



KG LEGAL KIEŁTYKA GŁADKOWSKI

INTERNATIONAL CHILD ABDUCTION

POLISH REGULATIONS



Legislative acts related to the International Child Abduction:

- ▶ Convention on the Civil Aspects of International Child Abduction (Journal of Laws, 1999, 1085)
- ▶ Criminal Code (Journal of Laws, 1997, 533 as amended)

APPLICATION FOR RETURN OF THE CHILD



- ▶ In case of a child abduction the first step to be taken is to file an application for the return of the child, under the Convention on the Civil Aspects of International Child Abduction.
- ▶ Such an application is recognized by the competent authorities (courts or administrative bodies) of the country to which the child was abducted or detained.

APPLICATION FOR RETURN OF THE CHILD



Template of the application

- ▶ The application should be made in accordance with the specified form, which could be found on the website of the Ministry on Justice as follows:
www.bip.ms.gov.pl

Documents attached

- ▶ The application must be accompanied by all necessary documents (e.g. photographs of the child), including the power of attorney for the central authority of the country where the application is filed.

CRIMINAL CHARGES



Art. 211 of the Polish Criminal Code

- ▶ In case of child abduction, there may apply art. 211 of the Polish Criminal Code. This provision states that anyone who abducts a minor under the age of 15, or a person who is helpless due to a mental or physical condition, against the will of the person appointed to take care of or supervise him or her, is liable to imprisonment for up to three years.

CRIMINAL CHARGES – PARENTAL ABDUCTION



Abduction made by a parent

- ▶ However, art. 211 of the Polish Criminal Code will not apply if the child was abducted by a parent with full parental authority.
- ▶ This is an established rule present in the Polish judicial decisions, confirmed by the Polish Supreme Court.
- ▶ If the parent's parental authority was limited, it would be possible to bring criminal charges based on art. 211 of the Polish Criminal Code.

PROCEEDINGS IN THE COURT

- ▶ Application for the return of the child will be followed by non-litigious proceedings in the court.
- ▶ There apply special procedures to child abduction cases . They are specified in the Code of Civil Procedure – which takes into account difficulties and concerns of the case and the child's best interest.



DETAILS OF THE PROCEEDINGS

The procedure is referring to cases involving removal of a person from parental authority or custody

- ▶ One of the most important principles is that the final decision can be only made by the court after conducting a hearing.
- ▶ This procedure also foresees a cooperation with a probation officer and with the Police to ensure a faster return of the abducted child.

EVIDENCE SUBMITTED DURING PROCEEDINGS



It is crucial to submit to the court any evidence which may be helpful for the court in adjudicating the case

- ▶ Mail messages, phone calls history, community interview, psycho-legal expert opinions – this is in general the information which helps to determine whether the judge shall order the return of the child.

UNCONVENTIONAL EVIDENCE

Applicants may be interested in using other ways of collecting evidence

- ▶ It is not forbidden to provide evidence from non-standard sources.
- ▶ Applicants could use detective / private investigator services to establish the place of the abducted child's whereabouts. It has to be pointed that such services in Poland are subject to severe regulations and the reports prepared by detectives must comply with Polish law in order to be used as evidence in court.



THE DECISION NOT TO ORDER THE RETURN OF THE CHILD

There are particular cases when the judicial or administrative authority is not bound to order the return of the child

- ▶ That takes place when the person, institution or other body having the legal care over the child was not exercising the custody rights at the time of the abduction, or had consented to the removal or retention; or there is a grave risk that ordering the child's return would expose the child to physical or psychological harm.
- ▶ Such circumstances need to be proved by the person who abducted the child – therefore it is not a common situation.

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KG Legal provides cross border legal assistance for private Clients, with a focus on family and civil cases:

- Representing foreign Clients before Polish courts of all instances in cases related to child care, child abduction, divorce, alimony;
- Representing foreign Clients before the Polish Registry Office and administrative authorities in immigration cases and cases related to residence.



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KG Legal is a member of a number of international organisations, such as NYSBA and Reunite International.



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**FOR MORE INFORMATION PLEASE VISIT
OUR WEBSITE**

www.kg-legal.eu

**IN CASE OF ANY QUESTION, WE REMAIN
AT YOUR DISPOSAL**

Thank you for your attention

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