

THE INFORMATION

The participation of the Republic of Belarus in the Convention on the Civil Aspects of International Child Abduction was realized in accordance with Article 38 of the Convention by accession.

As a number of the Articles of the Convention had a divergence with the legislative acts of the Republic of Belarus, the Convention was subject to ratification.

In accordance with Article 15 of the Law of the Republic of Belarus "About the order of the conclusion, execution and denunciation of the international treaties of the Republic of Belarus" of 23 October 1991, the solutions about accession of the Republic of Belarus to the international treaties, which are subject to ratification, should be accepted by the Parliament of the Republic of Belarus, and in accordance with point 2 of Article 97 of the Constitution of the Republic of Belarus, such solution should be accepted in the form of the law.

The accession of the Republic of Belarus to the Convention is made out by the Law of the Republic of Belarus of 13 November 1997 "About accession to the Convention on the Civil Aspects of International Child Abduction".

According to this Law a Central Authority to discharge the duties which are imposed by the Convention is the Ministry of Justice of the Republic of Belarus.

In the Ministry of Justice of the Republic of Belarus the questions concerned with the Convention are considered by the department on execution of the international treaties about legal aid of International Law Department.

The Central Authority:

Ministry of Justice of the Republic of Belarus
ul. Kollektornaya 10
220048 MINSK
Belarus
telephone number: + 375 172 208 687 + 375 172 208 829
telefax number: + 375 172 209 684 or + 375 172 208 829
adresse e-mail/e-mail address: - jndrv@minjust.belpak.minsk.by

Contact persons:

Mrs Marina Zhandarova
Head of the Legal Assistance Treaties Division
tel.: 375 17 211 01 85
e-mail address: jndrv@minjust.belpak.minsk.by

Mrs Julia TARASEVICH
Leading specialist
(languages of communication: Russian, English)
tel.: 375 17 211 02 01
e-mail address: julia_t@minjust.belpak.minsk.by

It should be noted that the Republic of Belarus has associate with the Convention on the Civil Aspects of International Child Abduction in accordance with Article 42 of the called Convention with the following reservation:

«The Republic of Belarus declares that it shall not be bound to assume any costs referred to in paragraph 2 of Article 26 of this Convention resulting from the participation of legal counsel or advisers or from our court proceedings, except insofar as those costs may be covered by its system of legal aid and advice».

In the Republic of Belarus special competent organs for the location of missing children have not established. In the Republic there are receivers - dispensers for the minor, which one temporarily are contained children and adolescents in the age of from 3 till 18 years requiring for the help on the part of the state.

In Article 545 of the Civil code of practice of the Republic of Belarus the general rules of judicial jurisdiction in the Republic, including in relation to the case in the interests of infant children are determined.

The cases under the suits of the foreign subjects, stateless persons and foreign juridical person against defendant having the habitation, either place of stay, or location in the Republic of Belarus are under the judicial jurisdiction in the Republic of Belarus.

As well as the cases under the suits against the foreign subjects and stateless persons having the habitation in the Republic of Belarus and against foreign juridical persons, if in the Republic of Belarus there is a controller, a representative office or affiliate of such foreign juridical persons, are under the judicial jurisdiction in the Republic of Belarus.

The applications to make arrangements for organizing or, securing the effective exercise of rights of access can be considered by both definite administrative agencies (organs of guardianship in the person of the departments of popular schooling) and courts of general jurisdiction.

The proceedings in time of trial are committed in terms, foreseen Article 150 of the Civil code of practice of the Republic of Belarus and another legislative acts, or in terms established by court.

The procedural terms are calculated by years, months and days. The terms can be determined also by indicating on event, which one necessarily should set in. The Civil code of practice of the Republic of Belarus allows the judge who has established the procedural term, to prolong or to reduce it, if interested person sends the appropriate application before the expiration of the term.

The legal proceeding in civil causes with participation of the foreign subjects and juridical persons in the Republic of Belarus is conducted according to rules of the Civil code of practice of the Republic of Belarus, if diverse is not provided by the another national legislative acts or international treaties of the Republic of Belarus.

At that the courts of the Republic of Belarus besides common principles of civil procedure are guided by principles of priority of the international treaties; procedural equality of the foreign subjects, stateless persons and foreign juridical persons with the citizens and juridical persons of the Republic of Belarus; observance of the jurisdiction of foreign courts and another executive organs; reciprocity.

In the event that the international treaty of the Republic of Belarus establishes diverse rules, than those, which are contained in the civil remedial legislation of the Republic of Belarus, the rules of the international treaty are applied.

Jurisdiction to the courts of the Republic of Belarus of the civil cases, in which the foreign subjects, stateless persons, foreign juridical persons participate, and also civil cases, in which at least one of the parties lives overseas, is determined by the legislation of the Republic of Belarus, if diverse is not provided by the international treaties of the Republic of Belarus or written agreement of the parties.

The right to enjoy a legal aid in the Republic of Belarus is determined by Article 14 of the Civil code of practice of the Republic of Belarus. Thus, the legal proceeding in civil causes the citizens and the juridical persons have the right to a legal aid of the lawyers and other representative.

Article 551 of the Civil code of practice determines the order of participation of the representative in the international civil legal proceedings. During the conduct of a case in the court of the Republic of Belarus the foreign subjects and the juridical persons have the right freely and without hindrance to enjoy services both of the foreign representative, including the lawyers, and of the representative, including the lawyers, of the Republic of Belarus. The foreign representative, including the lawyers, enjoy in the civil legal proceedings the same rights and perform the same duties, as the representative, including the lawyers, of the Republic of Belarus.

However, granting that the Republic of Belarus has associated with the Convention on the Civil Aspects of International Child Abduction with the reservation about that it shall not be bound to assume any costs referred to in paragraph 2 of Article 26 of this Convention resulting from the participation of legal counsel or advisers or from our court proceedings, except insofar as those costs may be covered by its system of legal aid and advice, the payment for rendering of the legal services is made according to the legislation of the Republic of Belarus currently in force.

The legislation of the Republic of Belarus endows the parents with the right to require the return of children from any persons retaining children without legal ground. The organs of guardianship and public prosecutor can also bring an action witness for the parental rights.

The court has the right to refuse in satisfaction of these claims, if will come to a conclusion, that the transfer of the child to the parents does not correspond to the interests the child. Here the court takes into account the continuance of sojourn of the child in the family of persons, which actually brought up him, and also desire of the child who has achieved ten years old.

If during judicial trial to be found out that neither parents, nor persons, with which the child is, are not capable to provide for proper upbringing of the child, the court transfers the child in the charge of the organs of guardianship.

The execution of the judgement about transfer or taking of the child from the parents or another persons is made by the officer of justice with the obligatory participation of the representative of the organ of guardianship.

The judgement about transfer or taking of the child is subject to the immediate execution, if the reservation of the child with the persons, at which he is, can adversely affect physical or mental health of the child or result in impossibility of the execution of the judgement.

In exceptional cases, if it is in the interests of a child, the court before the pronouncement judgement can decide the question about the temporary taking of the child from the defendant.

In cases, when the parent or another person prohibits from the execution of the judgement, the measures foreseen the Civil code of practice of the Republic of Belarus are taken. The execution of the judgement is made in the order foreseen Civil code of practice of the Republic of Belarus.

The child living separately from one or both parents in the Republic of Belarus, or in anyone the other state, has the right to maintenance of the regular personal relations and direct contacts with the parents, if it does not harm to his life and upbringing.

The court can take a decision about limitation of the rights to access to the child of one or both parents on definite term or on indefinite term, if they break the Agreement about children or judgement or if their intercourse infringes upon the rights and legitimate interests of the child. These rules are fixed in Article 77 of the Code of the Republic of Belarus about marriage and family.

In accordance with Article 32 of the Civil code of the Republic of Belarus the guardianship is established over the minors, and also over the citizens recognized by court incapable owing to a mental insanity (a mental illness or an imbecility). At that the guardians are the representative of the wards by operation of law (legal representatives) and commit on their behalf and in the interests of them all indispensable agreements.

Moreover, in the current legislation of the Republic of Belarus the term «trusteeship» is applied. So, in accordance with Article 33 Civil codes of the Republic of Belarus the trusteeship is established over the minors in the age of from fourteen till eighteen years, and also over the citizens, restricted by the court in active capacity owing to the drug, alcohol or psychotropic abuse.

Thus, in accordance with the first part of Article 142 of the Code of the Republic of Belarus about marriage and family, guardianship and trusteeship are established with the view of upbringing of infant children, which have remained without parental charge owing to death of the parents, deprivation of their parental rights, the disease or through other reasons, and also for the protection of the personal and property rights and interests of these children.

The parent living separately from children, has the right to commune with them, and must take part in their upbringing. The parent, with which one children live, have no right to hinder other parent from communicate with children and from participate in their upbringing, that correspond with principles of the equal parental rights and duties concerning their children and with right of the child to equal care and attention from the direction of the mother and father, irrespective of joint or separate habitation.

Guardianship and trusteeship are one of the forms of care of the state about the infant citizens requiring special measures of a legal protection. The main purpose of guardianship and trusteeship is to set up for the wards the living conditions close to those, which have children in family.

According to Article 76 of the Code of the Republic of Belarus about marriage and family, father and mother have the equal rights and duties with respect to their children. Thus, the parents enjoy the equal rights and bear equal duties with respect to their children even in case of divorcement between them, if diverse is not provided for in the Agreement about children. Moreover, the principle of general and identical responsibility of both parents to upbringing and development of the child is fixed in Article 18 of the Convention of the United Nations Organization on the rights of the child adopted on November 20, 1989.

In accordance with Article 182 of the Code of the Republic of Belarus about marriage and family, with Article 6 of the Law of the Republic of Belarus of the nineteenth of November, 1993 «About the rights of the child» in edition of the Law of the Republic of Belarus of the 25th of October, 2000, the children born in wedlock and out of wedlock use the equal and comprehensive protection of the state.

In accordance with the second part of Article 76 of the Code of the Republic of Belarus about marriage and family, the parents use the equal rights and bear equal duties concerning children and in case of divorcing between them, if diverse is not stipulated in the Agreement about children. The second part of Article 38 of the called Code fixes that in the Agreement about children the parents determine the habitation of children, size of the alimony, the order of access to the children of the separately living parent and other living conditions and upbringing of children in accordance with their rights.

Failing Agreement about children when pronouncing judgement about divorcing the court has to determine with who of the parents and who of the children remains, order of participation in their upbringing of separately living parent, and as well as in the presence of dispute between the marital partners, from whom of the parents and in what size the alimony for children are collected (Article 39 of the Code of the Republic of Belarus about marriage and family).

Thus, according to the current legislation of the Republic of Belarus in case of death of the parents, deprivation of their parental rights, limitation of the parental rights, recognition them as guilty, in case of illness, prolonged absence, evasion of upbringing of the children or protection of their rights and interests and in other cases of absence of the care from the direction of the parents, the protection of the rights and interests of children is entrusted to the organs of guardianship and trusteeship of local executive and administrative organs.

According to the Code of the Republic of Belarus about marriage and family the parents fulfil the upbringing of children, guardianship over them and their property. If the parents of the child are not married, the court can entrust implementation of custody over the child to one of them, by limiting the rights and duties of the other with respect to the child.

Besides the parent, living separately from children, has the right to access to them, and must take part in their upbringing. The parent, with which children live, have no right to hinder other parent from access to children and from participation in their upbringing. The court can take a decision about limitation of the rights to access to the child of one or both parents on definite or indefinite term, if they break the Agreement about children or judgement or if their intercourse infringes upon the rights and legitimate interests of the child.

The grandfather and grandmother have the right to access their infant grandsons irrespective of, parents of these children are married or have dissolved a marriage. In case of refusal of the parents to let the grandfather or grandmother to access to the grandsons, the court determines the order of access, if such access will not hinder from the normal upbringing of the child.

In case of deprivation one or both parents of their parental rights, if the transfer of the child to other parent is inexpedient or impossible, the court takes a decision on transfer of the child in care of an organ of guardianship and trusteeship. The parents deprived of their parental rights lose all rights based on the fact of kinship with the child, including the right to obtain the maintenance from the child, the right to a provision of pensions after death of the child and the right of succession by the law. At the instance of the parents deprived of their parental rights, the organs of guardianship and trusteeship can allow them a meeting with the children, if the intercourse with the parents will not exert harmful influence on the children.

Children, who have stayed without care of the parents, are subject to transfer for upbringing to the family (for adoption, in ward, in trusteeship, in adoptive family), and in the absence of such opportunity, to the public and non-public boarding school. The guardians, trustees of children are the named institutions and adoptive families.

In accordance with Article 183 of the Code of the Republic of Belarus about marriage and family, the rights of children and their protection are guaranteed by the organs of guardianship and trusteeship, juvenile committees, public prosecution office and court. These organs, being guided by the rules of the international law and legislation of the Republic of Belarus, take the decision with respect to above mentioned question, depending on priority of children to the special, preferential, prime care both on the part of the parents and on the part of the state.

It is necessary to mark, that consideration of the question about re-entering of the parents the country to which the child has been returned, is outside competence of the Ministry of Justice of the Republic of Belarus. These question can be solved by the consular and ambassadorial institutions of the receiving country.

As it was indicated above, each child has the right to live in family, to know both parents, right to their care, to habitation with them, except for cases, when separation with one or both parents is necessary in the interests of the child.

The Republic of Belarus according to the current legislation of the Republic of Belarus and rules of international law takes measures against wrongful removal and failure to return of children from abroad, their abduction, child trade with any purposes and in any form.