

The Legal Aspects and Scope of International Child Abduction

PART 1

Purpose, Scope and Definitions

The objective:

Article 1: (1) The objective of the law is to arrange the procedures and principles in the implementation of the Civil Aspects of the International Child Abduction Convention dated October 25, 1980 in returning the wrongfully removed or retained children to their habitual residence in any Contracting State.

The scope:

Article 2: (1) The law is operated for the wrongfully removed or retained children from their habitual residence in any Contracting State.

The removal or the retention of a child is to be considered wrongful where -

- a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The Definitions:

Article 3: (1) For this law, the definitions are given below:

- a) Central Authority: Ministry of Justice
- b) Applicant: Before the removal or retention of the child, any person, institution or other body actually having the care of the child and having an access to the child
- c) The child: one who doesn't attain the age of 16
- d) Rights of Custody: the rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence
- e) Rights of access: the right to take a child for a limited period of time to a place other than the child's habitual residence
- f) Convention: Civil Aspects of the International Child Abduction Convention on Legal dated October 25, 1980
- g) Head Office: Ministry of Justice, General Directorate of International Law & Foreign Affairs
- h) Experts: Social workers, psychologists and pedagogues
- i) Court: Family Court

PART 2
The Measures need to be taken by the Central Authority

Central Authority

Article 4: (1) The requirements of the Convention are fulfilled by the Central Authority through local Public Prosecutor's Offices.

(2) Central Authority has the power to initiate or facilitate judicial or administrative proceedings on behalf of the applicant with a view to obtaining the return of the child and to making arrangements for organizing the exercise of rights of access.

Duties of the Central Authority

Article 5: (1) Central Authority, through local Public Prosecutor's Office,

- a) takes all appropriate measures to discover the whereabouts of the child and to prevent further harm to the child by assigning the police and local authorities, immediately after the application is made to obtain the return of the child and to make arrangements for organizing the exercise of rights of access within the scope of the Convention.
- b) takes any necessary measures to secure the voluntary return of the child or to bring about an amicable resolution of the issues.
- c) files a lawsuit to have a decision regarding the return of the child and the arrangements for organizing the exercise of rights of access, if voluntary return of the child or an amicable resolution is not possible.

PART 3
Procedural Provisions

Function and Power

Article 6: (1) The lawsuits and related judicial proceedings arising from the implementation of this Law are handled by the family court. In the places which do not have a family court, the lawsuits and related judicial proceedings in the scope of this Law are handled in accordance with the provisions in the Article Two, Paragraph Two of the Establishment, Function and Judicial Proceedings of Family Court law dated September 1, 2003 numbered 4787.

(2) At the time of the application filed for the return of the child or for access rights, the court in the district where the child is residing or where the child is taken under protection in accordance with the Article 10 has the jurisdiction.

Application Procedures

Article 7: (1) Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

(2) Lawsuits about the return of the child shall be filed at the local Public Prosecutor's Office on behalf of the Central Authority.

(3) The application shall contain documents submitted by the Central Authority, the applicant, or the person alleged to have removed or retained the child. In the implementation of this Law, the authentication of the documents sent by the Central Authority is not required.

(4) The court may ask for the submission of documents and information to assess the claim for the return of the child or access rights.

Amicable Resolution

Article 8: (1) Before the trial starts, the court encourages the voluntary return of the child also by consulting experts. If there is no voluntary return of the child, then the court shall continue with the trial and consider judgment.

Judicial Proceedings

Article 9: (1) On the day of the trial, parties are notified of the court case.

(2) All the law suits and proceedings related the implementation of this Law shall be handled promptly and with priority.

Provisional Protection Measures

Article 10: Until the end of the lawsuit, the Court, upon request or upon its own initiative, shall take the below provisional measures to prevent further harm to the child, by taking the child's and an expert's opinion if necessary:

- a) handing the child over to one of the relatives who will take care of him/her
- b) placing the child with a confidential family who will take care of him/her
- c) placing the child to one of the child care institutions or orphanages
- d) placing the child into a state or private hospital or to a special training school

Right of Access

Article 11: (1) The claim for organizing and securing the right of access and the judicial or administrative proceedings over this claim is subject to procedures and principles regarding the claim of the return of the child.

(2) Until the lawsuits on the return of the child and child custody finalize, the court may decide that the applicant may have temporary access rights to the child.

Custody in the Lawsuit Regarding the Return of a Child

Article 12: If there is a court decision regarding the return of the child, another decision regarding custody cannot be made in this decision. However, if the court denies the return of the child, a decision can be made regarding custody.

The effect of the Decision of Custody to the lawsuit on the Return of a Child

Article 13: (1) A custody order made after the application is filed for the return of the child, cannot be a reason of denial for the return of the child in the scope of this Law.

Prejudicial Issue

Article 14: (1) If a child custody case is filed while the return case is going on, the child custody case will be put on hold.

Separation of the Lawsuits

Article 15: (1) If the return and custody cases are combined, the cases will be differentiated and the return case will be handled first.

Judicial Holiday

Article 16: (1) The judicial or administrative proceedings arising from the implementation of this Law shall be handled in judicial holiday as well.

(2) The Code of Civil Procedure dated 18 May 1927 numbered 1086 is not applied to the lawsuits and related judicial proceedings arising from the implementation of this Law.

Final Decision

Article 17: (1) Final decision is exercised when the judgments about the return of the child and access rights are finalized.

(2) The Central Authority, the applicant or the defendant objecting the court decision regarding the return of the child and access rights may appeal.

PART 4 Exercising the Decisions

Exercising the Decision

Article 18: (1) The final decision regarding the return of the child and the access rights is implemented as stated in the article 25 of the Execution and Bankruptcy Law, without the notification of enforcement order, by the Department of Execution at the child's place of residence in accordance with the Execution and Bankruptcy Law dated 09 May 1932 numbered 2004.

(2) The provisional protection measures taken in accordance with this Law are exercised by the Prosecutor's office through the care homes, orphanages or other related institutions.

Power of the Department of Execution

Article 19: (1) During the exercise of the final decision regarding the return of the child and the access rights, if the taking parent is not present or cannot be present with the child, the final decision is exercised at his/her absence.

(2) The taking parent has to show the places where the child might be if the Department of Execution requests. These places can be entered by force.

Function of the Police Force

Article 20: (1) The police force is required to help and execute the orders of the Department of Execution upon the department's written request.

Applying Provisional Protection measures

Article 21: (1) While taking the necessary measures regarding the child, the provisions in the Article 25/b of the Execution and Bankruptcy Law are implemented in order to prevent further physical and psychological harm to the child.

Delaying the Execution

Article 22: (1) If it is determined by the experts that exercising the final decision will pose a grave risk on the physical and psychological development of the child, upon a request or upon his/her own initiative, the director of the Department of Execution may postpone the exercise of the final decision until the risk disappears.

Return of the Child

Article 23: (1) In exercising the decisions regarding the return of the child and access rights through execution, the return of the child can only take place at the presence of the applicant, or a person or an institution representative that the applicant appointed.

Not Changing the Place of the Child

Article 24: (1) Until the decision regarding the return of the child and access rights is finalized, upon a request or upon its own initiative, the court can make one or more of the below decisions, as a provisional protection measure, in order to track the place of residence of the child:

- a) to stop the child from leaving the country temporarily .
- b) to stop the issuance or renewal of a passport to the child.
- c) to stop the procedure of changing or moving the school, registration or local records of the child.
- d) to confiscate the passport and identification records of the child while the lawsuit is in process.
- e) to check the child's welfare and whereabouts by the entitled authorities at the times allocated.
- f) to take all other necessary measures related to this issue.

Sanction

Article 25: (1) While exercising the decisions regarding the return of the child and access rights, those who hide the child or abduct the child again after the final decision, or those who are involved in the abduction, and those who do not abide by the notifications, orders and measures of this Law are subject to the article 341 of the Execution and Bankruptcy Law.

The expenses of the child

Article 26: (1) The expenses of the child, who has been taken care of by a family, a private institution or similar others, are paid by the Government. The amount of these expenses is determined by the court.

(2) For those who cause wrongful payment, the Government has the right of recourse in accordance with general provisions.

Litigation Costs

Article 27: (1) The lawsuits and related judicial proceedings arising from the implementation of this Law are not subject to any fee. Litigation costs are covered by prosecution funds. In addition to that, litigation costs are later to be covered by the party who has lost the lawsuit.

(2) Insofar, the expenses resulting from hiring an attorney or a counselor for the applicant and the return of the child are not covered by prosecution funds.

Judicial Assistance

Article 28: (1) The one who applied for the implementation of this Law can get judicial assistance.

PART 5

Procedural Provisions

Procedural Provisions

Article 29: (1) For the circumstances that do not have a provision in this Law, the provisions regarding family law in Turkish Civil Code dated 22 Nov 2001 numbered 4721, and the provisions in the Code of Civil Procedure dated 18 May 1927 numbered 1086, 09 June 1932 dated 4784 numbered law on the Establishment, Tasks and Procedures of Family Courts, 09 June 1932 dated 2828 numbered law on the Institution of Social Services and Protection of Children and 09 July 2005 dated 5395 numbered law on Protection of Children are operative.

Provisional Clause 1: (1) The clauses of this Law are exercised with the lawsuits and judicial proceedings in the scope of this Law that occurred after 01 August 2000.

Operative Effect

Article 30: (1) This Law enters into force on the date of publication.

Enforcement

Article 31: (1) Cabinet executes the provisions of this Law.
01 December 2007