

## Child Abduction and Article 224 of the Criminal Code of Japan (Minor Kidnapping)

February 3, 2019

Kaoru Haraguchi

Founding Partner

Haraguchi International Law Office

### I. Introduction

We assume you are a foreigner who got married with a Japanese wife.

Your wife abducted your child and filed for mediation for divorce because of domestic violence and refuses your visitation with your child.

### II. Issues of Family Court Proceedings

You are now considering filing a criminal accusation of your wife for minor kidnapping under Article 224 of the Criminal Code of Japan.

We understand your frustration of retrieval of the children through the Japanese legal system.

In general, our legal system in the practice of criminal accusation, you are requested to go to the family court first.

It is true that the family court has been established to sort out the domestic conflict, such as divorce and child custody.

You must, however, understand your chance to get the custody of your child is slim in Japan when your wife abducts your children for the following reasons:

Under Article 761 of the Civil Code, which applies to the separation before divorce, one of the parents should be appointed as the sole custodian of their child.

Upon the determination of the sole custodian, the family court of Japan emphasizes on the continuity of the custodial circumstances.

If your children are abducted and new custodial circumstances are established, the family court tends to appoint your Japanese wife as the sole custodian of your children.

To appoint the sole custodian of the child, it is necessary to anticipate the future of the child care. For example, which one of you or your wife should be the better child care giver to their child(ren) from now on to 10-15 years from now on.

A family court investigator's investigation of the husband, mother and child(ren) and school should be carefully evaluated.

The family court investigator's investigation should be taken a couple of months.

The mediation court day could be set once a month, the mediation or rulings by the judge if the mediation is failed would take more than 1 year.

Before the ruling is rendered, the new child care environment is established and eventually your wife is appointed as a sole custodian.

Your wife then refuses your visitation with your child until you agree to divorce her with the terms and conditions favorable to your wife by saying that your child does not want to see you (parental alienation by your wife).

To avoid such miserable consequences through the mediation in Japan, you would like to file a criminal accusation with the hope that your wife is sent to the jail and you will be left as the sole custodian of your child.

The reality is often more miserable. There is, however, a chance if you meet certain criteria.

### III. Criminal Accusation of Your Wife for Minor Kidnapping Under Article 224 of the Criminal Code

#### 1. Language of Article 224 of the Criminal Code.

Article 224 of the Criminal Code states that a person who abducts or kidnaps a minor shall be sentenced to prison from 3 years or more to 7 year or less.

As there is no limitation of the criminals under the Article, your wife as the joint parental holder with you under Article 818 (3) can be punished under the article.

#### 2. In Practice (reality) of Criminal Accusation

In practice, the police or the public prosecutor is very reluctant to accept your criminal accusation against your wife.

They often state that the domestic conflict should be resolved by the special court established for domestic conflict, the family court of Japan. The family court proceeding is not public and suitable for the domestic conflict. In particular, it is not necessary to label your wife as the criminal. This is the best interest of your child.

They also often refers to the judgment of the Osaka High Court rendered on June 22, 2005. The Osaka High Court states that the mother is entitled to take the children together with her upon the separation for divorce to her parents' home (Kozure Satogaeri).

The reasons behind the judgement is related to the primary caregiver doctrine.

In Japan, the mother is, in general, the primary care giver of the child.

Upon the separation for the divorce, the primary care giver of the child (normally the mother) is required to take her child together with her (or the failure to her duty to take care of the child as the primary care giver of the child).

In other words, the primary care giver (normally the mother) is not a criminal under Article 224 of the Criminal Code of Japan in accordance with the police or public prosecutor's interpretation of Article 224.

### 3. There still be a chance for you

Based on the interpretation of the police and the public prosecutor, there is a chance for you if you could establish you are the primary care giver to your child when your child is abducted by your wife.

In this context, the criteria for the determination of the primary care giver is important. Previously the mother is regarded as the primary care giver for the children less than 5 years. Now it seems to be changed and more closely reviewed the time to spend the children and quality of the child care.

### 4. New Approach

Although it has not yet succeeded, we often argued that the abuse of the primary care giver doctrine by the mother and her attorney. We often encounter very well-planned abduction of the children by Japanese wives obviously advised by her attorneys.

For example, a Japanese wife carefully chose the date and abduction (one day before the birth day of the child or Christmas day), appoint the moving company to take all the belongings including the school goods of the child and financial information for the division of the assets. She then goes to the DV shelter to create the false evidence of DV and morale harassment. She refuses to the visitation of the child by the husband without reasonable reasons until the husband agrees to get divorce with the terms and conditions in favor of the wife.

In this case, we argue that your wife abuses the primary care giver doctrine and try to utilize your child as a bond to get divorce with you with the conditions in favor of her.

To prevent the abuse of the primary care giver doctrine widely adopted by the family court, it is necessary to punish your wife no matter whether the mediation is filed by your wife to the family court not.

The family court proceeding is established to resolve the domestic conflict of your case only. To punish your wife is not only the benefit of your child but many other children who are abducted by their mothers and never allow to see their fathers. The criminal sanction is necessary for your wife to prevent the abduction prevailing in Japan.

#### IV. Conclusion

We understand that you are now considering making a criminal accusation of your wife who abducted your child for minor kidnapping under 224 of the Criminal Code of Japan.

Although the language of the article 224 seems to be clear that your wife is punishable.

It is, however, very difficult for your criminal accusation is accepted by the police or public prosecutor. This might be that your wife is a primary care giver of your child and her abduction is justifiable under the judgement of Osaka High Court.

We believe you still has a chance.

We might be able to persuade the police or public prosecutor if your case is extraordinary case and could be clarified as the abuse of the primary care giver doctrine.

If you could not rely on the proceeding of the family court of Japan and want to try to criminal accusation, you should contact the specialist, such as us.

We are not for all but might be good for you if you desperately want to punish your wife and get the custody.

It is necessary for you to be very patient (and rich).

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