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### **Parental Alienation (3)**

#### **Provisional Return of Taken Child**

#### **Shall be Available**

#### **After Japan became member states of Hague Convention**

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#### **I. Introduction**

As discussed before, once a child is taken away, a left behind parent (often foreign husband in Japan) has big disadvantage in the visitation or divorce litigation/mediation because of parental alienation by a taking away parent. To eliminate this disadvantage, provisional return of the taking child is very useful.

Fortunately, the possibility of provisional return of child is dramatically increase after Japan becomes the member state of the Convention of the Civil Aspects of the International Child Abduction (Hague Convention).

## **II . Previous Position of Family Courts in Japan**

Previously a child is mainly raised by a mother in Japan. It has been therefore widely accepted by Japanese society, including family courts, to take away the child to the home of grandparents for the mother who decided to get divorce with her husband. In this case, taking away the child from the husband is not regarded as illegal, but returning the children by the husband from mother is regarded as illegal. This is because the best interest of the child is stay with the mother and stability of the guardian is important.

Under this notion, the mother is easily program the children with only one parent to be afraid of his father and refuses to see him. After the parental alienation, the child squarely refuses the visitation. The wife often claims that the visitation is impossible because of the emotional stability and for the best interest of the child.

This is ridiculous. To eliminate parental alienation, provisional return of the child can be available in particular after Japan becomes the member state of Hague Convention.

## **III. Hague Convention**

Under Hague Convention, the member state requires to return of the taken child to the member state where the left behind parent is located. The custodian shall be decided under the laws of the country where the left behind parent is located.

The intent behind Hague Convention is that taken away the child itself is illegal.

After Japan become the member state of Hague Convention, the Japanese government, including Japanese family court shall follow the intent behind Hague Convention and change its previous position and accept the notion of Hague Convention. Taken away the child without the consent of the left behind parent is illegal and the child shall be return to the left behind the child. Provisional return of the taken away child shall be

immediately accepted without detailed examination of the purpose of the taken away by the taking away parent and which parent shall be better custodian. This examination shall be made later in the difference legal procedure, such as the mediation or judgment for the appointment of the custodian of the child.

#### **IV. Tokyo High Court Judgement of 2010**

There is a judgement accepting the above argument and rendering the provisional return order against the taking away parent (Japanese mother) for the left behind husband( foreign father) in 2010 rendered by Tokyo High Court.

It said that the taken away child from the left behind parent without his consent is not acceptable unless the taking away parent show the special circumstances under which the return of the child is not the best interest of the child.

According to Tokyo High Court, rational of the judgment is that the taken away the child is in general not the best interest of the child and if it is allowed, illegal taken away of the child will be continued and increased by each parent, which is not the best interest of the child. This is the same line of intent behind Hague Convention.

Although Judgment of Tokyo High Court of 2010 has not yet been considered leading case of provisional return so far, the above flame work of the provisional return of child shall become leading case from now on or from 2 years ago when Japan become the member state of the Hague Convention.

#### **V. Conclusion**

As Japan became the member state of Hague Convention, taken away of the child shall be illegal in Japan and the Japanese government, including the family court, shall

implement this notion under the Convention.

In this regard, Tokyo High Court Judgment of 2010, which render the provisional return order against the taking away parent for the left behind parent is regarded as the guiding case now.

If you are a left behind husband whose child is taken away by your Japanese wife without your consent, you shall be seriously consider filing a provisional return of the child immediately or the child might be parentally alienated by your Japanese wife and you will not be able to see him for long time (or forever).

Please note that we are always in your side for more than 26 years.

(Over)