

Parental authority (custody rights) in international marriage and the Hague Convention seminar

Date: 15.May.2018 (Wed.) [14:00 - 15:30]

Place: Paris Japan Cultural Center, ground floor small hall

Organizers: Ministry of Foreign Affairs of Japan / Japan Federation of Bar Associations

Language: Japanese

[Table of contents (elapsed time)]

*00:05:48 Embassy of Japan in France: Mr. IKEDA

*00:08:35 Japan Federation of Bar Associations - French survey team leader :
Lawyer Ms. Kazue OKUNI

*00:15:05 Japan Federation of Bar Associations - Working Group of the Hague
Convention – Vice-President: Lawyer Toshiteru SHIBAIKE

00:15:05- Japan's Divorce System and the Hague Convention study of Case Studies
[Lawyer SHIBAIKE]:

00:16:45- Introduction of the cases

00:18:20- Explanation of the International jurisdiction of Justice in Divorce

00:21:07- About the start of the procedure based on the Hague Convention

00:22:39- Explanation of the Hague Convention (The principle is that it is not a
criminal procedure; it is only a civil procedure.)

00:23:58- The Hague Convention only deals with the removal of children across
borders, and that the nationality of couples is irrelevant, etc.

00:24:56- About the principle to return within six weeks under the Hague Convention

- 00:25:24- The Hague Convention is a procedure to return to the country, not to the left behind parent.
- 00:25:45- Contacting [a specialist to answer your question for when] "you may not have to return the child even if the Hague Convention is raised"
- 00:26:52- Explanation of it is hardly recognized as a Refusal of Return of Child that your child has adapted to a new environment.
- 00:29:41- Explanation of it is hardly recognized as a Refusal of Return of Child that your husband said, "Take our child and leave from France".
- 00:31:45- Explanation of it is hardly recognized as a Refusal of Return of Child that there was DV from your husband.
- 00:35:28- Specific method for making DV-related evidence as a Refusal of Return of Child.
- 00:36:33- Explanation of the mother's choice not to return is hardly recognized as a Refusal of Return of Child.
- 00:38:30- Specific methods for making the mother's choice not to return to be a Refusal of Return of Child. (1)
- 00:39:40- Specific methods for making the mother's choice not to return to be a Refusal of Return of Child. (2)
- 00:40:21- Explanation that a child's intention may become a Refusal of Return of Child.
- 00:41:21- Specific methods for making a child's objection to be a Refusal of Return of Child.
- 00:41:54- About the age of a child whose intention is considered as a Refusal of Return of Child.
- 00:42:42- (on a Refusal of Return of Child) "there is no need to give up." (Assuming that the removal of a child is contrary to the Hague Convention's principle of preventing the removal of children.)
- 00:44:10- Because a Refusal of Return of Child is hardly admitted, "So that you have to do what you can do in France before you come back," (Assuming that

removal of a child is contrary to the Hague Convention's principle of preventing the removal of children.)

----- The followings, there is no transcript yet. -----

*00:45:55 Ministry of Foreign Affairs of Japan - Hague Convention Division -
Chief clerk : Ms. MATSUDA

Law Firm Hashimoto & Partners: Lawyer Mr. Akira HASHIMOTO

Law Firm Hashimoto & Partners: Lawyer Ms. Yuki IWAMURA

Note: Lines beginning with "#" means citation. Important parts are underlined. In Lawyer SHIBAIKE's seminar talk, he tends to interchange "the mother" in the case study and "a mother" as in seminar audience which means "you" in general. The subject switching in this way is not a mistranslation. It is as it is.

Record elapsed time- Summary of the part [Speaker]:

00:01:58- Explanation of the venue [Mr. KATAGIRI of Paris Japan Cultural Center]:

(This part is omitted.)

00:05:48- Opening remarks [Consul General Manager Naoya IKEDA, Embassy of Japan in France]:

(This part is omitted.)

00:08:35- General Manager of Japan Federation of Bar Associations - French survey team Greetings [team leader Lawyer Ms. Kazue OKUNI]:

(Partially omitted.)

The Hague Convention aims to prevent removal of the child across borders before it happens.

(Partially omitted.)

00:13:00- Introduction of panelists [Consul General Manager Naoya Ikeda, Embassy of Japan in France]:

(This part is omitted.)

00:15:05- Japan's Divorce System and the Hague Convention study of Case Studies [Lawyer SHIBAIKE]:

Hi everyone, hello, I am a lawyer, SHIBAIKE. Thank you. It is a bit strange to talk about international divorce and the Hague Convention at this great venue like a movie theater, thank you very much. Some people are with children; please don't hesitate to keep staying even if your baby cries. Because it is a story of children, everyone by all means [is in the same situation]. I would like to talk about it today. So, I am a Vice-President of the Working Group of the Hague Convention in the Japan Federation of Bar Associations. Since I deal with cases related to international family law and the Hague Convention at my own work almost 100%, I am going to talk today. So, of course the time is limited, I can talk only about general stories. There might be someone in an urgent situation. Or there might be someone feeling so painful. I would like these people not to think blindly that you are all right or not all right, considering only today's stories, by all means, since we stay here after this, particularly French lawyers will talk about the stories in France. Well, of course I will talk about the Hague Convention and the law of international divorce, if I talk about difficult text of a law here, I think it wouldn't be absorbed into your head, or conversely speaking I think you know some knowledge and information to some extent, so I would like to explain by using specific cases from my side.

What I am going to use today is the document of "the Japanese divorce system and the Hague Convention study of Case Studies" included in this document, and "the resume section". Especially, I would like to go through one by one using "the case section" where the cases are written.

00:16:45- Introduction of the cases

Well, the case is; "I am a Japanese woman. I am married to a French man and I have been living in Paris since January 2010. We have two children, a six-year-old

brother and a three-year-old sister. The relationship with my husband has gotten worse and we end up always quarreling each other, so I asked my husband that 'I wanted to go back to see my father in Japan, because his health condition had deteriorated.' With his permission, on February 15, 2018, I returned to Japan with my two children." Here is the situation. In other words, unlike you, the mother in this case returned to Japan with a husband's permission. The mother returned to Japan and now lives in Yokohama, Japan. First of all, there might be some of you worried if you can return to Japan. Mr. HASHIMOTO will explain about that part later. In this case, with the husband's permission, the mother once returned to Japan. It was really hard, wasn't it! It was tough, the mother wanted to have a little distance, and wanted to go back. However, for the husband, the mother returned since her father was ill. Here is the story. By the way, at first, after returning to Japan, after a while, E-mail messages like "When you will be back?" will be relentlessly coming from the husband. The mother doesn't say when she will come back, does she! So, of course a returning plane ticket has been taken, as it approaches, the mother is asked, "Come back soon!" or "When will you come back?" And the mother is stretching (the returning), saying that "My father's health condition is no good now. So, can I stay in Japan for a little more?" However, the mother really wants to divorce, to live in Japan as it is, to spend time in Japan with her children, if possible. Then, we received a consultation: "Can I go through divorce proceedings in Japan?"

00:18:20- Explanation of the International jurisdiction of Justice in Divorce

At first, the story doesn't begin with the Hague. Most people are consulting if it is possible to divorce, like this. Mostly, coming back from abroad, when you come back, a consultation begins with if it is possible to divorce in Japan. Therefore, I would like to briefly talk about the Japanese system here. Of course, you are all Japanese, and I think you know to some extent. To divorce in Japan, there are three main ways. Divorce by agreement, if you sign up for a divorce registration and submit it, you can divorce in Japan. Signing up for a divorce registration, Divorce by agreement is the first. If you cannot reach an agreement, there is mediation. There is a mediation divorce where you go to a family court, take mediation, and divorce there. If you still cannot reach an agreement, finally go to trial and divorce. Well, like that, there are three ways. Well then, this person Mrs. A, Mrs. A comes back to Japan, "Can I divorce in a trial? My husband absolutely never says 'Yes' for divorce." This is the situation. When you ask, "Can I divorce by trial in Japan?", the answer simply ends up that "It cannot be done." The wife is in Japan, the husband is in France, in this situation, if you ask a Japanese court for divorce, legally, now, it is legal though, the defendant country, because the defendant is not in Japan, the court would say "please make a trial where

the defendant is resident." However, exceptionally, I write in this resume, if you are abandoned by your husband, if abandoned, or if your husband is missing, he seems to be somewhere abroad but you don't know where he lives, or a case equivalent to these cases, unless in such a situation, the Japanese court will not accept the divorce procedure from the beginning. So, in this case the husband lives in France as usual. The wife came back to Japan. Then the wife tried to negotiate (for divorce), but she couldn't. Therefore, if the wife wants to make a trial for divorce, she cannot divorce in a Japanese court. In a word, it is a situation that divorce itself cannot be done. However, as I talked about divorce by agreement; the husband actually wanted to divorce, let's move on to a new step, or let's talk in good spirits. It can be mediation or a divorce by agreement. Mediation in Japan is possible if the husband comes to Japan. Or, if the husband hires a lawyer in Japan, it is possible to divorce while your husband is in France. Mediation divorce is also possible. However, I think you would imagine that this kind of situation doesn't happened so often, actually it does not go so easily. By a request of a mother who came back to Japan, in some cases, we talk to the husband in France, the husband in a foreign country, trying to reach an agreement for divorce while negotiating, though, generally speaking, when I am asked if you can divorce in Japan, or if you can divorce by trial, I will have to say "No". Therefore, while I'm talking about something like this, I really understand how much you want to divorce, and you want to live in Japan. However, from the perspective of your husband, he has been separated from your/his child and he wants your/his child to come back soon. The story obviously goes whether to keep staying in Japan is okay or not.

00:21:07- About the start of the procedure based on the Hague Convention

While doing like this, on the second page, you will receive a letter. Well, before the letter, harassing emails come from your husband. Harassment, offensive emails, "Why don't you come back?", "What is happening?", "Why don't you contact me?", it will be like that. Well, you are freaking out; you are shrinking, not replying. And a letter from the Ministry of Foreign Affairs comes by postal service. It is a letter about procedures under the Hague Convention. A letter comes. It is written that it is quite an important notification. There are about 10 sheets of paper in it, and it looks a bit difficult. What is this in the first place? "Am I going to lose my child?" This is what is called the Hague Convention. Then, what happens when your husband takes the procedure of the Hague Convention is that there are a few cases in which a notification suddenly comes from a court. Rather, this notification comes from the Ministry of Foreign Affairs in general. Then, detailed procedures will be explained by Mr. MATSUDA after this. First of all, the Ministry of Foreign Affairs will assist the mothers in Japan, support the fathers and the mothers, respectively, "If you would like

to return your child, please do it." "Is there any concern?" You can assume it is a support; a letter comes from such a place. However, this is the first sign of a Hague Convention beginning. So, if you receive this, don't ignore it. You must respond by all means. Since the contact deadline is written, you must contact properly. Or if you are in Japan, please consult a nearby lawyer. If you do not proceed properly at this stage, you will run out of time after the Hague Convention procedure has been filed.

00:22:39- Explanation of the Hague Convention (The principle is that it is not a criminal procedure; it is only a civil procedure.)

Then, I would like to explain in just three minutes what the Hague Convention is. As I write in this resume, it is on "No.2 About the Hague Convention". At first, the Hague Convention is not for deciding whether the father or the mother is good for the child at all. To the last, deciding such a issue is a story that you have to decide properly in the place where the child lived in the first place. For example, you lived in France for 5 years with your child. Say, you came back to Japan suddenly, and you claim "I have parental authority. The father (My husband) is no good." in Japanese court though, it would end up that there is no information at all; the kindergarten of your child is in France. So that, in principle, it is the purpose of the Hague Convention that the case should be decided where he/she originally lived, and after the ruling, you come back from there. In other words, once you bring your child, you should return him/her back. It is not to return to the father, but to return to the country where he/she originally lived, to take procedures properly in that country is the purport of the Hague Convention. Is that okay? First of all, it is called "habitual residence", it is a procedure to return the child to the place where he/she originally lived.

However, as I will explain later, there are exceptions; if there is a danger that the child may suffer physical or mental harm in particular, or if the child refuses by himself/herself, it is called "Refusal of Return of Child." Then, it is not necessary to return the child as an exception in such a procedure.

The Hague Convention itself is not for a procedure to be caught, detected, or arrested. It is a civil rule to the end. It is a procedure just to return the child or not.

00:23:58- The Hague Convention only deals with the removal of children across borders, and that the nationality of couples is irrelevant, etc.

Well, I wrote Point 7 on the upper of page 2, basically this is only for removal of

children across borders, so it is irrelevant to divorce between Japanese couples in Japan, or Japanese and foreign couples in Japan, or in France at all. It is for removal of children across borders. However, this is not limited to international marriage. It is applicable for a partner who is not married. Alternatively, Japanese couples, who may come today, for example, you have resided (in France), have a Japanese husband. Even if your husband is a Japanese and you are here in France, and you go back to Japan with your child, it will be a proper Hague Convention incident. This has nothing to do with nationality at all. Please be sure to remember that it would be applied to even Japanese couples.

Then, after returning to Japan, you may be thinking that it will be okay if you hide. However, the Ministry of Foreign Affairs searches your child's location properly, and you will end up being found. There is basically no way to hide, so hiding is useless.

Well, I talked about it a while ago. It is not for deciding parental authority, custody rights, whether the father or the mother is good for the child at all.

00:24:56- About the principle to return within six weeks under the Hague Convention

The fifth, it is very speedy, it is a procedure that basically comes to a decision in six weeks after the trial has begun. Usually, to divorce in Japan, in France too, deciding by mediation takes time, by thinking about what is a good interest for the child while taking proper negotiation. However, in the case of the Hague Convention, it does not take time because it is simply to return the child or not, and the time is limited and would not be spent. It is considered desirable to return the child back quickly, in six weeks. This is a major principle, and courts keep this in practice, so there is not much time.

00:25:24- The Hague Convention is a procedure to return to the country, not to the left behind parent.

Well, though, you may not want to return to such a father, but this Hague Convention is not to return to the father or the mother, but to return to the country. Therefore, in the case of France, all we have to do is to return to France. If the father is in somewhere in the country side, returning to Paris, France would be just fine. It is just a procedure to return to the country which is France.

Yes, this is everything from 1 to 7. For the Hague Convention, the summary is over.

00:25:45- Contacting [a specialist to answer your question for when] "you may not have to return even if the Hague Convention is raised"

Then, what you want to know is that if you go back to Japan, you may not have to return even if the Hague Convention is raised, or you may have already been consulted by someone and told that "In such a case, it would be fine". I would like to talk a little bit about whether it is true or not.

Actually, my office receives overseas calls quite a lot of times; some people say "I asked a Japanese administrative scrivener on the phone. Then I was told it would be okay to go (to Japan)." In the first place, an administrative scrivener is not competent at all. Please call a lawyer properly. Or please call the Ministry of Foreign Affairs properly. It is fine to ask about the Hague Convention in France, but French lawyers know only French law. It is in Japan that the Hague Convention issue arises. It is useless to ask a French lawyer whether your child does not have to come back when you take your child back to Japan, because it is Japanese courts to decide. It is just recently, there was a lawyer in France who said, "If the baby is little, the Hague Convention is fine even if you go back to Japan from France." I am going to say that this is a misunderstanding, so please listen.

00:26:52- Explanation of it is hardly recognized as a Refusal of Return of Child that your child has adapted to a new environment.

Well, looking through the cases, it is the third case. "At first, after coming back to Japan, the elder brother entered the elementary school. He has been admitted, and the little sister also went to the kindergarten. Well, they are completely getting used to Japanese life. I think it is much better in Japan where we can get cooperation from my parents. For my children, even though the environment is so good, and they are so accustomed, should I return them?" Here is such a primitive question. It is a story that they are so accustomed (to Japan). So, if you are looking through the text, thinking about something like this could be a Refusal of Return of Child, there is something similar. It is 3 (1) of page 2 of this regime, uh, "the child is now settled in his/her new environment"; in other words, "accustomed" is written.

Citation in the transcript

Act for Implementation of the Convention on the Civil Aspects of International Child

Abduction

(Grounds for Refusal of Return of Child, etc.)

Article 28 (1) Notwithstanding the provisions of the preceding Article, the court shall not order the return of child when it finds that any of the grounds listed in the following items exists;

(i) The petition for the return of child was filed after the expiration of the period of one year since the time of the removal or the commencement of the retention of the child, and the child is now settled in his/her new environment;

However, this means that the child is not only accustomed, but there is a sentence in front of it, "after the expiration of the period of one year" is written. So, it is written that; if it has been a year since the removal, the going back, or the retention in Japan, and if the child is accustomed, then it is not necessary to return the child. Therefore, within one year, no matter how much your child goes to the kindergarten as doing her best, no matter how much they forget French and speak Japanese, it is no use. If it is within a year, this requirement will not be satisfied.

As a word here, I think "taking away" is easy to understand. It is a case where you suddenly go back to Japan without your husband's permission. Then, there is "retention". I am going to explain "retention" with easy words; it is going back to Japan with consent of your husband of this case. "Please let me go back home. It's okay, I'll come back three months later", you said. Then, three months later, for example, after September 30, you don't return, this is called "retention". You have been in Japan for a certain period with a permission of your husband. However, after that, in case of staying in Japan beyond the promise, it is called "retention". Such a concept is okay. So, this Mrs. A's case is about "retention". However, Mrs. A, this person, she doesn't have an adequate promise with her husband in this situation. She goes back saying "I will go back home for a while." I think she reserved a round-trip ticket, but there is no fixed date (for returning) in this case. In such a situation, then it sometimes becomes a problem when is the one year starts. I write this briefly, basically, it is this "*" mark. Called "TP", Taking Parent, the mother, the mother who goes back home. It is when it can be objectively judged that (the mother) indicated her intention not to return the child to the habitual residence country, France. In other words, in this situation it is when the mother says, "I will not return.", when there is a situation that is clearly and objectively understandable. Then the period of one year starts, it is such a story. So, as it is, if the mother is extending the return by saying "I will be coming back soon. Please wait for a little more. My father's condition is not settled yet." The period of one year does not start while in this situation. You can assume that one year won't last forever. It won't. I am often asked if it is possible to run away for a year, however basically it is

impossible to run away for a year, so please don't even think about it. There are also many cases in which a petition for a trial comes at the last minute of the one year. So do not even think about running away for a year.

00:29:41- Explanation of it is hardly recognized as a Refusal of Return of Child that your husband said, "Take our child and leave from France".

That is so, and then it is helpless. It is the fourth. Go back to "the case section", the fourth of the cases.

In fact, there are many similar stories like: "When I was in Paris, my husband said, 'Take our child and leave France.' In other words, he said that he didn't need (us) anymore; he said I could go back to Japan with our child. As he said, I should be out, how dare he say that I should return now?"

Well, "Could it be this is a Refusal of Return of Child or anything?", if you ask, it's "(2)" on page 2 of the resume, there is Article 28 paragraph (1) item (iii), it is written in an easy-to-understand manner. If the father "had given prior consent or subsequently approved the removal or retention of the child", that is exactly the consent. At that time, if your husband said clearly that you can go back to Japan, basically you don't have to return. Well then, you may feel lucky to have him write emails, something, many things to make him agree anyway. Or then, you look through various emails, well, it was written that "You should go to Japan!" Even though, it is not so easy for Japanese courts clearly to say that it is a Refusal of Return of Child and you don't have to return your child. In the first place, your husband's emotion is fluctuating. Indeed, when you have a fight, he may say, "Don't come back." Even though, after that, he may say "I'm sorry. Please come back." So basically, it cannot be considered as an agreement by picking up a word. To the last, as I wrote in this, basically, "LBP" is the father; "Left Behind Parent", there must be on the father's situation like; he has agreed and consented that the child stays in Japan not temporarily but continually to live in Japan for a considerable period of time, and he has waived the right of demanding the return of the child. Do you see? So, unless there is some clear writing like; "You don't have to return to France anymore", please assume it is impossible. Well, there are stories often that he sent me to the airport. He might have agreed as "Do not come back!" However, after that, he gets sad and if there is an e-mail saying, "Please come back anyway", the court will not see there was an agreement. So, there is no choice, but you have to assume that it is hard to say that you don't have to come back in the context of agreement.

00:31:45- Explanation of it is hardly recognized as a Refusal of Return of Child that there was DV from your husband.

If that is so, then it is the 5th. "I was receiving violence from my husband while I was in France. Even in such a case, should I return my child?" Ever since joining the Hague Convention, you may hear this often, if there is a so-called DV, may it be a Refusal of Return of Child, there is a problem like that. About this area, cases of trial have been accumulated in Japan, so I would like to tell you the current situation.

Then, let's look at the text briefly, the text, this is important, so let's look at this. It is on page 5 of "the resume section". The font size may be a bit small, and it is hardly possible to be seen. There is article 28. Article 28 is about a Refusal of Return of Child. If your situation is like as described here, you don't have to return your child, as in such an article.

Citation in the transcript

Act for Implementation of the Convention on the Civil Aspects of International Child Abduction

(Grounds for Refusal of Return of Child, etc.)

Article 28 (1) Notwithstanding the provisions of the preceding Article, the court shall not order the return of child when it finds that any of the grounds listed in the following items exists;

.....

#(iv) There exists a grave risk that his/her return to the state of habitual residence would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation;

.....

(2) The court, when judging whether or not the grounds listed in item (iv) of the preceding paragraph exist, shall consider all circumstances such as those listed below:

.....

(ii) Whether or not there is a risk that the respondent would be subject to violence, etc. by the petitioner in such a manner as to cause psychological harm to the child, if the respondent and the child entered into the state of habitual residence;

Then, looking at Article 28, item (iv); "There exists a grave risk that his/her return to the state of habitual residence would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation;" is written. In a nutshell, it is written that if returning the child to France causes harm to the

child's mind or body, or that the child is put into an intolerable situation, such is a serious danger.

If you look at this only, DV to the mother is not included, but if you look through below, as I mentioned just before item (iv), there is paragraph (2); "when judging whether or not the grounds listed in item (iv) of the preceding paragraph exist, shall consider all circumstances" is written. Below paragraph (2), there are items (i), (ii), (iii). It's item (ii). It's a part of item (ii). It's paragraph (2), item (ii); "Whether or not there is a risk that the respondent would be subject to violence, etc. by the petitioner in such a manner as to cause psychological harm to the child," is written. "the respondent" is a mother, any of you here. You are "the respondent." It is the other party who is subject to the Hague Convention, the one who goes back with the child. When ("the respondent" and) your child came back to France in the future, whether you are subjected to violence from your husband who is the petitioner will be one of the judgment factors, is written. There is no writing like; "You don't have to return (your child), if there was DV." To the end, in the text, it is written if there is violence that gives the child psychological trauma. You may wonder what DV gives psychological trauma. In this case, and how the court thinks, basically, let's return to page 3 of the resume. There is a writing "about violence" in "ア", in the first place, it is no-good that "I was beaten in the quarrel." Violence as to whether it causes divorce is, of course, verbal violence as well, included in DV. However, in the case of violence here, it is necessary to have a certain level of violence that is continuous, constant, or almost daily. What's more, that the violence was done under the child's recognition, such as being performed in the presence of the child. That is, the violence against the mother has to hurt the child, so whether or not it takes place in front of the child is very fundamental. So that, if the child is six months old, then the child cannot recognize, so no matter how much violence there was, in fact, it would end up not falling under "harm to the child."

"Well, I was beaten in front of my child, also my child was seeing, crying so much. Well then, this is it, do I have to return?" Speaking of which, there is one more requirement. Even in such a situation, it is assessed that; when you return to France, whether there is a system that will protect the child and the mother properly or not. The fact that there is such a system means that when you actually come back to France, you can evacuate there properly, and you can protect your child, so that it is not considered as a Refusal of Return. This is Japanese courts now, and many countries decide the same way.

00:35:28- Specific method for making DV-related evidence as a Refusal of Return of Child.

Then, in the case of France, there are proper laws in the first place, so you might think it is impossible (for there to be a Refusal of Return of Child), though, it is basically case by case. For example, "Protection orders were taken in France. Nevertheless, my husband neglected and came to my house.", or "Even when the police came again and again, my husband did not hear that.", or "When I went to the shelter, it was all full; they did not let me in.", if such a situation actually happened, and if you can prove it, it is called protection requirement, this requirement can be satisfied. Then, do not judge by yourself that you don't have to return your child because of the violence. Basically, it is also very important to consult with a proper expert and what kind of evidence is available. No matter how much violence you say, it ends up a matter of whether you say or not. It is also important to come back with proper evidence. For example: You go to a hospital in France and have hospital personnel write a medical certificate properly. Or if you are in a shelter, have shelter personnel write a certificate. Or if you go to the police, have the police write the history record of your consultation with the police, so on. I would like to explain these points from Hashimoto office lawyers again. It is necessary to bring back such evidence properly.

00:36:33- Explanation of only the mother does not return is hardly recognized as a Refusal of Return of Child

Yes, in this Article 28 paragraph (1) item (iv) which I read it before, it is not only violence but also, where is it? in the text, "place the child in an intolerable situation;" is written. In other words, it is not limited to violence, but also the situation becomes intolerable for the child; then, it is not necessary to return. Well, there is a possibility that the situation will be intolerable. For example, what kind of case it is, it is written in the resume, it is below the part of "violence" as talked about before, "イ" on page 3. As a specific example, it is in the part of "A situation where custody of a child is difficult". In the first place, this mother is, Oh yeah, yeah, this also is case 6. 6. Let's see 6. It is case 6 of "the case section".

"I understand that there is no violence, and I will return if you still say I have to return my child, but I'm not returning." It is such a story. "I don't want to see such a husband anymore. I don't want to look at his eyes. I am scared, so I don't intend to return to France. Even though if you still say I have to return my child, only my child will return. However, even if my child returns, it will never be possible for such a father to raise a child. Without a mother, my child cannot be alive in the first place. Do you still say that I should return even in this situation?" You often assert such a kind of story. I think it's reasonable. Until now, there were parents, and your child was growing up. But in the absence of you, when you return your child to France, for

example a 9-month-old baby, whether your husband can take care of your child properly or not, it might be difficult. Whether such a situation satisfies a Refusal of Return of Child described above; "place the child in an intolerable situation;" or not, it is such a story. However, the court is quite severe about this. If you said that you wouldn't come back, and if it satisfied a Refusal of Return of Child, everyone would say that; "I'm not going to return." It is sorry to say; even if you refuse to return, it alone cannot be admitted as a Refusal of Return of Child.

00:38:30- Specific methods for making the mother's non-return to be a Refusal of Return of Child. (1)

However, as various comprehensive situations, I write in this "イ" for example, even if you were returning to the habitual residence country, which is France, [there is] the qualification to stay, for example: What kind of visa can you have for returning? If you have already divorced, you cannot remain in France, or you cannot work at all, such issues are considered. In fact, is it possible for the child to go to school? Or is there any support available from family members, friends, or support agencies? Or as circumstances of the father's side: If he has alcoholism, drug addiction, mental illness, or such mental and physical conditions. Considering such various circumstances comprehensively, and if the judge decides that the return of the child is not appropriate, it will be a Refusal of Return of Child. However, in practice there are almost no such cases that have been recognized. In fact, everyone argues "I think it is impossible for my husband." Of course, your husband says "I'm okay". Well, whether it's okay or not, in the six-week trial of the Hague, there is no time to judge carefully, so it may be judged that there is no problem in the end. Well, it will be judged so. I do not want you to think this point too easily. On the contrary, it is necessary to bring back such records if the father is really alcoholic, [psychosomatic disorder?] or is caught up with drugs.

00:39:40- Specific methods for making the mother's non-return to be a Refusal of Return of Child. (2)

I write in parenthesis, what kind of situation makes the mother's non-return to be a Refusal of Return of Child. For example: "When I get back to France definitely, I will get arrested. An arrest warrant has been issued in France, I will get caught absolutely when I get back," or something like that. Or, "I cannot live in France, nor can I expect to receive any support." Actually, I think that there are various social security services, so it is quite difficult to say there is such a situation in France. Or, "I

will definitely die if I come back." It is difficult to say such a thing by yourself though, in case there is an extremely high danger of suicide or self-harm, in such cases, the situation in which the mother does not return is considered as a reason of Refusal of Return of Child. This is the reality of the current court practice (in Japan).

00:40:21- Explanation that child's intention may become a Refusal of Return of Child.

It's up to six, yes six. It has been denied all one, two, three, four, five, six, so far, "I have no choice but have to return. But in the end, my son is saying that he no longer wants to come back to France." It's your child's intention. Your child is saying he/she does not like it. "Do I still have to return my son?" This is the seventh case. I write in the case. It is the seventh case. The 6-year-old eldest son is this one, saying that he doesn't want to return to France. It is the part of "Is the opinion of the child respected?" (on the resume), and, the article is article 28 paragraph (1) item (v) of the resume. It is the bottom of page 3. There is a provision that if your child says that he/she hates properly and refuses, you don't have to return your child.

Citation in the transcript

Act for Implementation of the Convention on the Civil Aspects of International Child Abduction

(Grounds for Refusal of Return of Child, etc.)

Article 28 (1) Notwithstanding the provisions of the preceding Article, the court shall not order the return of child when it finds that any of the grounds listed in the following items exists;

.....

(v) The child objects to being returned, in a case where it is appropriate to take account of the child's views in light of his/her age and degree of development;

I read it, "The child objects to being returned to the habitual residence country, in a case where it is appropriate to take account of the child's views in light of his/her age and degree of development" is written. It is not a case that your child just says that he/she does not like it. First of all, it would be to first see that he/she is at such an age as he/she is able to express him/her intentions, and he/she is well developed. And on top of that, it should be the case that he/she says it as his/her own intention.

00:41:21- Specific methods for making a child's objection to be a Refusal of Return of

Child.

Well, first of all, in essence, it is not "I hate such a father". What he/she says is he/she does not want to return to the country which is France. Do you see it? There is a situation where he/she might not like his/her father, even though, he/she has a lot of friends in France. If he/she loves France, the child's objection is not accepted in the first place.

On the other hand, he/she likes his/her father, even though, he/she will be bullied when he/she will come back, for example, he/she is discriminated against at school, in such a case, the child's objection will be accepted. The point is that he/she does not want to be returned to France.

00:41:54- About child age whose intention is considered as a Refusal of Return of Child.

So, it is about "his/her age and degree of development", what age is taken into account? There is no clear law of it. So, as a matter of fact, in Japan's operation, a child's intention is not considered at least if less than six years old. If he/she is 6 years old or older and less than 10 years old, there are not many cases, though they are case by case. Then, if he/she is over 10 years old, it is Japanese operation that is basically respected. In the case of foreign countries, there are some cases splendidly respected at the age of 8, but according to the Japanese judge's explanation, if he/she is under 6 years old, it is absolutely No. In the case of over 6 years old and less than 10 years old, it is case by case. So, this elder brother is 6 years old though, even if this elder brother says he doesn't want to return to France, there are not many cases where the court admits a Refusal of Return, it is a reality.

00:42:42- (on a Refusal of Return of Child) "there is no need to give up." (Assuming removal of the child, it is contrary to the Hague Convention's principle of preventing the removal of children.)

"Well, now, I cannot meet all of the reasons of Refusal of Return of Child. Everything is useless. Then, if a trial is raised in Japan, will it be absolutely returning?", that is not true. In fact, this is to negotiate. Basically, Japanese court opens mediation when the Hague trial is raised. It is used as a so-called divorce mediation, your husband basically comes to Japan and has a negotiation. Among the negotiations, assuming you remain in Japan, assuming you return to France, divided into both patterns to organize your thought. You will have to think of many things: If

you return to France, how to live there, how to exercise custody of your child. If you remain in Japan, your husband would be asked what to do: If he comes to Japan to meet, how to meet the child, asking your husband. It takes time. Among the negotiations, for example, a father often tells voluntarily that "It is okay to live in Japan because our child is accustomed to Japan." Or, conversely, there is also a mother who would like to negotiate properly with her husband in France, to think about living in France, and to return there. So, in fact, it is not decided at 0 (%) or 100 (%) in the Hague trial, but during the negotiation, you make good conditions, good arrangements, and you will return or not, that is the feature of Japanese courts and the case of the Hague in Japan. Then, in this case, you already go back to Japan, and even you are told by a lawyer that there are no facts for Refusal of Return of Child, there is no need to give up. Rather, I would like you to negotiate properly and do your best to reach the desired conclusion.

00:44:10- Because a Refusal of Return of Child is hardly admitted, "So that you have to do what you can do in France before you come back," (Assuming removal of the child, it is contrary to the Hague Convention's principle of preventing the removal of children.)

However, since you are the one who has not gone back (to Japan) yet, it is our advice today to say, I'm sorry if you go back, I'm really sorry. I have no choice but to tell you properly that you are going to have to return your child. Unless the reason is to a great extent, a Refusal of Return of Child is not satisfied. It is Japan's current practice. Other countries are the same. In addition, because the enforcement system is poor, there may be such a story that you can escape. But there is no such thing at all. Basically, you have to follow the court order. Then, you have to do what you can do in France before you go back, or I would like you to think about your own life. I gave a brief overview and explained the Hague at the end. After this, it will be about French law. Thank you very much.

00:45:55- (No transcript yet.)

Location of the Recording:

<http://www.bachome.org/news/caught-japan-seminar-on-how-to-abduct>

This transcript shall be used only for the purpose of reporting of this seminar.