Abstract

Since the late 20th century there has been an increase in migration due to the development of new technologies, easier ways of travel and the opening of national borders. People travel abroad for jobs, studies, or exploring new countries. During these travels some of them find life partners abroad, settle down there, conclude marriages and establish families. It often happens that such marriages end in divorce. If children are born in such a wedlock questions arise as to who will take care of them, who will pay maintenance etc. In some cases a parent decides to solve a conflict situation in such a way that he/she moves with the child without consent of the other parent to another place within the country or he/she decides to move to another country, usually to the country of his/her origin. He/she wants to settle there with the child and to legalize staying there. Such removal where national borders are crossed is considered to be international child abduction.

The basic document dealing with the issue of international child abductions is the Hague Convention on the Civil Aspects of International Child Abduction (hereinafter the Hague Convention) adopted on 25 October 1980 and currently acceded to by 87 states.

The Hague Convention establishes rules according to which cases of international child abduction are dealt with. Although the Hague Convention uses the term “abduction” in its title, technically, the Hague Convention understands this to mean the removal or retention of a child resulting in violation of the rights of the person having the custody right. It is also apparent from the title of the Hague Convention that it does not deal with possible criminal consequences of child abduction and does not apply to abduction when a child is kidnapped from his parents by a third person. The aim of this dissertation is to make a legal analysis of the Hague Convention, to define the content of the basic terms which the Hague Convention uses, and to make clear on what principles the proceedings on return of a child are to be based. The dissertation deals in detail with the terms “rights of custody”, “rights of access”, “habitual residence of the child”, “interests of the child” and “appropriate measures”. Among the principles applied in proceedings on the return of a child, the dissertation deals in detail with the principle of promptness of proceedings, the principle of an autonomous interpretation of the terms of the Hague
Convention, and the principle that the decision about the return of the child is not a
decision about rights of custody. The Hague Convention does not always insist on
returning the child and establishes exceptions justifying the removal or retention of
the child. Therefore a part of the dissertation deals with their definition and analysis.

As the Hague Convention is a source of international private law the subject-
matter of the dissertation is defined by the subject-matter of this branch of law.

The legal regulation dealing with the issue of international abductions of
children within the European Union is the 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,
Therefore the next part of the dissertation is concerned with a legal analysis of this
regulation and its relationship to the Hague Convention. The jurisdiction of the
regulation is briefly described and definitions of the basic concepts used there are
mentioned. The dissertation deals in more detail only with those provisions that
concern the given issue.

The dissertation establishes how the Regulation Brussels IIa modifies and
complements the Hague Convention. The Regulation Brussels IIa follows the Hague
Convention but sets forth special rules for the proceedings on the return of a child. It
strengthens the authority of the court of a member state in which the child had a
habitual residence prior to his/her removal in such a way that the court is
empowered, within the proceedings on the right of custody, to order his/her return
even if the application pursuant to the Hague Convention was rejected.

If the child is not returned voluntarily the entitled person has to claim his/her
right in the judgment enforcement procedure. In that case the judgment enforcement
procedure becomes an integral part of the proceedings on the return of the child. A
special chapter of the dissertation describes how one should proceed in the judgment
enforcement procedure and what rules apply there. At the same time, it deals with
particularities of the enforcement procedure of the judgment relating to return of the
child issued by the court of a member state in which the child had a habitual
residence prior to his/her abduction. It also mentions reasons standing in the way of
effective judgment enforcement.

Although the Hague Convention may be proud of a high number of states
acceded to it there are still many countries that have not done so. Another part of the
The dissertation then deals with abduction of children to the states that are not contracting states, examining reasons for which they have not signed the Hague Convention yet. As one of the reasons is also religion special attention is paid to the Sharia Islamic law. At the same time, the dissertation explains how some states deal with the cases of abduction of children to non-contracting states and with the cases when a child is removed from a non-contracting state to a contracting state.

Another focus of the dissertation is the regulation of international child abduction in the Czech legal order. Originally the former Czech and Slovak Republic acceded to the Hague Convention on 28 December 1992. The Parliament of the Czech Republic gave its consent to it and the President ratified it with one reservation pursuant to Article 42. The Convention came in force for the Czech Republic on 1 March 1998. In connection with that, the Czech Rules of Civil Procedure were slightly changed when Section 176, Paragraph 1, was amended in such a way that the words “on return of the child” were inserted into this paragraph. Later, a decision about the adoption of a new regulation was made which was supposed to make deciding in matters of illegal removal of children more effective. By the Act No 298/2008 Coll. the proceedings on return of minors in matters of international child abduction were inserted into the Czech Rules of Civil Procedure.

The final part of the dissertation is concerned with an analysis of this regulation examining the nature of the proceedings on return of a child which are not quite clear. Finally, the dissertation mentions some decisions of Czech courts concerning international child abduction.

The dissertation also mentions in various places decisions of courts of contracting states of the Hague Convention which can be found in the INCADAT database and which are related to either interpretation of the basic concepts of the Convention or to the proceedings on return of a child. Some attention is also paid to the case law of the ECHR which assesses decisions in matters of the return of a child from the viewpoint of the observation of human rights and the basic freedoms regulated by the European Convention for the Protection of Human Rights and Basic Freedoms.

In connection with an interpretation of the Brussels IIa Regulation decisions of the EU Court of Justice concerning proceedings on return of a child are mentioned.

If there is an abduction of a child in the sense of the Hague Convention there is always an infringement of family law relations of the persons at issue. For this reason
it is necessary for the contracting states to take the fulfillment of the objectives of the Hague Convention responsibly, to create conditions for preventing child abduction, and if such a situation occurs they should consistently apply rules on which the mechanism of return of a child is based.