

Brief Summary of Implementation Procedures of the Hague Convention in Japan

1. Japanese Central Authority (JCA)

(1) Structure

- JCA: Minister for Foreign Affairs of Japan (Hague Convention Division, Consular Affairs Bureau, Ministry of Foreign Affairs)
- Case officers from various backgrounds (Lawyers, Judge, Family Court Investigating Officer, Immigration Officer, Expert in Domestic Violence, Expert in Child Psychology, Social worker, Diplomats etc.) are working.

(2) Effectiveness of the Convention

- Japan recognizes all acceding state as Convention partners.

2. Incoming Case Procedure

(1) Acceptance of Application Documents

- Application Documents need to be submitted in English or Japanese. Documents written in languages other than English or Japanese need to be accompanied with Japanese or English translation.
- Application Documents need to be sent by postal mail to the JCA. Although submission by e-mail cannot be regarded as official receipt, it could help JCA initiate screening in advance.
- The JCA sends an acknowledgement of receipt by email within a few days.
- For further information about required documents please refer to our website.
 - * JCA website: http://www.mofa.go.jp/ca/ha/page22e_000380.html

(2) Screening (at least two weeks required)

- Screening consists of the following three steps;
 - (a) Documentation check; if necessary, the JCA requests the applicant via the requesting CA to submit additional documents.
 - (b) Confirm that the child is in Japan by referring to passport issuance information, immigration record, residence registration etc.
 - * If the child is in a Contracting State other than Japan, the JCA transmits the application to the CA of that Contracting State. If the child is in a non-Contracting State, the JCA dismisses the application.
 - (c) Review applicability of the Convention; if the application falls under any of dismissal reasons provided in the Act for Implementation of the Convention, the

JCA dismisses the application.

* Act for Implementation of the Convention:

<http://www.japaneselawtranslation.go.jp/law/detail/?id=2159&vm=04&re=01>

- After the JCA makes decision to provide assistance, the JCA sends a notice with explanatory materials (such as the information on mediation and court proceeding) to the applicant via Requesting CA.

(3) Discover whereabouts of the child

- The JCA can request for information to the relevant government organization and private organizations (schools, hospitals, telecommunications carriers, Domestic Violence shelters, utility providers) and requested organizations are legally obliged to provide relevant information to the JCA.
 - If the JCA cannot find location, the JCA can request the police to take necessary measures.
 - To protect victims of domestic violence, location of the child and taking parent (TP) is not disclosed to the applicant. Location of the child and TP is only shared with the Court.
 - After the location of the child and the TP is identified, the JCA send a letter to the TP. In the letter, the JCA conveys LBP's intentions, explains procedures to follow and requests the TP to express his/her intention.
- * If the applicant does not wish the JCA to contact the TP, the JCA may not send a letter to the TP.

(4) Mediation

- The JCA conveys messages between parties to facilitate their communication, but it will not work as a mediator between parties.
- The JCA commissions the mediation proceeding to five Alternative Dispute Resolution (ADR) institutions.
- The costs of ADR are borne by the JCA within the availability of its budget.
- Parties concerned can use ADR institution other than five commissioned ADR institutions by the JCA as long as the cost is borne by the parties.

(5) Lawyer Referral Service

- The Japan Federation of Bar Association offers a lawyer referral service to both TPs and Left-Behind Parents (LBPs) but the JCA receives application for the service.
- Three lawyers who have the following qualifications are referred;

- (a) three or more years of professional experience as a lawyer,
 - (b) experience in handling child custody cases,
 - (c) English language proficiency, and specialized training.
- Lawyers are referred about two weeks after the submission of the application
 - This service can be used only once per case.

(6) Legal Aid

- Japan legal Support Center provides loan for legal fees and cost.
- Applicant must meet the means test.

(7) Court Procedure for Return of Child

- Jurisdiction is concentrated to two Family Courts; Tokyo and Osaka.
- Standard procedure aims to finish within six weeks
- Documents submitted to the Courts must be presented in Japanese language. The translation of documentary evidence in foreign language into Japanese will be outsourced to a translation agency and the incurred translation costs are to be borne by the JCA within the availability of its budget if the party wishes.

(8) Compulsory Execution for Return of Child

- If the TP should not follow the return order by the Court, there are two steps of compulsory execution;
 - (a) Indirect Compulsory Execution
The Court orders to place certain financial burden on the TP,
 - (b) Execution by Substitute:
Execution officers from the court visit the TP and the child and try to persuade the TP to return the child. Execution officers even have the authority to use force against the TP to release the child if the TP physically prevents the child from leaving with the execution officers.

(9) Court Procedure for Access with Child

- The introduction of the Hague Convention in Japan does not change the standard with which the court makes decision for access cases.
- The cases will be dealt with under the existing Japanese family laws, for instance the Civil Code and the Family Affairs Cases Procedures Act.
- Documents submitted to the Courts must be presented in Japanese language. The translation of documentary evidence in foreign language into Japanese will be

outsourced to a translation agency and the incurred translation costs are to be borne by the JCA within the availability of its budget if the party wishes.

(10) After the return of the child

- The JCA requests the person who returns with the child to submit proof of return (ex. copy of passport with immigration stamp, copy of air ticket)

3. Outgoing Case Procedure

- After the JCA receives application document, it conducts screening as follows;
 - (a) Documentation check; if necessary, the JCA requests the applicant via the requesting CA to submit additional documents.
 - (b) Review applicability of the Convention; if the application falls under any of dismissal reasons provided in the Act for Implementation of the Convention, the JCA dismisses the application.
- After the JCA makes decision to provide assistance, where necessary, the JCA provides the assistance for translation of the application documents into English, French or other languages within its budget.
- The JCA transmits application to the CA of the state where the child is and facilitates communication between the applicant and requested CA.

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