

Date : 15.05.2018  
 Organizers: Ministry of Foreign Affairs of Japan / Japan Federation of Bar Association

Time Presentation of the speakers

00 :06 :00 \*Japanese Embassy in France : M. IKEDA  
 00 :08 :35 \*Japan Federation of Bar Associations - French survey team leader : Lawyer Ms. Kazue OKUNI  
 \*Japan Federation of Bar Associations - Working Group Related to Hague Convention –  
 00 :13 :18 Vice-President : Mr. Toshiteru SHIBAIKE  
 00 :13 :32 \*MOFA - Hague Convention Division - Chief clerk : Mrs. MATSUDA  
 00 :13 :43 \*Law Firm Hashimoto & Partners : Lawyer Mr. Akira HASHIMOTO  
 01 :38 :11 \*Law Firm Hashimoto & Partners : Lawyer Ms. Yuki IWAMURA

Translator's comments are in red.

Time	Speaker	Content
00 :19 :00	Lawyer Toshiteru SHIBAIKE	Explanation that normally, in the case of wrongful removal, it is not possible to divorce in Japan, unless the French parent agrees, and the mediation sessions are "scheduled for discussion". (In other words, there is support from the government to avoid a judgment of the convention, and to be able to "close the case".)
00 :23 :50	Lawyer Toshiteru SHIBAIKE	In Japan the Hague Convention is simply a civil and not a criminal case, so the local police do not intervene, no arrest.
00 :24 :10	Lawyer Toshiteru SHIBAIKE	Explanation that the Hague does not intervene if the couple lives in Japan. (Which is technically correct, but who also insinuates that if the Japanese parent can convince the French parent to move to Japan, we can avoid the Hague. There is an Italian case in which the Japanese wife kidnapped the children 2 months after moving to Japan).
00 :25 :24	Lawyer Toshiteru SHIBAIKE	With a return order - just need to return the child to France - and not return the child to the Father. (Which is technically correct, should the French father already get a return order for the child.)
00 :26 :25	Lawyer Toshiteru SHIBAIKE	Consult a French lawyer before returning is almost useless, because French lawyers know only the French laws, and the Hague will be treated in Japan, and it is the Japanese court which will judge the case. (The convention is supposed to be the same, however, it is an admission that the judgments are not the same in Japan, this being possible thanks to the Japanese implementation law in The Hague.)
00 :34 :30	Lawyer Toshiteru SHIBAIKE	Detailed explanation of the points taken into account by the Japanese courts - with regard to the cases already treated - in order to have Domestic Violence taken into account for a non-return. Explaining the need for domestic violence had taken place in front of children. (So no testimony possible if the child is 6 months old)
00 :35 :30	Lawyer Toshiteru SHIBAIKE	Explanation that in France because there are laws protecting battered women, we need evidence such as a protection order, several police interventions, the possibility of proving that no place was available in the shelters, then there, the court will take into account the situation (for a non-return judgement)
00 :36 :14	Lawyer Toshiteru SHIBAIKE	Explanation of the necessary evidence, such as a history of police ("main courante") consultations, indicating that Hashimoto Partners' lawyers will provide more information.
00 :39 :40	Lawyer Toshiteru SHIBAIKE	Explanation on the arguments to be presented in order to obtain a non-return, in observance of the current judgments in Japan: if there is a warrant of arrest against me in France, I will be arrested if I return, I can not live in France because I have no help and no money, I will die if I go back (suicide) (These arguments are not supposed to be taken into account by the Convention)
00 :40 :23	Lawyer Toshiteru SHIBAIKE	If nothing applies to my case, do I have to return the child? Even if my child does not want to go back?

00 :40:50	Lawyer Toshiteru SHIBAIKE	There is an article allowing you to not return if the child does not want to (Article 28. 5). The opinion of the child is taken into consideration according to his maturity, he must say by himself that he does not want to return to France. If he says that he does not want to see his father, it will not be taken into account, he must say that he does not want to return to France, if he says he loves his father but that there is bullying at school, there's racism, it will pass. If he says he does not want to see his father but has a lot of friends in France, it will not happen. (The vice president of the "Working Group Related to Hague Convention" explains what to say to children - this is parental alienation.) <b>WARNING: This is article 28, paragraph 5 of the Emplementation law of the Hague Convention in Japan and not article 28 of the Convention.</b> <b>Full text available via</b> <a href="http://www.japaneselawtranslation.go.jp/law/detail/?printID=&amp;id=2159&amp;re=01&amp;vm=02">http://www.japaneselawtranslation.go.jp/law/detail/?printID=&amp;id=2159&amp;re=01&amp;vm=02</a>
00 :42:00	Lawyer Toshiteru SHIBAIKE	There is no law regarding the age of the child and his opinion, but in Japan, under 6 years the opinion is not taken into account, between 6 and 10 it depends on its maturity, after 10 years his opinion will be taken into account. There are many cases where the opinion of 8 year old children is taken into account.
00 :42:45	Lawyer Toshiteru SHIBAIKE	<b>If all the conditions cannot apply, am I obliged to return the child under the Hague? No, this is not the case.</b> Under the Hague, a mediation is opened, and during the discussion the parents examine the possibilities, if the mother returns to France, can she live there, if the children stay in Japan can the father come and see them. There are many cases where children have become accustomed to Japan, parents decide to leave them in Japan. This is a specificity of Japanese courts.
00 :44:00	Lawyer Toshiteru SHIBAIKE	If you have no condition to justify a non-return, do not give up and be persistent.
00 :44:28	Lawyer Toshiteru SHIBAIKE	Even if the execution of the judgment is not forced, it does not mean that one can avoid the return, although there is this type of explanation. We must respect the judgement
00 :47:48	MOFA – Mrs MASTUDA	The Hague is only a civil matter. ( <b>Understand that the police do not intervene.</b> )
00 :58:33	MOFA – Mrs MASTUDA	Before the trial begins, there is a mediation organized through a private partner ADR (ADR: Alternative Dispute Resolution) if both parents agree. If the LBP does not do anything more, there is no trial.
00 :59:45	MOFA – Mrs MASTUDA	In some countries, the central authority starts the trial, but in Japan, it must be the LBP that starts it. We offer him assistance in this process: introduction of lawyer - it takes about 2 weeks, we introduce him 3. For those LBPs that do not have the necessary funds, we present Houterasu (Japan Legal Support Center) - which allows you to borrow legal fees.
01 :01:18	MOFA – Mrs MASTUDA	Sometimes, in parallel with the trial, a procedure for visits can be started.
01 :10:20	MOFA – Mrs MASTUDA	We will not forbid you to return to Japan, but if you return, we recommend to return after preparing your defense, the methods will be explained by Hashimoto Partners.
01 :12:05	MOFA – Mrs MASTUDA	The embassy archives the consultations it has received and can provide proof of your consultations, these documents are often used during the proceedings. Consult the embassy at any costs. ( <b>Japanese consulates in France, however, refuse to reply in writing to French nationals who contact them in French or in Japanese</b> )
01 :12:33	MOFA – Mrs MASTUDA	If the case is recognized in the framework of the Hague Convention, for you too, there will be legal aid, introduction of lawyer, translation, as well as help for legal fees, although this last point does not depend on the MOFA.
01 :13:08	MOFA – Mrs MASTUDA	The figures for France, in 4 years, the number of removal to Japan: 6 (Including 1 case of Japanese couple, and a case of a non French and a Japanese person) and 5 of visit request. Conversely, there were 3 cases of travel to France (Figures are not clear, and the person from MOFA corrects them during his explanation. Moreover, as explained by Lawyer Toshiteru SHIBAIKE at the very beginning, some cases are classified before the trial, and are therefore not included in these figures. The number of Hague cases is not equivalent to the number of abductions. In addition, local kidnappings - inside Japan - are not counted.)
01 :14 :38	MOFA – Mrs MASTUDA	What is happening in cases of removal to Japan? 74 cases were approved as part of the convention, and 58 cases were classified. There were 32 return orders, 26 no return orders. For France, of the 6 cases, there has been 2 return orders, 2 non-return orders, and 2 cases are still active.

01 :16:35	Lawyer Akira HASHIMOTO	Explanation of divorce proceedings in France, stressing that it is much more constraining than in Japan. <b>(Does he recommend a divorce in Japan and therefore deprive the French parent of his rights?)</b>
01 :20 :27	Lawyer Akira HASHIMOTO	If an amicable agreement is not made in consideration of the interest of the child, the French judge will not accept it.
01 :26 :00	Lawyer Akira HASHIMOTO	If there are no valid reasons for the divorce you have to go to the court explaining that you want to divorce, and an approval of separation valid for 30 months will be given, after this period you will be able to divorce. <b>(This highlights the ease of divorce in Japan.)</b>
01 :29 :01	Lawyer Akira HASHIMOTO	Joint parental authority is the basis in France. The parent who does not live with the child has visiting and accomodation rights.
01 :39:10	Lawyer IWAMURA	If you have no evidence for DV (Domestic Violence), it will not be taken into account; we will explain what is possible in France. First, there is the "Main Courante" to do at the police station. Make a record and get proof. It will not prove that you have been a victim of DV, but it will prove that you have made a "Main Courante" as a result of domestic violence, and you can use it as part of the Hague. <b>(Warning: this lawyer, from the oldest Japanese firm in Paris, explains that a "Main Courante" is a complaint, which means that a Japanese judge will understand the document in the same way. Such document has almost no power in french court, but becomes very powerfull in japanese Court)</b>
01 :40:12	Lawyer IWAMURA	Second is "to complain" (at the police). Consult a lawyer beforehand. If you do not have enough income, you can apply for legal aid.
01 :41:28	Lawyer IWAMURA	Third, there is the "protection order", which has been in existence since 2012. It will also be evidence of domestic violence.
01 :42:57	Lawyer IWAMURA	Fourth, there are social workers who can be consulted. The best known is the CCAS (Communal Center for Social Action), which can be consulted if the husband is violent, has problems with alcohol.
01 :43:20	Lawyer IWAMURA	There is also the National Solidarity Federation Women, which is run by the government, the phone number is 3919. They will present shelters for battered women, help you with daily life. They will then be able to provide you attestations of your approach to the shelter.
01 :45:00	Lawyer IWAMURA	Take pictures, verbal abuse can also be proven by SMS, or testimonials from third parties, or medical certificate proving the impact on the mind of the child, you can get at your general practitioner. Everything is useful.
01 :46:00	Lawyer IWAMURA	You can consult us by phone too.
01 :50:57	Lawyer Toshiteru SHIBAIKE	If you are in Japan, and there is a judgment in France concerning a modification of custody, it is a French judgment, which has no power in Japan.
01 :51:48	Lawyer Akira HASHIMOTO	Lawyer Hashimoto adds that if the children are in Japan, the father will not be able to do any procedure in France to change the custody arrangements, because the children are not under French jurisdiction.
01 :52:50	A Participant	A participant who is a sworn translator, explains that it is possible to request a translator when filing a complaint. This is also possible with social workers.
02 :00:44	Lawyer Toshiteru SHIBAIKE	If you are in Japan, you can not be arrested by the French Judiciary. Whether there is an arrest warrant in France or via Interpol, the Japanese police will not intervene.