CHAPTER 410

CHILD ABDUCTION AND CUSTODY ACT

To enable Malta to ratify two international Conventions relating respectively to the civil aspects of international child abduction and to the recognition and enforcement of custody decisions.

12th October, 1999

1st August, 2000

ACT XIII of 1999 as amended by Act VI of 2001 and II of 2019

Short title.

1. The short title of this Act is Child Abduction and Custody Act.

Interpretation.

2. (1) In this Act, unless the context otherwise requires -

"abduction" means the taking by force or the kidnapping of a person;

"child" means a person under the age of sixteen years;

"Malta" has the same meaning assigned to it by the Constitution;

"Minister" means the Minister responsible for justice.

(2) In the First and Second Schedules to this Act, if there is any conflict between the English and the Maltese texts, the English text shall prevail.

PARTI

International Child Abduction

The Hague Convention.

3. (1) In this Part of this Act "the Convention" means the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on the 25th October, 1980 and the relevant Articles of which Convention are set out in the First Schedule to this Act.

(2) Subject to the provisions of this Part of this Act, the provisions of the Convention set out in the First Schedule to this Act shall have the force of law in Malta.

Contracting States.

4. (1) For the purposes of the Convention as having the force of law in Malta under this Part of this Act, the Contracting States other than Malta shall be those for the time being specified by the Minister responsible for foreign affairs by an order in the Gazette under this article.

(2) Such order shall specify the date of the coming into force of the Convention as between Malta and any State specified in it; and, except where the order otherwise provides, the Convention shall apply as between Malta and that State only in relation to wrongful removals or retentions occurring on or after that date.

(3) Where the Convention applies, or applies only, to a particular territory or particular territories specified in a declaration

made by a Contracting State under Article 39 or 40 of the Convention, references to that State in subarticles (1) and (2) above shall be construed as references to that territory or those territories.

Central authority. *Substituted by: II.2019.20.*

5. The functions under the Convention of a central authority shall be discharged by the Chief Executive Officer of the Social Care Standards Authority and any application made under the Convention by or on behalf of a person outside Malta may be addressed to the office of the Chief Executive Officer of the Social Care Standards Authority.

Jurisdiction. *Amended by: II.2019.21.*

6. (1) The First Hall of the Civil Court or any other court which the Minister may by order designate shall have jurisdiction to entertain applications under the Convention.

(2) Whenever any person interested or the Chief Executive Officer of the Social Care Standards Authority alleges that a child has been wrongfully removed within the meaning of Article 3 of the Convention, he may, without prejudice to any other action with respect to the same matter that is lawfully available, make an application under sub-article (1) for redress.

(3) Any party to the proceedings shall have a right of appeal to the Court of Appeal.

Interim powers.

7. Where an application has been made under the Convention to the First Hall of the Civil Court or to any other court which the Minister may by order designate, the court may, at any time before the application is determined, give such *interim* directions as it thinks fit for the purpose of securing the welfare of the child concerned or of preventing changes in the circumstances relevant to the determination of the application.

Reports. *Substituted by: II.2019.22.*

8. Where the Chief Executive Officer of the Social Care Standards Authority is requested to provide information relating to a child under Article 7(d) of the Convention he may:

(*a*) request any person to make a report to him in writing with respect to any matter which appears to him to be relevant;

(*b*) request any court to which a written report relating to the child has been made to send him a copy of the report,

and such a request shall be duly complied with.

Proof of documents and evidence.

9. (1) For the purposes of Article 14 of the Convention a decision or determination of a judicial or administrative authority outside Malta may be proved by a duly authenticated copy of the decision or determination; and any document purporting to be such a copy shall be deemed to be a true copy unless the contrary is shown.

(2) For the purposes of subarticle (1), a copy is duly authenticated if it bears the seal, or is signed by a judge or officer of the authority in question.

(3) For the purposes of Articles 14 and 30 of the Convention any such document as is mentioned in Article 8 of the Convention, or a certified copy of any such document, shall be sufficient evidence of anything stated in it.

Declarations by the First Hall of the Civil Court or any other designated court.

10. The First Hall of the Civil Court or any other court designated by order by the Minister may, on an application made for the purposes of Article 15 of the Convention by any person appearing to the Court to have an interest in the matter, make a declaration that the removal of any child from, or his retention outside, Malta was wrongful within the meaning of Article 3 of the Convention.

Suspension of court's powers in cases of wrongful removal.

11. The reference in Article 16 of the Convention to deciding on the merits of rights of custody shall be construed as a reference to -

(*a*) making, varying or revoking a custody order under articles 47, 56, 60, 61 or 149 of the Civil Code; Cap. 16.

(*b*) registering or enforcing a decision under Part II of this Act.

Rules of Court. Cap. 12.

12. The Rule-Making Board established under article 29 of the Code of Organization and Civil Procedure may make such provision for giving effect to this Part of this Act as appears to it to be necessary or expedient.

Reservations.

13. (1) As Malta is making such a reservation (reproduced in the Third Schedule to this Act) as is mentioned in the third paragraph of Article 26 of the Convention, the costs mentioned in that paragraph shall not be borne by any Minister or any authority in Malta.

(2) Malta is also making a reservation to the effect that communications sent to the central authority shall be accompanied by a translation in English.

PART II

Recognition and Enforcement of Custody Decisions

The European Convention.

14. (1) In this Part of this Act "the Convention" means the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children which was signed in Luxembourg on 20th May, 1980, and the relevant Articles of which Convention are set out in the Second Schedule to this Act.

(2) Subject to the provisions of this Part of this Act, the provisions of that Convention set out in the Second Schedule to this Act (which include Articles 9 and 10 as they have effect in consequence of a reservation made by Malta under Article 17, which reservation is reproduced in the Fourth Schedule to this Act) shall have the force of law in Malta.

Contracting States.

15. (1) For the purposes of the Convention as having the force of law in Malta under this Part of this Act, the Contracting States other than Malta shall be those for the time being specified by the Minister responsible for foreign affairs by an order in the Gazette under this article.

(2) Such order shall specify the date of the coming into force of the Convention as between Malta and any State specified in the order.

(3) Where the Convention applies, or applies only, to a

particular territory or particular territories specified by a Contracting State under Article 24 or 25 of the Convention, references to that State in subarticles (1) and (2) above shall be construed as references to that territory or those territories.

Central authority. *Substituted by: II.2019.23.*

16. (1) The functions under the Convention of a central authority shall be discharged by the Chief Executive Officer of the Social Care Standards Authority.

(2) Any application made under the Convention by or on behalf of a person outside Malta may be addressed to the Chief Executive Officer of the Social Care Standards Authority.

Recognition of decisions.

17. (1) Articles 7 and 12 of the Convention shall have effect in accordance with this article.

(2) A decision to which either of those Articles applies which was made in a Contracting State other than Malta shall be recognised in Malta as if made by a court in Malta but -

(*a*) the Court of Appeal may, on the application of any person appearing to it to have an interest in the matter, declare on any of the grounds specified in Article 9 or 10 of the Convention that the decision is not to be recognised in Malta; and

(*b*) the decision shall not be enforceable in Malta unless registered in the appropriate court under article 18.

(3) The references in Article 9 (1)(*c*) of the Convention to the removal of the child are to his improper removal within the meaning of the Convention.

Registration of decisions.

18. (1) A person on whom any rights are conferred by a decision relating to custody made by an authority in a Contracting State other than Malta may make an application for the registration of the decision in the registry of the Court of Appeal.

(2) The central authority in Malta shall assist such a person in making such an application if a request for such assistance is made by him or on his behalf by the central authority of the Contracting State in question.

(3) An application under subarticle (1) or a request under subarticle (2) shall be treated as a request for enforcement for the purposes of Articles 10 and 13 of the Convention.

(4) The Court of Appeal shall refuse to register a decision if -

(*a*) the court is of the opinion that on any of the grounds specified in Article 9 or 10 of the Convention the decision should not be recognised in Malta;

(*b*) the court is of the opinion that the decision is not enforceable in the Contracting State where it was made and is not a decision to which Article 12 of the Convention applies; or

(*c*) an application in respect of the child under Part I of this Act is pending.

(5) In this article "decision relating to custody" has the same meaning as in the Convention.

Variation and revocation of registered decisions.

19. (1) Where a decision which has been registered under article 18 above is varied or revoked by an authority in the Contracting State in which it was made, the person on whose behalf the application for registration of the decision was made shall notify the Court of Appeal of the variation or revocation.

(2) Where the Court of Appeal is notified under subarticle (1) above of the revocation of a decision, it shall -

(*a*) cancel the registration, and

(*b*) notify such persons as may be prescribed by such rules of court as may be made by the Rule-Making Board set up under article 29 of the Code of Organization and Civil Procedure, of the cancellation. Cap. 12.

(3) Where a court is notified under subarticle (1) of the variation of a decision, it shall -

(*a*) notify such persons as may be prescribed by rules of court as may be made of the variation; and

(*b*) subject to any conditions which may be prescribed by such rules, vary the registration.

(4) The Court of Appeal may also, on the application of any person appearing to the court to have an interest in the matter, cancel or vary the registration if it is satisfied that the decision has been revoked or, as the case may be, varied by an authority in the Contracting State in which it was made.

Enforcement of decisions.

20. Where a decision relating to custody has been registered under article 18, the Court of Appeal shall have the same powers for the purpose of enforcing the decision as if it had been made by it; and proceedings for or with respect to enforcement may be taken accordingly.

Interim powers.

21. Where an application has been made to the Court of Appeal for the registration of a decision under article 18 or for the enforcement of such a decision, the court may, at any time before the application is determined, give such *interim* directions as it thinks fit for the purpose of securing the welfare of the child concerned or of preventing changes in the circumstances relevant to the determination of the application or, in the case of an application for registration, to the determination of any subsequent application for the enforcement of the decision.

Suspension of court's powers.

22. (1) Where it appears to any court in which such proceedings as are mentioned in subarticle (2) are pending in respect of a child that -

(*a*) an application has been made for the registration of a decision in respect of the child under article 18 (other than a decision to which subarticle (3) applies) or that such a decision is registered; and

(*b*) the decision was made in proceedings commenced before the proceedings which are pending,

the powers of the court with respect to the child in those proceedings shall be restricted as mentioned in subarticle (2) unless, in the case of an application for registration, the application

is refused.

(2) Where subarticle (1) applies the court shall not, in the case of custody proceedings, make, vary or revoke any custody order.

(3) The decision referred to in subarticle (1) above is a decision which is only a decision relating to custody within the meaning of article 18 by virtue of being a decision relating to rights of access.

(4) Article 10(2)(*b*) of the Convention shall be construed as referring to custody proceedings within the meaning of this Act.

Reports. *Substituted by: II.2019.24.*

23. Where the Chief Executive Officer of the Social Care Standards Authority is requested to make enquiries about a child under Article 15(1)(b) of the Convention he may:

(*a*) request any person to make a report to him in writing with respect to any matter relating to the child concerned which appears to him to be relevant;

(*b*) request any court to which a written report relating to the child has been made to send him a copy of the report,

and any such request shall be duly complied with.

Proof of documents and evidence.

24. (1) In any proceedings under this Part of this Act a decision of an authority outside Malta may be proved by a duly authenticated copy of the decision; and any document purporting to be such a copy shall be deemed to be a true copy unless the contrary is shown.

(2) For the purposes of subarticle (1), a copy is duly authenticated if it bears the seal, or is signed by, a judge or officer, of the authority in question.

(3) In any proceedings under this Part of this Act any such document as is mentioned in Article 13 of the Convention, or a certified copy of any such document, shall be sufficient evidence of anything stated in it.

Decisions of Maltese courts. *Amended by: II.2019.25.*

25. (1) Where a person on whom any rights are conferred by a decision relating to custody made by a court in Malta makes an application to the Chief Executive Officer of the Social Care Standards Authority under Article 4 of the Convention with a view to securing its recognition or enforcement in another Contracting State, the said Chief Executive Officer of the Social Care Standards Authority may require the court which made the decision to furnish him with all or any of the documents referred to in Article 13(1)(b), (c) and (d) of the Convention.

(2) Where in any custody proceedings a court in Malta makes a decision relating to a child who has been removed from Malta, the court may also, on an application made by any person for the purposes of Article 12 of the Convention, declare the removal to have been unlawful if it is satisfied that the applicant has an interest in the matter and that the child has been taken from or sent or kept out of Malta without the consent of the person (or, if more than one, all the persons) having the right to determine the child's place of residence in Malta.

(3) In this article "decision relating to custody" has the same meaning as in the Convention.

Rules of court. *Amended by: VI. 2001.33.*

26. (1) The Rule-Making Board set up under article 29 of the Code of Organization and Civil Procedure may make such provision for giving effect to this Part of this Act as appears to that authority to be necessary or expedient. Cap. 12.

(2) Without prejudice to the generality of subarticle (1), rules of court may make provision -

(*a*) with respect to the procedure on applications to a court under any provision of this Part of this Act and with respect to the documents and information to be furnished and the notices to be given in connection with any such application;

(*b*) for the giving of directions requiring the disclosure of information about any child who is the subject of proceedings under this Part of this Act and for safeguarding its welfare.

(3) The Minister responsible for justice may by regulations under this subarticle establish the fees payable in the registry of the courts in relation to the filing of judicial acts in connection with any procedure under this Part of this Act:

Provided that until such fees are so established by the Minister, the fees contained in the Code of Organization and Civil Procedure shall apply. Cap. 12.

PART III

Supplementary

Termination of existing custody orders, etc.

27. (1) Where -

(*a*) an order is made for the return of a child under Part I of this Act; or

(*b*) a decision with respect to a child (other than decisions to which subarticle (2) applies) is registered under article 18,

any custody order inconsistent with such order or decision relating to him shall cease to have effect.

(2) The decision referred to in subarticle (1)(*b*) above is a decision which is only a decision relating to custody within the meaning of article 18 by virtue of being a decision relating to rights of access.

Expenses. *Substituted by: II.2019.26.*

28. Expenses incurred by the Chief Executive Officer of the Social Care Standards Authority for the purposes of this Act shall be paid out of money provided by the House of Representatives for that purpose.

Ratification of Treaties.

29. By virtue of this Act, the Government of Malta is authorised to ratify the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on the 25th October, 1980, and the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children signed in Luxembourg on the 20th May, 1980.

SCHEDULES

FIRST SCHEDULE

[Article 3(1)]

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

CHAPTER 1 - SCOPE OF THE CONVENTION

Article 3

The removal or the retention of a child is to be considered wrongful where -

(*a*) it is in 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

(*b*) at the time of 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 rights of custody mentioned in sub-paragraph (*a*) above may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of sixteen years.

Article 5

For the purposes of this Convention -

(*a*) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;

(*b*) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

CHAPTER II - CENTRAL AUTHORITIES

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures -

(*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 to be taken provisional measures;

(*c*) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

(*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;

(*f*) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing 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.

CHAPTER III - RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain -

(*a*) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;

(*b*) where available, the date of birth of the child;

(*c*) the grounds on which the applicant's claim for return of the child is based;

(*d*) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by -

(*e*) an authenticated copy of any relevant decision or agreement;

(*f*) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;

(*g*) any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -

(*a*) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

(*b*) 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.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of

that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

CHAPTER IV - RIGHTS OF ACCESS

Article 21

An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V - GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative

proceedings falling within the scope of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorisation empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the

courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units -

(*a*) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

(*b*) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

SECOND SCHEDULE

[Article 14(2)]

EUROPEAN CONVENTION ON RECOGNITION AND ENFORCEMENT OF DECISIONS CONCERNING CUSTODY OF CHILDREN

Article 1

For the purposes of this Convention:

(*a*) "child" means a person of any nationality, so long as he is under 16 years of age and has not the right to decide on his own place of residence under the law of his habitual residence, the law of his nationality or the internal law of the State addressed;

(*b*) "authority" means a judicial or administrative authority;

(*c*) "decision relating to custody" means a decision of an authority in so far as it relates to the care of the person of the child, including the right to decide on the place of his residence, or to the right of access to him;

(*d*) "improper removal" means the removal of a child across an international frontier in breach of a decision relating to his custody which has been given in a Contracting State and which is enforceable in such a State; "improper removal" also includes:

(i) the failure to return a child across an international frontier at the end of a period of the exercise of the right of access to this child or at the end of any other temporary stay in a territory other than that where the custody is exercised;

(ii) a removal which is subsequently declared unlawful within the meaning of Article 12.

Article 4

(1) Any person who has obtained in a Contracting State a decision relating to the custody of a child and who wishes to have that decision recognised or enforced in another Contracting State may submit an application for this purpose to the

Central Authority in any Contracting State.

(2) The application shall be accompanied by the documents mentioned in Article 13.

(3) The Central Authority receiving the application, if it is not the Central Authority in the State addressed, shall send the documents directly and without delay to that Central Authority.

(4) The Central Authority receiving the application shall keep the applicant informed without delay of the progress of his application.

Article 5

(1) The Central Authority in the State addressed shall take or cause to be taken without delay all steps which it considers to be appropriate, if necessary by instituting proceedings before its competent authorities, in order -

(*a*) to discover the whereabouts of the child;

(*b*) to avoid, in particular by any necessary provisional measures, prejudice to the interests of the child or of the applicant;

(*c*) to secure the recognition or enforcement of the decision;

(*d*) to secure the delivery of the child to the applicant where enforcement is granted;

(*e*) to inform the requesting authority of the measures taken and their results.

(2) Where the Central Authority in the State addressed has reason to believe that the child is in the territory of another Contracting State it shall send the documents directly and without delay to the Central Authority of that State.

(3) With the exception of the cost of repatriation, each Contracting State undertakes not to claim any payment from an applicant in respect of any measures taken under paragraph (1) by the Central Authority of that State on the applicant's behalf, including the costs of proceedings and, where applicable, the costs incurred by the assistance of a lawyer.

(4) If recognition or enforcement is refused, and if the Central Authority of the State addressed considers that it should comply with a request by the applicant to bring in that State proceedings concerning the substance of the case, that authority shall use its best endeavours to secure the representation of the applicant in the proceedings under conditions no less favourable than those available to a person who is resident in and a national of that State and for this purpose it may, in particular, institute proceedings before its competent authorities.

Article 7

A decision relating to custody given in a Contracting State shall be recognised and, where it is enforceable in the State of origin, made enforceable in every other Contracting State.

Article 9

(1) [*Recognition and enforcement may be refused*] if -

(*a*) in the case of a decision given in the absence of the defendant or his legal representative, the defendant was not duly served with the document which instituted the proceedings or an equivalent document in sufficient time to enable him to arrange his defence; but such a failure to effect service cannot constitute a ground for refusing recognition or

enforcement where service was not effected because the defendant had concealed his whereabouts from the person who instituted the proceedings in the State of origin;

(*b*) in the case of a decision given in the absence of the defendant or his legal representative, the competence of the authority giving the decision was not founded -

i. on the habitual residence of the defendant; or

ii. on the last common habitual residence of the child's parents, at least one parent being still habitually resident there; or

iii. on the habitual residence of the child;

(*c*) the decision is incompatible with a decision relating to custody which became enforceable in the State addressed before the removal of the child, unless the child has had his habitual residence in the territory of the requesting State for one year before his removal.

(3) In no circumstances may the foreign decision be reviewed as to its substance.

Article 10

(1) [*Recognition and enforcement may also be refused*] on any of the following grounds:

(*a*) if it is found that the effects of the decision are manifestly incompatible with the fundamental principles of the law relating to the family and children in the State addressed;

(*b*) if it is found that by reason of a change in the circumstances including the passage of time but not including a mere change in the residence of the child after an improper removal, the effects of the original decision are manifestly no longer in accordance with the welfare of the child;

(*c*) if at the time when the proceedings were instituted in the State of origin -

i. the child was a national of the State addressed or was habitually resident there and no such connection existed with the State of origin;

ii. the child was a national both of the State of origin and of the State addressed and was habitually resident in the State addressed;

(*d*) if the decision is incompatible with a decision given in the State addressed or enforceable in that State after being given in a third State, pursuant to proceedings begun before the submission of the request for recognition or enforcement, and if the refusal is in accordance with the welfare of the child.

(2) Proceedings for recognition or enforcement may be adjourned on any of the following grounds:

(*a*) if an ordinary form of review of the original decision has been commenced;

(*b*) if proceedings relating to the custody of the child, commenced before the proceedings in the State of origin were instituted, are pending in the State addressed;

(*c*) if 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.

Article 11

(1) Decisions on rights of access and provisions of decisions relating to custody which deal with the rights of access shall be recognised and enforced subject to the same conditions as other decisions relating to custody.

(2) However, the competent authority of the State addressed may fix the conditions for the implementation and exercise of the right of access taking into account, in particular, undertakings given by the parties on this matter.

(3) Where no decision on the right of access has been taken or where recognition or enforcement of the decision relating to custody is refused, the Central Authority of the State addressed may apply to its competent authorities for a decision on the right of access if the person claiming a right of access so requests.

Article 12

Where, at the time of the removal of a child across an international frontier, there is no enforceable decision given in a Contracting State relating to his custody, the provisions of this Convention shall apply to any subsequent decision, relating to the custody of that child and declaring the removal to be unlawful, given in a Contracting State at the request of any interested person.

Article 13

(1) A request for recognition or enforcement in another Contracting State of a decision relating to custody shall be accompanied by -

(*a*) a document authorising the Central Authority of the State addressed to act on behalf of the applicant or to designate another representative for that purpose;

(*b*) a copy of the decision which satisfies the necessary conditions of authenticity;

(*c*) in the case of a decision given in the absence of the defendant or his legal representative, a document which establishes that the defendant was duly served with the document which instituted the proceedings or an equivalent document;

(*d*) if applicable, any document which establishes that, in accordance with the law of the State of origin, the decision is enforceable;

(*e*) if possible, a statement indicating the whereabouts or likely whereabouts of the child in the State addressed;

(*f*) proposals as to how the custody of the child should be restored.

Article 15

(1) Before reaching a decision under paragraph (1) of Article 10, the authority concerned in the State addressed -

(*a*) shall ascertain the child's views unless this is impracticable having regard in particular to his age and understanding; and

(*b*) may request that any appropriate enquiries be carried out.

(2) The cost of enquiries in any Contracting State shall be met by the authorities of the State where they are carried out.

Requests for enquiries and the results of enquiries may be sent to the authority concerned through the central authorities.

THIRD SCHEDULE

(Article 13)

Reservations

(1) The Government of Malta declares that it shall not be bound to assume any costs resulting from the participation of legal counsel or advisers or from court proceedings, except in so far as those costs may be covered by legal aid.

(2) In accordance with Article 24 of the Convention, Malta reserves the right to accept translations of the original documents only in English.

FOURTH SCHEDULE

[Article 14(2)]

Reservation

In accordance with Article 17, paragraph 1 of the Convention, the Government of Malta reserves the right to refuse recognition and enforcement of decisions relating to custody, in cases covered by Articles 8 and 9 or either of these Articles, on any of the grounds provided under Article 10, paragraph 1(*a*), (*b*), (*c*) and (*d*).
