

THE DANISH CENTRAL AUTHORITY
HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION
AND
EUROPEAN CONVENTION ON RECOGNITION AND ENFORCEMENT OF DECISIONS CONCERNING
CUSTODY OF CHILDREN AND ON RESTORATION OF CUSTODY OF CHILDREN

E-mail secretariat@hcch.net

Date: July 11, 2006

To: Permanent Bureau
 Hague Conference on Private International Law

From: Neel Pryds
 Ministry of Family and Consumer Affairs
 Department of Family Affairs
 (FAMILIESTYRELSEN)
 Fax Number: + 45 39 27 18 89

File no./our ref: 06-7009-00020

Re: Questionnaire concerning the practical operation of the Hague Convention of 25 October 1980 on the civil Aspects of International Child Abduction

(Including questions on implementation of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children)

The Ministry of Family and Consumer Affairs, Department of Family Affairs, which is the central authority of Denmark hereby forwards our responses to the above-mentioned questionnaire.

The role and functions of Central Authorities

1. In general we find the communication and co-operation between the Central Authorities very efficient and well functioning. We use mail, fax, phone and e-mail in our communication with other Central Authorities and with Danish Authorities.

The Danish Central Authority have experienced that in some instances requested Member States are very slow to start convention proceedings and –when proceedings have been started – neglect to keep us informed, to provide us with court orders or answer our questions.

Also we have experienced some difficulties with a few Member States in achieving legal information of a general character in connection with applications.

Finally we have experienced difficulties in getting help to organise or secure the effective exercise of rights of access.

2. So far the Danish Central Authority has not experienced any major problems.

3. In 2004 the Danish Central Authority - in cooperation with the Ministry of Foreign Affairs and the Police - made a homepage (www.bornebortforelse.dk) regarding child

abductions The homepage was made to ensure that information about child abduction is within easy reach for those who need it. Parents and other interested can find information about legislation and authorities to contact if a child have been abducted. The homepage is in both Danish and English. At the same time a Child Abduction Hotline was established. The Hotline, which is attached to The Danish Central Authority, can be contacted outside normal working hours and during weekends. The Hotline staff can inform about the rules that apply in a current situation, the authorities to contact, the help to get from various authorities and the precautions to take.

Danish embassies and consular representations abroad has also been instructed to recommend persons seeking advice and guidance on these questions in countries covered by the conventions, to contact the Danish Central Authority – if necessary through the Foreign Service. The Danish representations abroad have also been instructed, in a given case, to advise the persons in question to seek legal advice in the country of residence as well.

The information on The Hague Conference website is accurate.

- a) Yes.
- b) Yes.
- c) Yes.
- d) Yes.
- e) Yes.
- f) There is information about the judicial procedures which apply to return applications, but not information about appeals procedures.
- g) Yes.
- h) No.
- i) Yes.
- j) There is no information about the liaison judges on the website; however when a case is forwarded to the relevant court (Civil Court) information about liaison judges is included.

4. The Civil Court takes measures to encourage a voluntary return and an amicable resolution.

5. The Danish Central Authority attended a meeting in Sweden in 2005 together with the Central Authorities from all the Nordic Countries. A new meeting is planned in the autumn of 2006 in Norway.

Court proceedings

6. In Denmark applications for return are dealt with by the Civil Courts in first instance. There are 82 Civil Courts in Denmark.

If a decision made by the Civil Court is appealed, the High Court will deal with the case. We have two divisions of the High Court in Denmark, a western and an eastern division.

It is possible to apply for permission to get the case tried in the third instance, which is the Supreme Court. We have not had any examples of cases where permission has been granted.

7. The Hague Convention has been implemented in Danish law in Act No. 793 of 27. November 1990 on International Enforcement of Decisions concerning Custody of Children and Restoration of Custody of Children, etc. (International Child Abduction).

- a). No specific measures other than the above mentioned has been taken.
- b). The judge at the Civil Court decides the case procedure according to the Danish Administration of Justice Act.

8. In Denmark the court shall automatically assign an attorney at law to a requesting parent who applies for the return of a child. The procedure is prescribed in the Danish Act on International Enforcement of Decisions concerning Custody of Children and Restoration of Children, etc. Fees and reimbursement of expenses incurred in connection with the assigned attorney are covered by the Danish State.

When a parent is applying for access in Denmark, the application shall be lodged with a Local Government Office. The Danish legal aid system does not apply for cases which are dealt with by administrative authorities. However, The Local Government Office is obliged to offer counselling and information to the parents and to the child.

We have not experienced that the above measures have lead to delays.

9. Judges or an expert in child behaviour will have a conversation with the child, if the child has reached an age and maturity so the child's opinion has to be considered before the decision is made. In some cases there will be made an examination by an expert on child behaviour. Children above 12 years of age will always be heard.

10. The 1980 Hague Convention have been implemented in Danish law. We have not taken any specific measures concerning article 20 and article 20 have never been used.

Legal issues and interpretation of key concepts

11. The 1980 Hague Convention have been implemented in Danish law.

12. Since July 1, 2003 it has been possible to apply for legal aid to cover the cost of legal steps needed to recover the child if a child has been removed to a foreign country – including non contracting states. The granting of legal aid is not means-tested.

See also the answer to question 13 (a).

13.

a). Section 3 in the Danish Act on Custody and Access has been extended so it is made clear that both parents – if joint custody – must consent if a child's stay in a foreign country is extended beyond what is decided or agreed.

In March 2005 The Danish Ministry of Family and Consumer Affairs set a committee on Custody and Access. The committee has now made a report with suggestions to a new Act on Custody and Access It is expected that the Minister of Family and Consumer Affairs will introduce a new bill on Custody and Access on the basis of the committees suggestions.

b). no comments.

c). no comments.

d). no comments.

e). no comments.

f). no comments.

g). Se above answer to question 13 (a).

- h). no comments.
- i). no comments.
- j). no comments.
- k). no comments.
- l). no comments.

Direct international judicial communication

14. Please see answer to question 5 and our previous answer from 2002.

Immigration / asylum / refugee matters

15- 18. No, we do not have such experience.

Criminal proceedings

19. We have had some cases where there were questions as to the right of the Danish parent to re-enter the country from which the child was abducted. The situation in these cases was that the mother abducted the children to Denmark, and an arrest warrant was issued, and she was imposed a fine. In these cases the Danish enforcement court ordered the return of the children. Afterwards it was not possible for the parent to return because of the arrest order and the fine, and therefore it was not possible for them to attend the following custody case or to have access to the child.

In Denmark it is a criminal offence when a child is wrongfully removed from Denmark by one of its parents. However in order to ensure the return of the child we have experienced cases where the public prosecutor has accepted to drop the criminal proceedings in condition that the abducting parent returned to Denmark with the child.

Mediation

20. A co-operational group between the Central Authority, the Ministry of Foreign Affairs, the police and the Ministry of Social Affairs has proposed that mediation will be offered in Hague Convention return cases. It is the plan that the Governmental Offices shall handle the mediation after the parents are referred from the court. We expect that a bill with this proposal will be proposed within a year.

For the time being the judge is obligated to seek a voluntary return of the child or to bring about an amicable resolution.

In access cases mediation can be offered by the Governmental Office and an agreement can with the parents consent be written in a decision that can be enforced.

21. As mentioned in our answer of question 20 mediations is not offered for the time being in return cases.

22. No comments.

Training and education

23. No comments.

24. In spring 2006 The Danish Court Administration had a seminar for judges from the Civil Courts, where part of the agenda was child abduction. The seminar was planned in co-operation with the Danish liaison judge.

Ensuring the safe return of children where issues such as domestic violence and abuse are raised

25-32. We do not recall cases, where the return has been refused because of domestic violence. The question on how a child shall be returned must be solved in accordance with Danish legislation's general provisions about enforcement. However the courts usually tries, maybe with the help from the lawyers involved in the case, to get the parties to accept what could be called "confidence-building arrangements". Arrangements like this will be entered in the Records of the Court, because the parties hereby feel more responsible to comply with the arrangements.

In Denmark we do not have any examples of safe harbour orders or mirror orders in Danish legal usages. Danish Courts of enforcement cannot make mirror orders, because they only have jurisdiction to make enforcement orders. However Denmark has signed the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children and it will therefore in the future be possible for the courts to make mirror orders when the 1996 Convention has entered into force in Denmark.

As we recall there has been no cases where Danish authorities has refused to make or enforce an order in respect of a young child on the basis that an abducting parent who is the child's primary carer, refuses or is otherwise not in a position to return with the child.

Standard questionnaire for newly acceding Stases

33.-35.

The Guide to Good Practice

36-44. The Danish Central Authority has used and uses the Guide to Good Practice, Part I, Part II and Part III to improve the implementation an operation of the Convention.

We also refer to our answer from 2004.

Standardised consent form

45. No comments.

Statistics and case management

46. The Danish Central Authority maintains statistics concerning all return and access case under this Convention and the 1980 European Convention. The statistic has not been send to the Permanent Bureau but will be sent.

47. We do not use any special software for case management/statistical purposes other than our normal case management. For the moment we do not find it necessary to invest in special software for case management/statistical purposes since we have only got a limited number of cases per year.

Publicity / debate concerning the Convention

48. The Convention itself has not raised any publicity or debate. But specific return cases once in a while raise publicity and debate.

49. We do not believe that the Convention has any negative effects which are causing concern.

50. Mainly by our website www.boernebortforelse.dk and with seminars for the judges from the Civil Courts.

51. The Danish Central Authority does not cooperate with any organisations working especially with subjects concerning the conventions.

Services provided by the Permanent Bureau

52.

- a). We find that INCADAT is a very good instrument.
- b). No comments.
- c). We find that the bibliography of the Convention is a very good instrument.
- d). We use the website very often and find it of great importance that the contact information to the different Central Authorities is updated.
- e). We look forward to the development on the INCASTAT.
- f). iChild seems as an interesting project.
- g). No comments.
- h). No comments.

53. No comments or suggestions.

Compliance with the Convention

54. Please see the answer to question 1.

55. No comments.

Non-Convention cases and non-Convention States

56. The Danish Central Authority is not aware of any troubling cases of international abduction which fall outside the scope of the convention. However the central authority does not handle non-convention cases. These cases are dealt with by the Danish Ministry of Foreign Affairs.

57. No comments.

58. Denmark does not have any bilateral agreements with non-Contracting States.

59. No comments.

Relationship with other instruments

60. No comments or observations.

61. No comments or observations.

The Hague Convention of 1996 on Jurisdictions, Application Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of children

62. The 1996 Hague Convention has been implemented in Danish legislation by Act No. 434 of May 8, 2006. However, the date for the commencement of the Act – and the Convention – is not fixed, since Denmark has not ratified the Convention yet.

The Convention is implemented by incorporation. The implementing act also stipulates certain procedural rules to secure the implementation of art. 24 and art. 26. Further the act changes the general provisions in the Danish Administration of Justice Act concerning international jurisdiction in custody cases, so it is in conformity with the convention.

63. See 62.

64. We had difficulties in interpretation of:

- The scope of art. 3 and 4, and the effect on Danish legislation.
- The scope of art. 24 and art. 26, since the Danish Administration on Justice Act did not have provisions concerning pre-recognition or declaration of enforceability (exequatur-procedure).
- The scope of art. 41.
- Art. 21 was very difficult to interpretate.

65. We find that a Guide to Good Practice could be of great importance for countries who is in process of implementing the Convention.

66. See the answer to question 62.

Denmark signed the 1996 convention on April 1, 2003, together with the other member states of the European Union. The Convention is now implemented in Danish Legislation, and Denmark is ready to ratify. However, Denmark wishes to ratify the convention together with the other European member states.

Any other matters and recommendations

67. A specific case in Denmark has made it clear that there are some difficulties relating to the situation where parents make agreements on how long a child shall stay in one country, but courts can find that the child's habitual residence has to be decided according to the actually circumstances.

In one specific case parents with joint custody made an agreement that the mother and child should travel to Denmark and stay for one year. While the mother and child stayed in Denmark, the father should visit. After one year the mother and child should return to the State X where the child should stay permanently. According to the agreement any dispute in relation to the arrangement should be handled by the Family Court in State X.

After 6 months in Denmark the mother applied for sole custody in Denmark. The father immediately made a request on return of the child. According to Article 16 the custody case was suspended until it was determined whether or not the child should be returned under this convention. The Danish Court did not find that the child's stay in Denmark was illegal according to Article 3 in the Convention, since there was a written agreement between the parties saying that the mother and child was allowed to stay in Den-

mark for one year. Shortly hereafter the Danish County Court revoked the joint custody and sole parenting in respect of the child was awarded to the mother. The mother and child did not return to State X after one year. Once again the father made a request on return of the child.

The High court decided that the child should not be returned. The court found that according to the actual circumstances the child had her habitual residence in Denmark. The court noted that an agreement between parents on where a child shall have habitual residence is not binding, since the decision on where a child has residence has to be decided according to the actual circumstances.

The court noted that the father had made a considerable effort to uphold contact with the child and that the father had acted in confidence with the agreement between the parents and had tried to get the child returned since the mother applied for sole custody in Denmark and therefore could feel that he is placed in an unfair position. In spite of that the court had not found that it could disregard the fact that the child had now stayed more than a year legally in Denmark. The return was therefore denied in accordance with Article 12 of the Hague Convention.

68. No comments.

We hope this information will be useful to you.

Yours Sincerely

Hanne Kristiansen
Department of Family Affairs

Enclosure:

- a) Translation into English of The Act implementing the Convention and The European Convention of 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children - without amendments.
- b) Translation into English of The Act on Custody and Access.

**Act on International Enforcement of Decisions
concerning
Custody of Children and Restoration of Custody of Children, etc.
(International Child Abduction)**

WE MARGRETHE THE SECOND, by the Grace of God Queen of Denmark, do hereby make known:

The Danish Folketing has passed the following Act, which has received Royal Assent:

Part 1

Scope of the Act

1.-(1) This Act shall apply to recognition and enforcement of foreign decisions concerning custody of children, the child's residence and the right of access, cf. Part 3. Further, the Act shall apply to the return of children who have been unlawfully taken to this country or unlawfully retained here, cf. Part 4.

(2) This Act shall apply to children under the age of 16 years.

(3) Recognition and enforcement under Part 3 can take place on the basis of judgments, orders and decisions made by a court or a public authority or on the basis of agreements approved by a public authority.

2.-(1) Sections 3-9, 12-13, 15(1), 16-18 and 20 shall apply in relation to States which have acceded to the European Convention of 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children.

(2) Sections 3, 10-12 and 14-20 shall apply in relation to States which have acceded to the Hague Convention of 1980 on the Civil Aspects of International Child Abduction.

(3) This Act shall not apply in relation to Finland, Iceland, Norway or Sweden to the extent other provisions apply.

(4) Based on an agreement, which may contain derogations from the provisions of the European Convention or the Hague Convention, with a State which has not acceded to the European Convention or the Hague Convention, the Minister of Justice may determine that the Act shall also apply with the necessary changes to the relationship between Denmark and that State.

Part 2

Central authority

3.-(1) The central authority shall:

- 1) receive and transmit communications under the Conventions;
- 2) co-operate with the central authorities of the other States which have acceded to the Conventions;
and
- 3) discharge the duties which are imposed by the Conventions on the central authority.

(2) The Minister of Justice shall designate the central authority in this country and lay down detailed rules on its function.

Part 3

Recognition and enforcement in accordance with the European Convention

4.-(1) A decision relating to custody of a child, the child's residence or the right of access given in a State which has acceded to the European Convention shall be recognised in this country.

(2) A decision as mentioned in subsection (1) may be enforced in this country on application if it can provide the basis for enforcement in the State in which the decision was given (the State of origin), cf., however, sections 5-8.

(3) Where, at the time of the removal of a child to another country, there was no enforceable decision given in a Convention State, any subsequent decision, declaring the removal to be unlawful, given in a Convention State shall be treated as equivalent to a decision under subsection (1).

5. A decision under section 4 given in the absence of the defendant can only be recognised or enforced in this country if:

- 1) the defendant was duly served with a writ of summons or received an equivalent document in sufficient time to enable the party to arrange for his defence, or a writ of summons or an equivalent document could not be served on or received by the party because he had concealed his whereabouts from the other party; and
- 2) the competence of the authority giving the decision under section 4 was founded on the habitual residence of the defendant, on the last common habitual residence of the child's parents, at least one parent being still habitually resident there, or on the habitual residence of the child.

6. A decision under section 4 cannot be recognised or enforced if:

- 1) the effects of the decision will be manifestly incompatible with the fundamental Danish principles of the law relating to the family and children;
- 2) by reason of a change in the circumstances the effects of the decision are manifestly no longer in accordance with the welfare of the child;

- 3) at the time when the proceedings were instituted in the State of origin, the child was a national of or habitually resident in this country and no such connection existed with the State of origin;
- 4) at the time when the proceedings were instituted in the State of origin, the child was a national both of the State of origin and of this country and was habitually resident in this country; or
- 5) according to the law of the State of which the child is a national or in which the child is habitually resident, the child is entitled to determine its place of residence.

7.-(1) A decision given under section 4 cannot be recognised or enforced in this country if it is incompatible with a decision given in this country pursuant to proceedings begun before the submission of the application for recognition or enforcement, and if the refusal is in accordance with the welfare of the child.

(2) A decision given in a country other than the State of origin and enforceable here shall be treated as equivalent to a decision given in this country under subsection (1).

8. Proceedings relating to recognition or enforcement under section 4 may be adjourned by an order if:

- 1) an ordinary form of review of the decision has been commenced in the State of origin;
- 2) proceedings relating to the custody of the child or rights of access, commenced before the proceedings in the State of origin were instituted, are pending in this country; or
- 3) another decision concerning the custody of the child is the subject of proceedings for enforcement or of any other proceedings concerning the recognition of the decision.

9. In connection with the enforcement of a decision relating to a right of access under section 4, the enforcement court may make a decision on the extent and exercise of such right of access.

Part 4

Return in accordance with the Hague Convention

10.-(1) Children removed wrongfully to this country or retained here wrongfully shall on application be returned to the person from whom the child is retained if immediately before the removal or retention the child was habitually resident in a State which has acceded to the Hague Convention.

(2) The removal or the retention of a child is wrongful where:

- 1) it is in breach of rights of custody whether attributed to a person, an institution or another 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
- 2) at the time of removal or retention those rights were actually exercised or would have been so exercised but for the wrongful removal or retention.

11. Return under section 10(1) may be refused if:

- 1) at the date of the lodging of an application for return with the enforcement court one year has elapsed since the removal or retention and the child is now settled in its new environment;
- 2) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation;
- 3) the child objects to being returned and has attained an age and a degree of maturity at which it is appropriate to take account of its views; or
- 4) the return would not be permitted by the fundamental principles of this country relating to the protection of human rights and fundamental freedoms.

Part 5

Procedure

12.-(1) An application for enforcement of a decision relating to custody of a child, the child's place of residence, or rights of access under section 4 or the return of a child under section 10(1) shall be lodged with the enforcement court.

(2) Applications to the enforcement court shall be drawn up in Danish or be accompanied by a translation into Danish. Documents in foreign languages which are enclosed shall be translated into Danish unless the court does not find it necessary.

13.-(1) An application for enforcement of a decision under section 4 shall contain information about the likely whereabouts of the child in this country, and proposals as to how the custody of the child should be restored.

(2) The application shall be accompanied by a certified transcript of the decision, documentary evidence that the conditions for recognition and enforcement under section 5 are satisfied and documentary evidence that the decision can provide the basis for enforcement in the State of origin.

14.-(1) An application for the return of a child under section 10(1) shall contain information about the applicant, the child and the person who is alleged to have removed or retained the child, and the child's date of birth. It shall contain a reason for the demand for return and information about the likely whereabouts of the child in this country.

(2) The application shall be accompanied by the documents relied upon.

(3) During the proceedings relating to return under section 10(1), the enforcement court may order that a decision be obtained from an authority in the State of the habitual residence of the child immediately before the removal or retention that the removal or retention was wrongful. However, this shall only apply if such a decision can be obtained in that State.

15.-(1) Proceedings relating to enforcement of a decision under section 4 and to return under section 10(1) shall be proceeded with as expeditiously as possible.

(2) Where no decision has been reached in proceedings under section 10(1) within six weeks from the date when the application for return was lodged with the enforcement court, the court shall on request state the reasons for the delay.

16. Before the enforcement court gives a decision in proceedings concerning the enforcement of a decision under section 4 or the return of a child under section 10(1), it shall have a talk with the child if the child has attained an age and a degree of maturity at which it is appropriate to take account of its views.

17.-(1) In proceedings under section 4 or section 10(1) the enforcement court may on application determine that during the proceedings the child shall be placed with either of the parents or in a neutral place at the initiative of the social authorities where this is found to be necessary.

(2) The determination, which shall be given by an order, shall apply until the final decision has been given in the proceedings.

18.-(1) Otherwise proceedings shall be subject to the provisions of Parts 45, 46 and 48 of the Danish Administration of Justice Act.

(2) The enforcement court shall assign an attorney-at-law to the party who has lodged the application. Fees and reimbursement of expenses incurred in connection with the assigned attorney-at-law shall be subject to the same rules as in cases where free legal aid is granted, cf. Part 31 of the Danish Administration of Justice Act.

Part 6

Decisions relating to custody

19.-(1) Where an application for the return of a child has been made under section 10(1), no decision can be given in proceedings relating to custody in this country until the application has been considered.

(2) If during custody proceedings in this country the central authority states that the child is staying unlawfully here, cf. section 10(2), without any application for return of the child under section 10(1) having been lodged, the court can give no decision on custody unless there has been reasonable time for making such an application.

20.-(1) If a child who is habitually resident in this country is removed to another country or retained there, the Minister of Justice or any one authorised for the purpose may on the application of the person holding the custody of the child decide that the removal is wrongful.

(2) During proceedings to bring the joint custody of a child to an end, the court may decide on the basis of a claim that the child has wrongfully left the country, cf. section 10 a of the Danish Legal Capacity Act.

(3) If the place of residence of the person that the case concerns is unknown and if no information about the place of residence can be obtained, a decision under subsections (1) and (2) may be given no matter whether the person concerned has not been served with a writ of summons or any other equivalent document in the proceedings.

Part 7

Commencement etc.

21.-(1) The date of entry into force of this Act shall be fixed by the Minister of Justice. Different dates of entry into force of the provisions on recognition and enforcement in accordance with the European Convention and the provisions on return in accordance with the Hague Convention may be fixed.

(2) Section 10 shall only apply in cases where the wrongful removal or retention took place after the Act entered into force in relation to the State in which the child was habitually resident or staying immediately before the removal or retention.

22. In the Legal Capacity Act, cf. Consolidated Act No. 443 of 3 October 1985, as amended by section 2 of Act No. 209 of 5 April 1989, there shall be inserted after section 10:

"**10 a.** Where the parents fail to agree on who is to have sole custody, both shall give their consent to the child leaving the country."

23.-(1) In the Danish Penal Code, cf. Consolidated Act No. 607 of 6 September 1986 as most recently amended by Act No. 399 of 13 June 1990, there shall be inserted a new subsection in *section 215*:

"(2) Any person who wrongfully takes the child out of the country shall be punished in the same manner."

24.-(1) This Act shall not apply to the Faroe Islands and Greenland.

(2) The Act may by Royal Decree be made effective for the Faroe Islands subject to such deviations as are dictated by the special circumstances of the Faroe Islands.

(3) Sections 1-22 may by Royal Decree be made effective for Greenland subject to such deviations as are dictated by the special circumstances of Greenland.

Given at Amalienborg, 27 November 1990

Under Our Royal Hand and Seal

MARGRETHE R.

/Hans Engell

The following amendments have been made to Act No. 793 of 27 November 1990 on International Enforcement of Decisions concerning Custody of Children and Restoration of Custody of Children, etc. (International Child Abduction):

1. The following to be inserted as subsection 3 in Section 1 (1):

»Moreover, the Act shall apply to legal aid for the person holding custody of a child who has been unlawfully removed from Denmark to another country or unlawfully retained there, cf. Part 6 a.«

2. A new subsection to be inserted in Section 2 following subsection 2:

»(3) Sections 20 a-20 d shall apply in cases in which a child has been unlawfully removed from Denmark to another country or unlawfully retained there, notwithstanding that the country has acceded to the conventions mentioned in subsections 1 and 2.«

Subsections 3 and 4 will thereafter be subsections 4 and 5.

3. The following to be inserted after Section 20:

»Part 6 a

Legal aid

20 a.- (1) On application, the Minister of Justice may grant legal aid to the person holding custody of a child who has been unlawfully removed from Denmark to another country or unlawfully retained there to cover costs incurred in connection with actions of a legal nature conducted for the purpose of the return of the child.

(2) Legal aid can only be granted if the child was habitually resident in Denmark at the time of the unlawful abduction or retention.

(3) In special cases, the Minister of Justice may grant legal aid to cover costs incurred in connection with actions of a legal nature conducted for the purpose of the return of the child, even if the conditions under subsections 1 and 2 have not been satisfied.

(4) The Minister of Justice may lay down more detailed rules regarding the administration of the scheme, including the content of applications for legal aid.

20 b.- (1) Legal aid comprises reimbursement by the Danish state to cover:

1. the cost of reasonable fees of an attorney-at-law
2. other reasonable costs necessary in connection with actions of a legal nature, including travel costs, fees for the translation and authentication of documents and
3. legal costs that the court orders the person in question to pay to the other party.

(2) Legal aid may be limited to certain types of expense. Furthermore, an upper limit may be set on the reimbursement, which may be allocated to specific expenses.

(3) Legal aid covers only expenses that cannot otherwise be reimbursed under the rules of free legal aid or similar applicable in the country to which the child has been removed, and are not covered by the applicant's legal expenses insurance.

(4) The Danish state is subrogated to the compensation claim of the recipient of legal aid from the person who removed the child or others, for expenses covered by the legal aid system.

20 c.- (1) The granting of legal aid may be withdrawn if the conditions under which aid was granted prove not to be present or have lapsed.

20 d.- (1) After the lodging of an application, the Minister of Justice shall appoint a number of attorneys-at-law that the Minister can recommend for the use of the person holding custody of a child in cases of child abduction.«

Act on Custody and Access

We, MARGRETHE THE SECOND, by the Grace of God Queen of Denmark, hereby make known:

Folketinget has passed and We have provided the following Act with Our Royal Assent:

PART 1

Custody

1. Children and young persons under the age of 18 are subject to custodial care, unless they have contracted marriage.

Content

2.-(1) The person with custody shall take care of the child and may make decisions about its personal circumstances in light of the child's interests and needs.

(2) Custody involves the duty to protect the child against physical violence and mental cruelty and any other violation of the child's rights.

(3) The parents may apply the child's income towards its maintenance to a suitable extent, in considering their own and the child's situation.

3. Where the parents have joint custody of the child, and they disagree about who is to have sole custody of the child, both parents shall consent to the child leaving the county.

HOLDERS OF CUSTODY

4. If the parents are married to each other at the time of the child's birth, or if they contract marriage later, they shall

have joint custody. However, if the parents are judicially separated at the time of the child's birth, the mother shall have sole custody of the child, unless the spouses resume cohabitation or the parents have entered into an agreement about joint custody in pursuance of section 6 below.

5. If the parents are not married to each other, the mother shall have sole custody of the child, unless the parents have entered into an agreement about joint custody in pursuance of section 6 below.

Agreement about joint custody

6. The parents may agree that they shall have joint custody of the child. Any such agreement shall only be valid following notification to the appropriate government office. Where a custody case has been brought before the court, notification may be made to the relevant court.

Judicial separation and divorce

7.--(1) In case of judicial separation or divorce, a decision shall be made on custody, unless an agreement or decision has previously been made in this respect.

(2) The parents may agree that they shall continue to have joint custody of the child. Any such agreement shall only be valid following notification to the appropriate government office. Where a case regarding judicial separation or divorce has been brought before the court, notification may be made to the relevant court.

(3) If joint custody is to cease, the provisions of section 9 below shall be applied.

Living apart

8. If the parents live apart, or if either one of them intends to leave the other, either parent may demand that joint custody shall cease.

Cessation of joint custody

9.-(1) If joint custody is to cease, the parents may agree, subject to approval by the appropriate government office, who is to have sole custody of the child. Any such agreement will be approved, unless it is contrary to the child's best interests. Where a custody case has been brought before the court, the agreement may be approved by the relevant court.

(2) If the parents disagree, or if approval of their agreement is not granted, the court shall decide, in consideration of the child's best interests, which of the parents shall have sole custody of the child.

Resuming cohabitation

10. Where an agreement or decision has been made in pursuance of section 9 above to the effect that one of the parents shall have sole custody, joint custody shall be reestablished, if married parents, including those judicially separated, resume or continue cohabitation. If the parents are unmarried or divorced, they shall not reacquire joint custody, unless they enter into an agreement to this effect in pursuance of section 6 above.

Transfer by agreement

11. Subject to an agreement approved by the appropriate government office, custody may be transferred to the non-custodial parent or to third parties. Custody may be transferred to a married couple jointly, including one of the parents and his or her spouse. Any such agreement will be approved, unless it is

contrary to the child's best interests. Where a custody case has been brought before the court, the agreement may be approved by the relevant court.

Transfer of custody to the father by judgment

12.-(1) Where parents who are not married to each other have lived together for a long period of time without having joint custody, and the father demands custody when they cease cohabiting, the court shall decide, in consideration of the child's best interests, which of the parents shall have sole custody of the child.

(2) In other cases, the court may transfer sole custody from the mother to the father, if this is in the child's best interests. In making the decision, the court shall attach weight to the question of whether the person with custody prevents access without reasonable grounds.

Variation by judgment

13.-(1) Where, upon an agreement or a judgment, custody has been vested in one parent alone, the court may, where warranted by special reasons, transfer custody to the other parent, if this is in the child's best interests, in particular due to a major change of circumstances. In making the decision, the court shall attach weight to the question of whether the person with custody prevents access without reasonable grounds.

(2) Subsection (1) shall also apply if the father has not been granted custody in a custody case as referred to in section 12 above.

(3) An agreement made in pursuance of section 11 above or a decision made in pursuance of section 14 below may be varied by the court, subject to the conditions set out in subsection (1) hereof.

Death

14.--(1) Where the parents have joint custody, and one parent dies, custody shall be retained by the other parent. If the child does not live with the surviving parent at the time of the other parent's death, a third party may apply for custody upon the death of such parent. Any such application will only be met if the consideration for the child's best interests does not warrant vesting custody in the surviving parent. If, at the time of death, the child lives with the surviving person with custody, and such person caused the death of the other person with custody, a third party may apply for custody. Any such application will only be met if it is vital for the child that custody is not vested in the surviving person with custody.

(2) Where one of the parents has sole custody of the child, and such parent dies, or if the death of any party has the effect that no-one has custody of the child, it shall be decided, in considering the child's best interests, who shall have custody. If the surviving parent applies for custody, the application will be met, unless this is considered contrary to the child's best interests.

(3) Where one of the parents has sole custody of the child, and such parent has caused the other parent's death, a third party may apply for custody. Any such application will only be met if it is vital for the child that custody is not vested in the surviving parent.

(4) Custody may be vested in a married couple jointly, including the surviving parent and his or her spouse.

(5) Decisions in pursuance of subsections (1) to (4) shall be made by the appropriate government office, and cannot be appealed to a higher administrative authority.

(6) Within eight weeks of the date on which the relevant party was informed of the decision made by the government office, such decision may be brought before the court in proceedings instituted against the person to whom the government office granted custody.

15. The persons with custody may express a preference as to who should be granted custody upon their death. This request will be complied with, unless it is considered contrary to the child's best interests. However, the surviving person with custody shall retain his or her preferential position, in accordance with section 14 above, regardless of any request to the contrary.

PART 2

Access, etc.

16. Attempts should be made to maintain the child's relations with both parents by granting a right of access to the parent with whom the child does not reside.

17.--(1) Upon application, the appropriate government office shall decide the amount of access and define the access arrangement, and may make the necessary stipulations in this respect. The decision shall be made in light of the child's best interests.

(2) The government office may vary an agreement or decision on access, where such variation is in the child's best interests, in particular due to a change of circumstances.

(3) The government office may refuse to define access or revoke an agreement or decision in this respect, where this is necessary due to the welfare of the child.

(4) The Minister of Justice may lay down rules and regulations regarding supervised access.

Other contact

18. In special cases, the appropriate government office may make stipulations regarding other contact between the child and the parent with whom the child does not reside, in the form of telephone conversations, letters and the like.

Information about the child

19.-(1) Upon application, the non-custodial parent shall be entitled to information about the child's circumstances from schools, day care institutions and the health and social services. The relevant authority or institution may refuse to disclose information, where this is detrimental to the child's interests. No confidential information may be disclosed about the circumstances of the person with custody.

(2) In special cases, upon an application from the person with custody or one of the authorities or institutions mentioned in subsection (1) above, the government office may deny the non-custodial parent access to information as provided for in subsection (1) above. A decision made in pursuance of the first clause hereof shall have effect from the time that the authority or institution is notified of the decision.

PART 3

Contracts of service

20. Where a child or young person who is under custodial care, cf. section 1 above, has of his or her own accord undertaken services or other personal work, subject to the consent of the person with custody, thus enabling the child or young person to provide for his or her own maintenance, such child or young person, provided that he or she has attained the age of 15, may terminate such contract of service and engage in work of a

corresponding nature, unless otherwise decided by the person with custody.

21. A contract of service or a contract for other personal work that a child or young person has made of his or her own accord may be terminated by the person with custody, where warranted by the consideration for the child's or young person's upbringing or welfare. However, to the extent possible, any such contract should be terminated subject to reasonable notice, and where justified, suitable damages may be awarded to the other party.

PART 4

Temporary decisions

Custody

22. Where a custody case is pending, the court may make an order, upon an application in this respect, determining who shall have temporary custody of the child. The order shall be made in consideration of the child's best interests during the proceedings. The order shall remain in force until a judgment that is enforceable has been pronounced, and the order shall no longer apply if the custody case is discontinued or dismissed.

23. Where the parents have joint custody, and there is a risk that one of them will take the child out of the country, thus preempting the decision on custody, the Minister of Justice, or the authority so empowered by the Minister, may temporarily award the other parent sole custody.

Death

24. During a custody case pending before the government office following the death of a person with custody, cf. section 14 above, the government office may decide to whom temporary custody shall be awarded. Any such decision shall remain in force until an enforceable decision on custody has been made.

Hindrance in making decisions

25. Where the person with sole custody, one of the two persons with joint custody, or both persons with joint custody are hindered from making decisions about the child's personal circumstances, the government office may decide who shall have custody for the duration of such hindrance.

Access

26. During a pending case regarding custody or access, the government office may, upon an application in this respect, make a decision on temporary access. The decision shall be made in considering the child's best interests during the proceedings.

Variation

27. A temporary decision made in pursuance of sections 22 to 26 may be varied, if this is considered in the child's best interests. Where proceedings are pending before the court, the decision on custody shall be made by the court.

PART 5

Advice by an expert on child behaviour

28.-(1) The government office shall offer parents and children advice by an expert on child behaviour in case of disagreement about custody and access. The purpose is to help the parties resolve their conflict in considering the child's best interests.

(2) The government office may also offer advice on custody and access by an expert on child behaviour, where a special need is considered to exist in this respect.

(3) The government office may refrain from offering advice in accordance with subsection (1) above, if this is considered unnecessary or inappropriate in individual cases.

PART 6

Custody and access proceedings

29. Where a child has reached the age of 12, a conversation shall be held with the child before a decision is made in a case concerning custody or access. However, such a conversation may be dispensed with, if it must be assumed to be detrimental to the child's interests or to be of no relevance to the case.

30. The government office shall obtain an opinion from the non-custodial parent, before a decision is made in pursuance of section 11 or section 14(2), unless this may be to the serious detriment of the child or involve an inordinate delay in the proceedings.

31. The Minister of Justice may lay down rules and regulations regarding the hearing by government offices and courts of cases brought under the provisions of this Act, including more specific rules about the conditions for notification of agreements about joint custody.

PART 7

International treaties

32.-(1) The Government may enter into treaties with foreign states about the reciprocal recognition of the provisions of Danish law and the law of foreign countries on custody and access. Any such treaty shall become effective in this country following its promulgation in 'Lovtidende' (the Danish Law Gazette).

(2) Moreover, the Minister of Justice may lay down rules and regulations on the reciprocal recognition of the provisions of

Danish law and the law of the other Nordic countries on custody and access.

PART 8

Commencement, etc.

33.--(1) This Act shall enter into force on January 1, 1996. However, the provisions of paragraphs (i) and (ii) of section 35 shall enter into force on the day following their promulgation in 'Lovtidende' (the Danish Law Gazette).

(2) On January 1, 1996, the provisions of *PART 2* and sections 35, 36 and 37 of the Act on Minors and Incapacitated Persons, Consolidated Act No. 443 of October 3, 1985, shall be repealed. In section 72(1) and (2) of that Act, the words "custody and access" shall be deleted.

(3) If, prior to January 1, 1996, no final judgment has been pronounced in a case brought under the existing provisions of sections 14 or 17 of the Act on Minors and Incapacitated Persons, the provisions of sections 12 or 13 of this Act shall be applied.

(4) The provisions of sections 13 and 17(2) and (3) of this Act shall also apply to agreements or decisions on custody and access made before January 1, 1996.

(5) The provisions of section 14 of this Act shall also be applicable, if death occurred before the Act became operative.

34. In the Administration of Justice Act, Consolidated Act No. 905 of November 10, 1992, as most recently amended by section 1 of Act No. 209 of March 29, 1995, the following amendment shall be made:

In section 450A, the first clause, for "section 26 of the Act on Minors and Incapacitated Persons", there is substituted "section 29 of the Act on Custody and Access".

35. The Act on the Contraction and Dissolution of Marriage, Consolidated Act No. 148 of March 8, 1991, as amended by section 4 of Act No. 386 of May 20, 1992, shall be amended as follows:

1. In section 13, there shall be added subsection (4):

"(4) The Minister of Justice may lay down rules and regulations regarding the payment of fees for the translation of documents necessary for reviewing the conditions of marriage. Further, the Minister of Justice may lay down rules and regulations regarding the payment of fees for the participation of an interpreter in connection with the review of the conditions of marriage, in those cases where neither party resides in this country."

2. In section 20, there shall be added subsection (4):

"(4) The Minister of Justice may lay down rules and regulations regarding the payment of fees for the participation of an interpreter during the marriage ceremony, in those cases where neither party resides in this country."

3. In section 46, for "the provisions of the Act on Minors and Incapacitated Persons", there shall be substituted "the provisions of the Act on Custody and Access".

36. Act No. 372 of June 7, 1989 on Registered Partnerships, as amended by Act No. 821 of December 19, 1989, shall be amended as follows:

Section 4(2) shall be worded as follows:

"(2) Section 11, the second clause, and section 14(4) of the Act on Custody and Access shall not apply to the registered partnership."

37. This Act shall not extend to the Faroe Islands and Greenland. However, under an Order in Council, the Act, with the exception of section 34, may also become operative for these territories, with any variations dictated by the special conditions prevailing in the Faroe Islands and Greenland.

Given at Christiansborg Palace, June 14, 1995

Under Our Royal Hand and Seal

MARGRETHE R.

/Bjørn Westh