually this guardian is chosen from the nearest relatives of the child. If the appointment of guardian is not possible, the child is placed in a foster family or in a childcare institution, for example, orphanage.

Under the Law "On Orphans Courts and Parish Courts" Orphans (Parish) court is responsible for ensuring the child's rights if the child has lost his (her) parents' care. If this child lives in a childcare institution, the head of this

institution is the child's guardian during his (her) stay in this institution. The Orphans (Parish) court is also entitled to solve any disagreements that may arise between parents concerning childcare, upbringing and education of the child etc.

(b) Both parents have equal rights in fulfilling their parental custody. If the parents live separately and there is no decision of competent authorities or agreement of parents about the child's place of living, the presumption is that the child has to live together with his (her) mother (Article 67 of the Protection of the Rights of the Child Law).

### VII Social services and child protection services

After locating the child the local municipalities Orphans (Parish) court and social service are responsible for clarifying the situation and prevention of any harm to the child. If required by circumstances, Orphans (Parish) court is entitled to remove the child from his or her present location. Orphans (Parish) court is also the first institution responsible for settling disagreements on rights of access.

Orphans (Parish) courts cooperate with psychologists and other specialists to find out the child's opinion and clarifying his or her best interests.

If the environment of child is not safe or does not correspond to his or her best interests, the child can be placed in a childcare institution. General childcare and educational institutions are childcare centre for orphans, asylums for orphans, crisis centres and other institutions established for the care and education of orphaned children and children who have lost their parents' care. There are plenty of crisis centres with different specialization.

On legal aid available to a parent see IV (c). There are no other special services defined for a person accompanying the child, but any particular case should be examined and assistance should be provided within available resources.

### VIII Information and training

As the Secretariat is a new institution without any experience implementing the Convention, a special training is necessary. Our Secretariat would be thankful for receiving some help of the Permanent Bureau in solving this problem. It would also be useful for us to acquaint with the experience of the Contracting States in the above mentioned questions.