NEW RULES ON CHILD ABDUCTION

Tokyo handles first cases under newly ratified Hague convention

Custom Media

It took time and the application of a degree of pressure—both international and domestic—for Japan’s Diet to approve the Hague Convention on the Civil Aspects of International Child Abduction, which finally went into effect on April 1, 2014. So far, diplomats, lawyers, and children’s rights activists have broadly applauded the efforts of the Japanese authorities to accede to the spirit of the agreement, pointing out a number of cases in which the pact has been enforced.

They warn, however, that the legislation has been in place for less than a year, and that Japan’s courts have yet to become deeply involved in cases that, all sides agree, are complicated and replete with emotional aspects.

“It’s too early to tell yet,” Steven Maloney, consul general at the US Embassy in Tokyo, told the ACCJ Journal.

“The Japanese government has done a lot of things very well; they have enacted the legislation, set up an office in the foreign ministry, as well as assembled judges, social workers, and lawyers with diverse skills and the ability to do the job properly, and we’re very happy with that.

“But how the courts react remains to be seen,” he added.

Before last April, Japan was the only G-8 nation not to have ratified this Hague convention, which generally stipulates that a child should be returned to his or her country of habitual residence when they have been taken out of that country by a parent and without the consent of the other parent.

With ever more international marriages—estimated at 40,000 a year in Japan—ending in separation or divorce, pressure from around the world has been building for Tokyo to enact relevant legislation.

In recent years, embassies in Tokyo were handling around 400 cases annually in which the Japanese parent had violated the terms of the convention. But previously, international authorities had been powerless to act once the child was in Japan.

At present, the US Embassy in Tokyo is dealing with close to 100 cases [of international child abduction].

Jury still out

Concern revolves around an article in the convention that identifies “grave risk” to the physical well-being of the child at the center of a dispute as being grounds for a judge to refuse to sanction the child being returned to his or her country of habitual residence. Critics say that Japanese parents who have abducted a child are aware of this loophole and that they are likely to use it—whether or not there was any physical abuse in the past—to keep the child in Japan.

“If the article is interpreted in Japan as it is interpreted elsewhere, then we do not believe there are any loopholes,” Maloney said.

Taeko Mizuno Tada, a Tokyo-based lawyer with the firm Nagahama, Mizuno & Inoue, has handled international family cases for many years. She says the law was changed largely as a result of pressure from foreign governments.

“I believe the Japanese government agreed to ratify the convention because of overseas pressure, especially from the US government,” Mizuno said. “Over the past 20 years, amendments to the Civil Code related to family matters have been very slow and controversial in Japan.

“But as some children have been returned to Japan from other countries since April 1, we now understand that the Hague convention can be beneficial to Japanese and other residents of Japan as well,” she added.

Without external encouragement, Mizuno believes, it could have taken another 30 years for Japan to sign the Hague pact. But she agrees that the authorities here are taking their new obligations seriously.
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“The Japanese foreign ministry has hired many good people to handle Hague convention issues,” she said. “And Japanese courts and the bar association have had a lot of education and training courses for Hague cases.”

**Parents still suffering**

However, foreign nationals who have been separated from their children for many years say Japan’s failure to ratify the convention earlier condemned them to years without their children, and that they still may never have the right to see their kids again.

“The benefits of Japan signing the convention only apply to cases where the children are under 16 years of age,” said Walter Benda, of Virginia, who has seen his two daughters just once in 20 years.

“The Hague convention is not retroactive, so cases such as mine, which occurred in the past, and in which the children are already 16 or older, are not covered under any of the provisions of this treaty,” Benda added. He is joint founder of the Japan chapter of the US-based Children’s Rights Council.

Benda’s wife disappeared with the girls after seeing him off to work one morning from their home in Chiba Prefecture, and she rebuffed all his efforts to make contact with them. As soon as he did find them again, they vanished once more. The only time he has seen them was for a few moments on a street in a Japanese town in 1998, after a private investigator managed to track down the girls and their mother.

The problem was overlooked for many years simply because it was not in the public eye, and there was “a cultural bias” in Japan that supported Japanese parents who had abducted children, Benda said.

“However, as the number of cases kept growing at an ever increasing rate, with parents becoming more and more organized and being able to use the Internet to leverage this issue, it started to catch the attention of leaders in the US, Japan, and other countries,” he explained.

“In addition to media coverage, various documentaries, such as *From the Shadows*, further exposed the problem.

“Rallies and other events held by parents in the US, Japan, and other countries also raised public awareness, as did the passage of various congressional resolutions in the US.

“All of this built up to the point where it started to become an international diplomatic issue that Japanese leaders had to deal with when meeting with their foreign counterparts,” he said.

“All of these efforts took about 20 years of hard work and sacrifices by parents who had their children internationally abducted.”

And while Benda concedes that little can be done in his case, he agrees that Japan signing the convention means that other foreign parents may not have to go through what he has endured for two decades.

“We have seen a marked decline in the number of parents contacting our organization for help because of their children being internationally abducted;” he said. “I definitely believe that Japan’s signing of the Hague convention has had a deterrent effect on the number of parental abductions of children of couples with one Japanese spouse and one non-Japanese spouse.”

US nationals seeking advice may contact tokyoacs@state.gov, call 03 3224 5000, or view the State Department’s website at http://travel.state.gov/content/childabduction/english/about.html.