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AMENDMENT TO NATIONAL PROVISIONS IMPLEMENTING THE HAGUE CONVENTION

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1. INTRODUCTION

An announcement entitled 'Let us protect the rights of Polish children – new specialist courts start working' appeared on the website of the Ministry of Justice[1] on 27 August 2018 providing information about entry into force of the statute[2] prepared by the Ministry and reforming the procedure of dealing with applications for the return of abducted children, in accordance with the Hague Convention. The announcement states, inter alia, that: 'The new solutions are to guarantee that no Polish child will fall into the wrong hands and the cases of this type will have a smaller impact on the youngest children. We are changing our policy which has not kept guard over Polish children for years.' This and other statements suggested that the legal state concerning the implementation of the Hague Convention regulations in Poland has been completely inefficient so far and the proceedings in such cases have been a considerable problem for the administration of justice. However, the amendment is to outright improve the situation. The above as well as the purposefulness and the necessity of the amendment should be challenged and this is the aim of this article, which will analyse the introduced changes. Taking into account the ease of travel and the increasing development of the society, the issue is of fundamental importance.

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1 https://www.ms.gov.pl/pl/informacje/news,11592,chronimy-prawa-polskich-dzieci---ruszaja-nowe.html.

2 Act of 26 January 2018 on the performance of some activities of the Central Authority in family-related cases concerning legal transactions in accordance with the European Union law and international agreements (Dz.U. 2018, item 416).

2. THE HAGUE CONVENTION AND A CHILD RETURN PROCEDURE

The Convention on the Civil Aspects of International Child Abduction of 1980[3] is an international legal act at present binding a few dozens of states in the world and regulating states' cooperation in the field of the return of a child abducted and taken to another state. It resulted from the cooperation of the Hague Conference on Private International Law, which is a standing intergovernmental committee.[4] The Convention entered into force in Poland on 1 November 1995,[5] and the Ministry of Justice was designated a Central Authority obliged to discharge thereof. In accordance with Article 1 Convention, its objective is to secure the prompt return of children wrongfully abducted to or retained in any Contracting State; and to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting State. However, the Convention is applicable until the child attains the age of 16 years. The Convention enjoys great popularity due to growing globalisation and the ease of travel as well as the estimated return of a few thousand abducted children thereunder.[6] The Convention regulates the wrongfulness of abduction in Article 3 defining it as a 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 when at the time of the 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 duties imposed by the Convention are discharged through cooperation of Central Authorities that the Contracting States designate (Article 6), and which, if they receive an application from another Contracting State, are obliged to take all appropriate measures, in particular:

a) to discover the whereabouts of a child who has been wrongfully removed or retained;
b) to prevent further harm to the child or prejudice to interested parties by taking or causing provisional measures to be taken;
c) to secure the voluntary return of the child or to bring about an amicable resolution of the issue;
d) to exchange, where desirable, information relating to the social background of the child;
e) to provide information of a general character as to the law of their State in connection with the application of the Convention;

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[3] The Convention on the Civil Aspects of International Child Abduction concluded in the Hague on 25 October 1980 (Dz.U. 1995, No. 108, item 528); hereinafter Convention.

[4] M. Kulas, *Praktyka stosowania Konwencji haskiej dotyczącej cywilnych aspektów uprowadzenia dziecka za granicę (cz. 1),* Palestra 5–6, 2009, p. 14.

[5] Government announcement of 15 May 1995 concerning the Republic of Poland's accession to the Convention on the Civil Aspects of International Child Abduction concluded in the Hague on 25 October 1980 (Dz.U. 1995, No. 108, item 529).

[6] L. Kuźniak, *Praktyka stosowania Konwencji haskiej, dotyczącej cywilnych aspektów uprowadzenia dziecka za granicę*, Biuletyn Informacyjny Rzecznika Praw Dziecka 1–2, 2009, p. 3.

f) to initiate or facilitate the institution of the judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access;
g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

The proceedings in a case concerning the return of an abducted child is in general based on the provisions of the Convention alone. Its main assumptions are the protection of a child's interests and their protection against the negative consequences of abduction, which should be reflected in the prompt return to the state before abduction.[7] The authorities' proceedings in the field are deformalized in nature because they aim to return a child quickly to the place from which the child has been removed. It is also connected with the special obligation to protect the rights of children resulting from the Constitution of the Republic of Poland and international legal acts, including the right to upbringing in a family.[8] The Central Authority that receives an application is obliged to send it to a competent court, which hears the case only in order to judge whether the child's abduction has been wrongful, in accordance with Article 3 Convention, and whether there are negative reasons for the return of the child laid down in Articles 12 and 13 Convention. Formerly, there were no special regulations in the Polish legislation on dealing with applications for the return of a child in accordance with the Hague Convention. To tell the truth, the legislator introduced the provisions of Article 598^1 Code of Civil Procedure (CCP) and next those concerning the return of a child, however, they are also applicable to 'national' proceedings. Only one provision, i.e. Article 598^2 CCP, directly refers to the Convention and stipulates that in the course of the proceedings concerning a child's return in accordance with the Convention, the matter of parental right of custody or childcare cannot be judged. As a result of the fact that the legislator did not lay down a special type of non-judicial proceedings of the return of a child under the Convention, the proceedings must be carried out based on general guardianship provisions on childcare and matters concerning the return of a person that is subject to parental custody or being under custody (Section 5, Chapter II, Part II CCP), however, the Convention is applicable in the national proceedings as a directly binding source of law.[9] It is pointed out that the provisions

[7] D. Szczęch, *Ochrona praw dziecka w konwencjach międzynarodowych*, pp. 46–47; m.wspia.eu/file/20244/08-SZCZĘCH+DOROTA.pdf.

[8] K. Szmigiel, *Ochrona praw dziecka w świetle regulacji prawa międzynarodowego i polskiego*, Zeszyt Studencki Kół Naukowych Wydziału Prawa i Administracji UAM 8, 2018, pp. 272–274; Also see J. Błeszyński, A. Rodkiewicz-Ryżek, *Ochrona praw dziecka w świetle standardów polskich i międzynarodowych*, Pedagogia Christiana 2/30, 2012, p. 97 et seq.

[9] I. Biedrzycka, *Dobro dziecka w świetle konwencji haskiej dotyczącej cywilnych aspektów uprowadzenia dziecka za granicę*, Kortowski Przegląd Prawniczy 1, 2012, p. 37. Act of 19 July 2001 amending the Act: Code of Civil Procedure, the Act on legal costs in civil proceedings and the Act on bailiffs and execution (Dz.U. 2001, No. 98, item 1069).

of this last Section introduced by means of the amendment of 2001[10] were added for the purpose of discharging the Hague Convention.[11] Therefore, the scope of dealing with an application filed based on the Convention is limited to examination of circumstances of the wrongful abduction and possible lack of negative premises, however, the issue of parental rights of custody remains beyond a court's cognition, which also results from Article 598[2] § 1 and § 3 CCP.

3. AMENDING STATUTE

The Act of 26 February 2018 introduces a fundamental change in the proceedings concerning a receipt of an application under the Convention and dealing therewith. In accordance with the amending provisions, the statute completely remodels the procedure under the Hague Convention. Article 14 stipulates that the Minister of Justice refers an application to a court competent to hear the case or to a foreign Central Authority via e-mail or similar means of distance communications and the original document via registered post the receipt of which must be confirmed; however, it does not determine which court is competent to hear the case. Nevertheless, in accordance with Article 569[1] CCP placed in general provisions concerning guardianship, a district court in a town that is the seat of an appellate court has jurisdiction over cases concerning the return of a person subject to parental custody or being under custody and dealt with in accordance with the Hague Convention of 1980, provided that the person subject to parental custody or being under custody resides or stays in the area. On the other hand, in accordance with Article 518[2] § 1 CCP, the Court of Appeal in Warsaw is the second-instance court to deal with all decisions issued under the Convention.

In the justification for the Bill, the Ministry of Justice indicates that: 'Entrusting cases concerning the return of a child abroad to numerous regional courts is not conducive to fast proceedings in such cases', and argues that: 'There is often a lack of foreign language sworn translators and specialist family law counsel within the area of a court jurisdiction. This also has influence on the possibility of adjudicating on the matter in time required by the Hague Convention of 1980. Moreover, taking into account that the frequency of such cases in one court is very low, i.e. ca. 1,000 cases per year countrywide, it is hard for judges to find opportunities to specialise in the adjudication of such matters as this requires hearing many cases of a particular type.' [12] Further, the authors of the Bill claim that: 'The specificity of such cases and the requirement of fast proceedings under the Convention require concentrating them in the hands of judges who have considerable experience. Thus, new Article 569[1] § 1 CCP entrusting the examination of cases concerning the return of a child subject to parental custody or being under custody conducted in accordance with the Hague Convention of 1980 to first-instance district courts

[10] Act of 19 July 2001 amending the Act: Code of Civil Procedure, the Act on legal costs in civil proceedings and the Act on bailiffs and execution, *supra* n. 9.

[11] M. Kulas, *supra* n. 4, p. 15.

[12] Justification for the Bill, Sejm paper No. 1827, Sejm of the 8th term, p. 26.

in towns where appellate courts have a seat should serve as an instrument for doing that.' The above means that the statute not only delegates adjudication on the application under the Hague Convention to higher instance courts but also limits their territorial jurisdiction. Not all existing regional courts are authorised to hear such cases as first-instance ones but only those in towns where appellate courts have a seat, i.e. only 11 out of 45 district courts. As a result, the competence to hear a matter is moved from a regional court, designed to be more accessible due to its small territorial jurisdiction, which in particular concerns family courts, to the level of an appellate court in fact, because a district court in a town of a particular appellate region is competent to hear such a case. The statute also introduces the time limit of six weeks for hearing the case in the first-instance proceedings (Article 569^1 § 2 CCP). As a rule, in accordance with Article 10 § 1a Act on the common courts system,[13] a regional court is established for an area of one or a number of communes inhabited by at least 50,000 people, provided that the total number of civil, criminal, family and juvenile cases filed to the existing regional court from the area of this commune or a few communes accounts for at least 5,000 per year; on the other hand, a district court is established for an area of at least two regional courts' jurisdiction, thereinafter referred to as a 'court district'. However, what is more important, the assignment of cases to judges in a court dealing with guardianship cases is based on the territorial divisions, which is laid down in § 46(2) of the Rules and regulations of common courts,[14] and execution proceedings are within the competence of a judge hearing the case (§ 246(1) Rules and regulations). As a result, judges adjudicating in a family court are most familiar with the specificity of guardianship matters, including those concerning a particular family. Therefore, the above-mentioned argument that a judge at the regional level lacks relevant experience in such matters is not convincing. Also the argument concerning the fact that a regional court jurisdiction does not always ensure the participation of a translator in the proceedings is inaccurate. Even in the case of small courts operating in small towns, there is no obstacle to ask a translator from another town for assistance. There are no grounds for stating that it is especially difficult to obtain a translator's assistance in county towns (where regional courts usually have a seat). Such an argument can only be valid for rare foreign languages but even in such cases obtaining assistance of a translator from a bigger city does not seem to be so difficult that it would cause excessive lengthening of proceedings. Also the change of the competence to hear the case that was intended to accelerate proceedings may eventually bring about the opposite effect. The transfer of this category of first-instance cases to district courts in towns that are capitals of appellate districts, i.e. relatively big courts with a considerable number of cases, justifies a claim that the effect will be opposite. As the Supreme Court rightly stated in its opinion about the Bill,[15] the transfer of the

[13] Act of 27 July 2001: Law on the common courts system, consolidated text (Dz.U. 2018, item 23).

[14] Regulation of the Minister of Justice of 23 December 2015: Rules and regulations for the operation of common courts (Dz.U. 2015, item 2316).

[15] The Supreme Court Research and Analyses Office, *Uwagi do projektu ustawy, przygotowanego przez Ministerstwo Sprawiedliwości (UD 123), o wykonywaniu niektórych czynności organu centralnego*

competence in such cases to the level of a district court will not contribute to the acceleration of such proceedings, which are conflicting in nature, and this is the reason of lengthening them. Moreover, this will not improve the 'quality' of hearing those cases, either, because courts dealing with guardianship matters are the ones that are organised in the way guaranteeing that adjudicating judges will specialise, while fulfilling some tasks at the regional level will not be feasible.

The legislator is also inconsistent when it comes to proceedings before court proceedings are instigated. While the legislator, as it has been mentioned above, justifies the transfer of competence in cases under the Hague Convention from a regional court to a district court by indicating judges' bigger expertise and specialisation, the statute under Article 13 para. 2 obliges the Minister of Justice to inform a court dealing with guardianship matters about an application filed, and under Article 20 about referring the application, inter alia, to a court that has heard the case of parental custody or childcare, i.e. a family court. Moreover, a court is obliged to conduct a social environment interview via a court-appointed legal guardian who is formally subordinated to the president of a district court but performs basic tasks within the operation of a regional court.

Evaluating the length of proceedings under the Hague Convention, it is necessary to take into account the entirety of the changes introduced. In accordance with Article 518^2 § 1 CCP, only one court is a court of appeal against first-instance courts' decisions, i.e. the Court of Appeal in Warsaw, which has three civil divisions with 46 judges in total, but some of them perform administrative functions or are seconded to the Ministry of Justice. Taking into consideration that an appellate court adjudicates as a three-person bench (Article 367 § 3 CCP), provided that the inflow of the new category of cases is not numerous, the appellate proceedings can considerably lengthen the entire proceedings. Mainly technical factors can influence that. The designation of a single court as a second-instance one for the territory of the whole country can cause problems connected with the distance from this court to a party's place of residence in a completely different part of Poland. The six-week time limit for the adjudication on the appeal by the Court of Appeal in Warsaw, introduced under Article 518^2 § 2 CCP, will not change the situation because it is a prescriptive period. Moreover, Article 11 Hague Convention stipulates that the entire proceedings should take six weeks and when the period expires the applicant has the right to request a statement of the reasons for the delay. At the same time, the Polish legislator, explicitly against the Convention, decides that just the appellate proceedings can take six weeks. The Convention clearly indicates that the time limit determined reflects the conviction that taking care of the child's interests, in particular protection against unfavourable influence of the lengthening stay away from the family environment, is a priority.[16] In the face of the stipulation of the maximum six-week time limit for the proceedings before first-instance court and the inflow of cases to the Court of Appeal in Warsaw, in which 14 judges

w sprawach rodzinnych z zakresu obrotu prawnego na podstawie prawa Unii Europejskiej i umów międzynarodowych oraz zmianie ustawy – Kodeks postępowania cywilnego i niektórych innych ustaw, BSA I-021-12/17, pp. 2–3.

[16] I. Biedrzycka, *supra* n. 9, p. 36.

adjudicate in I Civil Division hearing appeals (in three-person benches) concerning those cases,[17] there is a justified assumption that the length of the proceedings will not be shorter than in the past.

In fact, the justification for the Bill stated that, for example, there is a single court in England and Wales competent to adjudicate on cases under the Hague Convention, similarly to one single specialist court competent to hear such cases in the Czech Republic, Lithuania, Hungary and Sweden, but there are 22 such courts in Germany and 27 in Ukraine. Based on the data of the Hague Conference on Private International Law,[18] it should be pointed out that in countries with the population similar to Poland's, e.g. in Italy, there are 27 juvenile courts competent to adjudicate on matters under the Convention and their decisions can be appealed against to the Supreme Court, there are 35 competent courts in France, and 179 courts in Turkey, which leads to a conclusion that the considerable limitation of the number of courts competent to hear such cases in countries similar to Poland is rare. Thus, the assessment whether the amendment consisting in the change of first-instance courts' competence will serve more efficient proceedings will be possible from a time perspective, however, the author's opinion is that such assessment should be negative.

Another basic change influencing the length of the proceedings is an application lodged for their cassation, which is laid down in Article 519^1 § 2^1 CCP. The legislator indicated that: 'Taking into account the significance of judgments issued in such cases, due to their international context, it will be justified, regardless of the above solutions, to enable the Supreme Court to shape case law in such cases.' At the same time, the circle of entities entitled to lodge the appeal was limited under Article 519^1 § 5 CCP to the Ombudsman, the Children's Ombudsman and the Prosecutor General, who can do so within the period of two months. However, it is not a new solution because, until the amendment to the Code of Civil Procedure of 24 May 2000[19] entered into force, it had been possible to lodge an appeal in cassation concerning such cases to the Supreme Court. Both the advantages and disadvantages of such a regulation were presented in the legal doctrine because it had a negative impact on the length of proceedings; on the other hand, the Supreme Court's interpretation of the Convention proved to be useful.[20] Nevertheless, it should be mentioned that in the former legal state, also the parties to the proceedings had the right to apply for cassation concerning the return of a child and they could effectively lengthen the proceedings if they were not satisfied with the decisions issued by common courts. It must be admitted that *de lege lata* the legislator avoided the problem by rightly limiting the circle of entities entitled to lodge a cassation appeal only to the state bodies indicated. From the point of view of the length of proceedings, in accordance with Article 598^5 § 3 CCP, the obligation to develop motives for the decision on the return of a child under the Hague Convention and to deliver them to a public

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17 http://www.waw.sa.gov.pl/index.php?p=m&idg=mg,77,79,129.

18 https://www.hcch.net/en/instruments/conventions/publications1/?dtid=42&cid=24.

19 Act of 24 May 2000 amending the Act: Code of Civil Procedure, the Act on the registered pledge and the pledge registry, the Act on legal costs in civil cases and the Act on bailiffs and execution (Dz.U. 2000, No. 48, item 554).

20 M. Kulas, *supra* n. 4, p. 15.

prosecutor also seems to be justified. However, while the abstract interpretation of the Hague Convention by the Supreme Court of 30 June 2000 was influenced by the relatively short period of its application, the need does not seem to be substantiated at present. In addition, the need to shape case law stated in the justification is eliminated by the new regulation of the course of instance-related proceedings and the indication of the Court of Appeal in Warsaw as the only one competent to hear such cases in the second-instance proceedings. The National Council of the Judiciary in Poland,[21] in its opinion on the Bill, also rightly notes the legislator's certain inconsistence because, in accordance with Article 598^4 § 5 CCP, a court's decision is executable the moment it becomes valid and can be obligatorily executed pursuant to Article 598^6 CCP. However, the time for lodging a cassation appeal at the Supreme Court is two months, which, taking into account the time necessary to hear it, can result in a situation where, if the appellate court's judgment is overruled, it can be necessary to take a child back from the person to whom it has been returned. The National Council of the Judiciary is right to propose that the development of uniform case law by the Supreme Court be done without the subjective extension of cassation cases because the effect can be also obtained by means of filing a motion to solve discrepancies in the interpretation of the provisions of law that are grounds for adjudication by the First President of the Supreme Court, the Ombudsman, the Children's Ombudsman and the Prosecutor General (Article 83 § 1 and § 2 Act on the Supreme Court[22]). An appellate court can also ask the Supreme Court for solving a legal question that raises serious doubts (Article 390 § 1 CCP in conjunction with Article 13 § 1 and § 2 CCP). This leads to a conclusion that the extension of the Supreme Court's cassation cognition to cases under the Hague Convention is not fully justified. It is necessary to share the stand presented in the justification for the above-mentioned amendment to the Code of Civil Procedure of 2000, which was not more broadly elaborated though, that apart from the matters concerning adoption and division of joint property, matters concerning family law are not subject to cassation due to their instability and conflicting nature. As it has been argued above, the legislator's assumption in the interpretation of the Convention can be achieved without any obstacles with the use of other available legal measures.

The amendment also makes another important change in the scope of proceedings before a court by introducing, under Article 578^2 § 1, a provision of obligatory participation of a counsel. The obligation does not apply to the proceedings concerning the exemption from legal costs and the appointment of a counsel, and the situation where a party to the proceedings, its body, its statutory representative or proxy is a judge, a prosecutor, a notary, a professor or doctor of law, a defence counsel, an attorney-at-law, a legal advisor or a lawyer of the General Counsel to the Republic of Poland (Article 578^2 § 2 CCP). The above means that the obligation is applicable to both parties to the proceedings, i.e. an applicant and the participants.

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[21] Opinion of the National Council of the Judiciary of 7 February 2017 concerning the Bill on the performance of some activities of a Central Authority in family cases within the scope of legal transactions in accordance with the European Union law and international agreements and amending the Act: Code of Civil Procedure and some other acts, p. 1.

[22] Act of 8 December 2017 on the Supreme Court (Dz.U. 2018, item 5).

However, the statute, within the scope in which it changes the provisions of the Code of Civil Procedure, does not stipulate the method of procedural substitution for the applicant who does not have a seat in Poland. Moreover, at the stage of the proceedings involving the application before the Minister of Justice as the Polish Central Authority, Article 4 of the statute stipulates that the applicant can, i.e. does not have to, be represented by a counsel who can also be, apart from an attorney-at-law, the applicant's spouse, siblings, descendants, ascendants, and people who are in the adoption relationship with the applicant. In the justification for the Bill, its authors indicated that: 'The obligatory participation of a counsel, in conformity with the intention of the Bill, shall not apply to the act of filing an application because an applicant can do this on their own, which is guaranteed by the provisions of the Hague Convention of 1980.' It is also stated in the justification that: 'In the case of no possibility of appointing a counsel, because of the financial situation, a party to the proceedings can apply for the appointment of a counsel by court.' However, no legislation followed that idea and there is an obvious lack of such regulations. The statute does not specify any method or mode of informing an applicant having a seat abroad about the necessity of appointing a professional counsel. It seems that the regulation contained in Article 16 of the statute is insufficient in this regard. In accordance with this provision, the Minister of Justice passes information on the running of the proceedings concerning applications, information about the law that is in force in the Republic of Poland, other information and notifications to the foreign Central Authority acting in the case or the applicant. In the case the applicant has appointed a proxy, the Minister addresses correspondence to him or her. Thus, it means that potential information about obligatory participation of a counsel may reach the applicant after a long time, which should be negatively evaluated from the point of view of possible consequences of the lack of such representation. It is desirable that the Ministry of Justice should respond to the application and automatically notify the applicant of the obligation to appoint a professional counsel if the application is referred to a court.

4. CONCLUSIONS

At the present stage, an unequivocal evaluation of the amendments to the proceedings concerning an application for the return of a child under the Hague Convention is difficult, however, in the author's opinion, the direction of changes and their justification are at least doubtful. Undeniably, in cases of this kind, the well-being of a child should be the primary interest. That is why, the proceedings should be shaped in the way ensuring their effectiveness and efficiency. The assessment whether the proceedings before a district court will be more efficient than they used to be before a regional court will be possible after some period when the amended provisions are in force.

However, as it has been discussed above, the changes introduced by the analysed amendment raise doubts concerning their rationality from the point of view of the Hague Convention as well as the real need in this regard. In fact, there

have been no opinions so far that the proceedings in such cases were inefficient or the practice was incapable. Moreover, the Ministry of Justice has not presented data justifying those changes. The essence of the proceedings under the Hague Convention is to oblige a parent who has abducted a child to return him/her to their country of origin, and the Convention lays down the possibility of rejecting the application in extraordinary situations. Therefore, proceedings in such cases should be carried out efficiently and should be accessible to parties. However, the change of the competence of courts adjudicating in those cases will cause difficulties for the people concerned.

BIBLIOGRAPHY

Biedrzycka I., *Dobro dziecka w świetle konwencji haskiej dotyczącej cywilnych aspektów uprowadzenia dziecka za granicę*, Kortowski Przegląd Prawniczy 1, 2012.

Biuro Studiów i Analiz Sądu Najwyższego, *Uwagi do projektu ustawy, przygotowanego przez Ministerstwo Sprawiedliwości (UID 123), o wykonywaniu niektórych czynności organu centralnego w sprawach rodzinnych z zakresu obrotu prawnego na podstawie prawa Unii Europejskiej i umów międzynarodowych oraz zmianie ustawy – Kodeks postępowania cywilnego i niektórych innych ustaw*, BSA I-021-12/17.

Błeszyński J., Rodkiewicz-Ryżek A., *Ochrona praw dziecka w świetle standardów polskich i międzynarodowych*, Pedagogia Christiana 2/30, 2012.

Kulas M., *Praktyka stosowania Konwencji haskiej dotyczącej cywilnych aspektów uprowadzenia dziecka za granicę (cz. 1)*, Palestra 5–6, 2009.

Kuźniak L., *Praktyka stosowania Konwencji haskiej, dotyczącej cywilnych aspektów uprowadzenia dziecka za granicę*, Biuletyn Informacyjny Rzecznika Praw Dziecka 1–2, 2009.

Opinia Krajowej Rady Sądownictwa z 7 lutego 2017 r. w przedmiocie projektu ustawy o wykonywaniu niektórych czynności organu centralnego w sprawach rodzinnych z zakresu obrotu prawnego na podstawie prawa Unii Europejskiej i umów międzynarodowych oraz zmianie ustawy – Kodeks postępowania cywilnego i niektórych innych ustaw.

Szczęch D., *Ochrona praw dziecka w konwencjach międzynarodowych*, m.wspia.eu/file/20244/08-SZCZĘCH+DOROTA.pdf.

Szmigiel K., *Ochrona praw dziecka w świetle regulacji prawa międzynarodowego i polskiego*, Zeszyt Studencki Kół Naukowych Wydziału Prawa i Administracji UAM 8, 2018.

Online sources

http://www.waw.sa.gov.pl/index.php?p=m&idg=mg,77,79,129

https://www.hcch.net/en/instruments/conventions/publications1/?dtid=42&cid=24

https://www.ms.gov.pl/pl/informacje/news,11592,chronimy-prawa-polskich-dzieci---ruszaja-nowe.html

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Summary

The article discusses issues related to the recently amended provisions of the Code of Civil Procedure with regard to proceedings in the case of an application to return a child filed under the Hague Convention. The amended Act changes the jurisdiction of a court in these matters, transferring it from the level of a lowest regional court to selected district courts, and in appeal proceedings, the only competent court is the Court of Appeal in Warsaw. The Act also introduces the possibility of lodging a cassation appeal against the decision of the second-instance court. As the Ministry of Justice, the author of the Bill, directly claims, the aim of the regulation is to 'protect Polish children'. As a result, the Act raises extralegal emotions. With this in mind, and primarily considering the purpose of the Convention, which is the best interests of the child, the assessment of the amendments should be made with great caution.

Keywords: Hague Convention, civil aspects of international child abduction, child abduction, parental abduction

NOWELIZACJA KRAJOWYCH PRZEPISÓW DOTYCZĄCYCH WYKONYWANIA KONWENCJI HASKIEJ

Streszczenie

Artykuł dotyczy problematyki związanej z dokonaną w ostatnim czasie nowelizacją przepisów kodeksu postępowania cywilnego w zakresie postępowania w sprawie wniosku o wydanie dziecka złożonego na podstawie konwencji haskiej. Ustawa ta dokonuje zmiany właściwości rzeczowej sądu w tych sprawach, przenosząc je z poziomu sądu rejonowego do wybranych sądów okręgowych, a w postępowaniu odwoławczym jako jedyny właściwy określa Sąd Apelacyjny w Warszawie. Ustawa wprowadza także możliwość złożenia skargi kasacyjnej od postanowienia sądu drugiej instancji. Jak wprost przyznaje Ministerstwo Sprawiedliwości, będące autorem projektu ustawy, jej celem jest „ochrona polskich dzieci". Powoduje to, że ustawie towarzyszą pozaprawne emocje. Mając to na względzie, a przede wszystkim patrząc na cel konwencji, jakim jest dobro dziecka, ocena dokonanych zmian powinna być dokonywana z dużą ostrożnością.

Słowa kluczowe: konwencja haska, cywilne aspekty uprowadzenia dziecka za granicę, uprowadzenie dziecka, porwanie rodzicielskie

REFORMA DE NORMAS NACIONALES RELATIVAS A LA EJECUCIÓN DEL CONVENIO DE LA HAYA

Resumen

El artículo versa sobre la problemática relacionada con la reforma efectuada últimamente de preceptos del código de procedimiento civil en cuanto al proceso de la solicitud de entrega de niño presentado en virtud del Convenio de la Haya. Esta ley modifica la competencia objetiva de Tribunales en estos casos, trasladándola de los Tribunales de Primera Instancia

a determinados Tribunales regionales; en el proceso de apelación, el único órgano competente es el Tribunal de Apelación en Varsovia. La ley introduce también la posibilidad de presentar el recurso de casación contra auto del Tribunal de II instancia. Como admite directamente el Ministerio de Justicia, el autor de proyecto de la ley, su objetivo consiste en "proteger a los niños polacos". Esto significa, que la ley está acompañada por emociones extralegales. Teniendo esto en cuenta y, en particular, viendo el objetivo de la Convención que es el bien del niño, la valoración de modificaciones efectuadas ha de ser muy precavida.

Palabras claves: Convención de la Haya, aspectos civiles de secuestro de niño al extranjero, secuestro de niño, secuestro parental

ИЗМЕНЕНИЯ В НАЦИОНАЛЬНОМ ЗАКОНОДАТЕЛЬСТВЕ, КАСАЮЩЕМСЯ ВЫПОЛНЕНИЯ ГААГСКОЙ КОНВЕНЦИИ

Аннотация

В статье рассматриваются вопросы, связанные с недавним изменением положений Гражданского процессуального кодекса, касающихся производства по заявлению о возвращении ребенка, поданному в соответствии с Гаагской конвенцией. Законом, вносящим эти поправки, изменена материальная юрисдикция суда по соответствующим делам. Они передаются с уровня районных судов на уровень нескольких окружных судов, а в качестве единственной апелляционной инстанции указан Апелляционный суд в Варшаве. Кроме этого, законом предусмотрена возможность подачи кассационной жалобы на решение суда второй инстанции. Автор законопроекта, которым является Министерство юстиции, прямо указывал, что его целью является «защита польских детей». Как следствие, принятию закона сопутствовали эмоции, никак не связанные с юриспруденцией. Ввиду этого, а также учитывая основную цель конвенции, которой является благополучие ребенка, к внесенным недавно изменениям следует отнестись с большой осторожностью.

Ключевые слова: Гаагская конвенция; гражданские аспекты международного похищения ребенка; похищение ребенка; похищение ребенка родителем

ÄNDERUNG DER EINZELSTAATLICHEN VORSCHRIFTEN ZUR AUSFÜHRUNG DES HAAGER ÜBEREINKOMMENS

Zusammenfassung

Der Artikel behandelt Fragen im Zusammenhang mit der jüngsten Änderung der polnischen Zivilprozessordnung in Bezug auf die Behandlung eines Antrags auf Anordnung der Rückgabe eines Kindes nach dem Haager Übereinkommen. Durch dieses Gesetz ändert sich die sachliche Zuständigkeit der Gerichte in diesen Fällen und überträgt diese von der Ebene des Sąd rejonowy, der Eingangsinstanz in Zivil- und Strafsachen in Polen auf ausgewählte Bezirksgerichte (Sąd okręgowy), die gewöhnlich die zweite Instanz der ordentlichen Gerichtsbarkeit in Polen sind, und legt das Berufungsgericht Warschau (Sąd Apelacyjny w Warszawie) als alleinig für Berufungsverfahren zuständiges Gericht fest. Das Gesetz räumt auch die Möglichkeit ein, gegen zweitinstanzlich ergangene Entscheidungen Kassationsbeschwerde einzulegen. Wie das polnische Justizministerium, das den Gesetzesentwurf ausgearbeitet hat, explizit einräumt, zielt dieses darauf ab, „polnische Kinder zu schützen". Dies hat zur Folge, dass mit

dem Gesetz auch außergerichtliche Emotionen einhergehen. Vor diesem Hintergrund und vor allem unter Berücksichtigung des Zwecks des Haager Übereinkommens, das das Wohl des Kindes im Auge hat, sollte die Bewertung der vorgenommenen Änderungen mit großer Vorsicht erfolgen.

Schlüsselwörter: Haager Übereinkommen, zivilrechtliche Aspekte der grenzüberschreitenden Kindesentführung, Kindesentführung, elterliche Kindesentführung

MODIFICATION DES DISPOSITIONS NATIONALES CONCERNANT LA MISE EN ŒUVRE DE LA CONVENTION DE LA HAYE

Résumé

L'article traite des questions liées à la récente modification des dispositions du Code de procédure civile dans le cadre de la procédure relative à la demande de remise de l'enfant présentée en vertu de la Convention de La Haye. Cette loi modifie la compétence matérielle du tribunal dans ces affaires, en les transférant du niveau du tribunal de district aux tribunaux d'arrondissement sélectionnés, et détermine la cour d'appel de Varsovie comme la seule compétente en matière de procédure d'appel. La loi prévoit également la possibilité de déposer une plainte en cassation contre une décision du tribunal de deuxième instance. Comme l'admet explicitement le ministère de la Justice, auteur du projet de loi, son objectif est de «protéger les enfants polonais». Il fait que l'acte s'accompagne d'émotions extra-légales. Dans cette optique, et surtout au regard de l'objet de la convention, qui est le bien de l'enfant, l'appréciation des changements doit se faire avec une extrême prudence.

Mots-clés: Convention de La Haye, aspects civils de l'enlèvement d'enfants, enlèvement d'enfants, enlèvement parental

RIFORMA DELLE NORMATIVE NAZIONALI RIGUARDANTI L'APPLICAZIONE DELLA CONVENZIONI DELL'AIA

Sintesi

L'articolo riguarda la problematica legata alla riforma, ultimamente introdotta, delle norme del codice di procedura civile nell'ambito del procedimento circa la domanda di ritorno di minore, presentata sulla base della convenzione dell'Aia. Tale legge introduce variazioni della competenza ratione materiae del giudice in tali casi, trasferendola dal livello di tribunale circondariale a tribunali distrettuali scelti, e nel procedimento d'impugnazione come unico competente viene indicata la Corte di Appello di Varsavia. La legge introduce anche la possibilità di presentare un ricorso per cassazione avverso le sentenze del giudice di secondo grado. Come ammette esplicitamente il Ministero della Giustizia, autore del progetto di legge, il suo obiettivo è la "tutela dei bambini polacchi". Questo fa sì che la legge sia accompagnata da emozioni extragiuridiche. Considerando questo e soprattutto guardando all'obiettivo della convenzione, ossia il bene del bambino, la valutazione delle modifiche introdotte deve essere eseguita con grande prudenza.

Parole chiave: Convenzione dell'Aia, aspetti civili della sottrazione trasfrontaliera di minore, sottrazione di minore, sottrazione da parte di un genitore

Cytuj jako:

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