

International Child Abductions

Abstract in English

This dissertation thesis deals with the issue of International Child Abductions, which is a constantly growing phenomenon. The focus of the legal regulation of international abductions lies within the Hague Convention on the Civil Aspects of International Child Abduction (hereinafter referred to as the 1980 Convention), which was adopted on 25 October 1980. There are already 98 signatory States of the Convention. This fact makes the Convention, at least in terms of the number of signatory states, one of the most successful international treaties at all. In spite of the nearly forty years of this Convention, there are still uncertainties in interpretation of certain terms during its application. The introductory part of this work deals mainly with questions of interpretation of basic concepts such as habitual residence or the right to care for a child, as well as the interpretation of individual exemptions from the obligation to return the child to the state of his habitual residence without delay. This section analyzes in particular the case law of the United Kingdom and United States courts, which account for nearly 50 % of all international abductions. Recently, there has been discussion among academics and other professional on the decision-making practice of the European Court of Human Rights, which has deviated from its previous opinions. The author also considers the question of such a divergence and the case law of the European Court of Human Rights on the interpretation of the 1980 Convention.

The 1980 Convention is not, of course, the only legal instrument dealing with this issue of International Child Abductions. Some countries are bound by bilateral treaties or other multilateral agreements, as is the case with Latin American countries. Among the Member States of the European Union Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (hereinafter referred to as Brussels II bis Regulation) is effective. The return procedure is regulated in particular in Article 11 of the Brusell II bis Regulation. This dissertation thesis deals with the related regulations in its second

part. At the present time, the work towards the revision of the text of the Regulation is in process. Such suggested revisions are compared with the present text.

The Czech legal system contains special rules for the proceedings on international child abduction in Act No. 292/2013 Coll., Act on Special Court Procedures. In the third part of the thesis, the development of the legislation, including the decision-making practice of the Czech courts, is described. Whether it concerns the interpretation of the individual provisions of the 1980 Convention or the Brussels II bis Regulation, or the access of courts to the return mechanism. It is clear that, after the centralized jurisdiction has been introduced in the Czech Republic for this agenda, the specialized court follows to the maximum extent possible the objectives of the Convention, namely to ensure the immediate return of the child to the country of its habitual residence.

The aim of this work is to evaluate the current functioning of the Convention together with a parallel Regulation and to point out possible problems, in the context of the case law of the European Court of Human Rights and the proposed revision of the Regulation.