

ACT CONCERNING IMPLEMENTATION OF THE HAGUE CONVENTION OF INTERNATIONAL CHILD ABDUCTION

Act No. 11529, Dec. 11, 2012

CHAPTER I GENERAL PROVISIONS

Article 1 (Purpose)

The purpose of this Act is to provide for matters necessary for the enforcement of the Convention on the Civil Aspects of International Child Abduction, thereby contributing to protecting children's rights and interests by securing the prompt return of abducted children.

Article 2 (Definitions)

(1) The terms used in this Act shall be defined as follows:

1. The term "child" means a person under 16 years of age, to whom the Convention on the Civil Aspects of International Child Abduction (hereinafter referred to as the "Convention") shall apply pursuant to Article 4 of the Convention;
2. The term "Central Authority" means a State agency of each Contracting State designated pursuant to Article 6 of the Convention to perform the duties, such as assistance in securing the return of the child, imposed by the Convention.

(2) Except as otherwise defined in paragraph (1), the terms used in this Act shall be as defined in the Convention.

Article 3 (Duty of State Agency, etc. to Act Expeditiously)

The State agency, etc. involved in the proceedings for the return of children, etc. under this Act shall act expeditiously, placing top priority on the welfare and interests of children, in any cases involving the return of children and

the rights of access under the Convention and this Act.

Article 4 (Designation of Central Authority)

The Minister of Justice shall be the Central Authority of the Republic of Korea.

**CHAPTER II PROCEDURE, ETC. FOR
ASSISTANCE IN SECURING
RETURN OF CHILD**

Article 5 (Application for Assistance in Securing Return of Child Abducted to Republic of Korea, Etc.)

- (1) A person who claims that there has been a breach of custody or access rights within the meaning of the Convention as a result of a wrongful removal to or retention of a child in the Republic of Korea may file an application with the Minister of Justice for each of the following assistance in securing the return of the child set forth in the Convention:
 1. Discovery of the whereabouts of the child;
 2. Provision of information of a general character as to the Korean law in connection with the application of the Convention;
 3. Other assistance specified in the Convention.
- (2) When it is manifest that the requirements of the Convention are not fulfilled or that the application is otherwise not well founded, the Minister of Justice may refuse to accept the application set forth in paragraph (1) pursuant to Article 27 of the Convention.

Article 6 (Amicable Resolution, etc. of Disputes)

Upon receipt of an application set forth in Article 5 (1), the Minister of Justice may take a measure necessary for an amicable resolution of a dispute concerning child abduction, etc. or for the voluntary return of a child as prescribed by the Convention.

Article 7 (Notice of Wrongful Removal or Retention of Child)

- (1) The Minister of Justice or any person claiming a breach of custody rights

who filed the application set forth in Article 5 (1) may notify the competent court prescribed by the Supreme Court Regulations of the wrongful removal or retention of a child to suspend judicial proceedings on the merits under Article 16 of the Convention.

(2) Upon receipt of the notice set forth in paragraph (1) or the petition set forth in Article 12 (1), the court shall suspend judicial proceedings on the merits pursuant to Article 16 of the Convention, except in either of the following cases:

1. Where the petition set forth in Article 12 (1) has been refused;
2. Where the petition set forth in Article 12 (1) has not been filed within a reasonable period after receipt of the notice set forth in paragraph (1).

Article 8 (Assistance in Application for Return of Child Abducted to Other Contracting State, Etc.)

Upon receipt of an application, etc. for assistance in securing the return of a child from a person claiming that there has been a breach of custody or access rights within the meaning of the Convention as a result of a wrongful removal to or retention of a child in any other Contracting State, the Minister of Justice may provide necessary assistance, within the scope specified by the Convention, such as transfer of the application for assistance to the Central Authority of the country where the child is located.

Article 9 (Request for Cooperation to Relevant Agencies)

When necessary for the enforcement of the Convention, including provision of the assistance upon receipt of the application set forth in Article 5 (1) and provision of the assistance set forth in Article 8, the Minister of Justice may request the head of a relevant central administrative agency, local government, or public institution (referring to the public institutions set forth in the Act on the Management of Public Institutions) or the Minister of the National Court Administration to provide materials or information on a child, such as the country which the child has entered and left, the whereabouts and social background of the child, and other cooperation necessary for performance of

the duties of the Central Authority under Article 7 of the Convention. In such cases, the head of the agency in receipt of such request shall comply therewith, unless under extraordinary circumstances.

Article 10 (Collection of Statistics and Public Relations, etc.)

The Minister of Justice may carry out the following to ensure the efficient prevention of child abduction and the prompt return of abducted children:

1. Collection of statistics on cases handled pursuant to the Convention;
2. Domestic and overseas public relations activities conducted through the Internet, newspapers, broadcasting media and other mass media;
3. Research and surveys for matters such as prevention of child abduction and prompt return of abducted children;
4. Exchanges with the Central Authority of each Contracting State;
5. Education and training of the personnel in charge of the relevant affairs, such as the return of abducted children.

CHAPTER III JUDICIAL PROCEEDINGS

Article 11 (Jurisdiction)

The Seoul Family Court shall have exclusive jurisdiction over a case involving the return of a child under the Convention.

Article 12 (Petitioners, etc.)

- (1) A person claiming that there has been a breach of custody rights within the meaning of the Convention as a result of a wrongful removal to or retention of a child in the Republic of Korea may file with the competent court a petition seeking the return of the child.
- (2) Except as otherwise prescribed by the Convention, this Act, and the Supreme Court Regulations, the provisions regarding Category E family non-litigation cases under the Family Litigation Act shall apply *mutatis mutandis* to a petition seeking the return of a child under paragraph (1).
- (3) The court may render a prior disposition under Article 62 of the Family Litigation Act or a provisional disposition under Article 63 of the aforesaid Act, to protect the rights and interests of children or prevent

further abduction or concealment of a child, in connection with the petition cases set forth in paragraph (1).

- (4) The court may dismiss the petition seeking the return of a child under paragraph (1), even where there has been a breach of custody rights within the meaning of the Convention as a result of a wrongful removal or retention of a child, if any of the following grounds set forth in the Convention occurs:
 1. One year has elapsed since the wrongful removal or retention of the child and the child has already settled into his/her new environment;
 2. The person having the care of the child was not actually exercising his/her rights of custody at the time of removal or retention, or consented to or subsequently acquiesced in the removal or retention of the child;
 3. There is a grave risk that the return of the child would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation;
 4. The court finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his/her views;
 5. The return of the child may be refused if this would not be permitted by the fundamental principles of the Republic of Korea regarding the protection of human rights and fundamental freedoms.
- (5) The court shall promptly notify the Minister of Justice in writing of the results of the judicial proceedings in court of each instance with respect to the cases set forth in paragraph (1).
- (6) Matters necessary for the procedures for judicial proceedings and conciliation regarding the petition cases under paragraph (1) shall be prescribed by the Supreme Court Regulations.

Article 13 (Order of Performance, etc.)

- (1) Where a person who is obligated to return a child within the meaning of the Convention by a judgment, a conciliation statement or a decision

substituting conciliation fails to perform such an obligation without justifiable grounds, the court may order the person to perform the obligation within a certain period.

- (2) The court may impose a fine for negligence of up to ten million won on any person who breaches, without justifiable grounds, an order of performance under paragraph (1).
- (3) Where a person in receipt of an order of performance under paragraph (1) fails to perform his/her obligation within 30 days without justifiable grounds despite his/her receipt of the sanction under paragraph (2), the court may impose a detention order for a period of up to 30 days until he/she performs the obligation.
- (4) Articles 64, 67 (1), and 68 of the Family Litigation Act shall apply *mutatis mutandis* to the method and procedures for issuance of an order of performance, imposition of fines for negligence, and issuance of an order of detention under paragraphs (1) through (3).

Article 14 (Notice of Reasons for Delay)

Where the court fails to reach a decision within six weeks from the date a petition for adjudication or an application for conciliation was filed in a case involving the return of a child, the court shall give written notice of the reasons for such delay at the request of the petitioner or the Minister of Justice.

CHAPTER IV SUPPLEMENTARY PROVISIONS

Article 15 (Litigation Expenses)

Except for cases eligible for the legal aid under the Legal Aid Act or any other Act or subordinate statute, the State shall not be liable to pay attorney's fees and other litigation expenses.

Article 16 (Translations)

A Korean translation shall be attached to any documents prepared in foreign languages other than English, among documents submitted to the Minister of Justice pursuant to this Act. An English translation may be attached to such

documents, provided that extraordinary circumstances make it impracticable to translate such documents into Korean.

Article 17 (Procedures for Handling Applications, etc.)

Except as otherwise prescribed in this Act for the enforcement of the Convention, matters necessary for the procedures for an application, etc. for assistance in securing the return of a child and for the procedures for handling the affairs of the Minister of Justice, and other necessary matters, shall be prescribed by Ordinance of the Ministry of Justice.

ADDENDA

Article 1 (Enforcement Date)

This Act shall enter into force on the date the Convention takes effect in the Republic of Korea.

Article 2 (Applicability)

The provisions of Articles 5 through 8 and Chapter III (Articles 11 through 14) shall apply where a person's rights of custody, etc. within the meaning of the Convention is breached, as a result of a wrongful removal or retention of a child occurring between the Republic of Korea and a relevant Contracting State, on and after the date the Convention takes effect between the Republic of Korea and each Contracting State.