

LAW No.03/L –238

ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

The Assembly of Republic of Kosovo;

Based on Article 65 (1) of the Constitution of Republic of Kosovo,

Adopts:

LAW ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

**CHAPTER I
GENERAL PROVISIONS**

**Article 1
Purpose**

The purpose of this Law is, to secure the prompt return of children who have been wrongly removed from or retained outside their State of habitual residence and to ensure respect for rights of custody of and access to children who are residents in Kosovo or a Requesting State.

**Article 2
Definitions**

1. Terms used in this Law have the following meaning:

1.1. **Child-** a person under the age of sixteen (16);

1.2. **The Hague Convention-** the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on 25 October 1980;

1.3. **Requesting State-** a State which is a party according to the Hague Convention;

1.4. **Central Authority of Kosovo-** the Ministry of Justice of the Republic of Kosovo;

1.5. **Rights of custody-** s rights relating the care of the child, in particular, the right to determine the child's place of residence;

1.6. **Rights of access-** the right to take a child for a limited period of time to a place other than the child's habitual residence;

1.7. **Temporary guardian-** the person who without a removes the child or the person to person to whom the child was entrusted in Kosovo taking care of a wrongfully removed child or the person to whom the child was entrusted , as defined by this law;

1.8. **District Court of Prishtina-** the competent court to take the decision and its descendant court in compliance with the Law on Courts.

**Article 3
Wrongful removal or retention of a child**

1. The removal or the retention of a child is wrongful where:

1.1. it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

1.2. at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been exercised with an exemption of the removal or retention.

2. The rights of custody mentioned in paragraph 1, sub-paragraph 1.1 of this Article, may arise by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

3. In ascertaining whether there has been a wrongful removal or retention of a child, the authorities of Kosovo may refer to a law or a foreign decision ex-officio.

Article 4 Role of the Kosovo Central Authority

1. The Ministry of Justice is the designated Central Authority in Kosovo to discharge the duties which are imposed by this law.

2. The Ministry of Justice shall co-operate with designated Central Authorities in other States and promote co-operation amongst the competent authorities in Kosovo to take all appropriate measures to secure the prompt return of the child, including measures:

2.1. to discover the whereabouts of a child who has been wrongfully removed or retained;

2.2. to prevent further harm to the child and providing protection or prejudice to interested parties by taking or causing to be taken provisional measures;

2.3. to insure the facultative child return or to bring an amicable resolution of the issues;

2.4. to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of the rights of access; and

2.5. where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

2.6. to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

2.7. to exchange information with the central authorities of other states, to eliminate any obstacles for the application of this law.

Article 5 Reports

1. Where the Ministry of Justice is requested to provide information relating to a child it may request:

1.1. any public authorities or any relevant person in Kosovo to provide a written report or information relating to the child;

1.2. any court in Kosovo to provide certified copies of any relevant court order, ruling or documentation relating to the whereabouts of the child.

**CHAPTER II
GENERAL PROCEEDINGS**

**Article 6
Applications for Return and Access to a Child**

1. Any person, institution or other body claiming that a child has been removed from or to Kosovo or retained in breach of custody rights may apply either to the Ministry of Justice or to the Central Authority of any other State for assistance in securing the return of the child.
2. An application for the return of a child to Kosovo in accordance with paragraph 1, may also be submitted to the District Court of Prishtina.
3. The District Court of Prishtina shall transfer the application to the Ministry of Justice provided that the application fulfils the formal requirements as set out in the following:
 - 3.1. information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child wrongfully;
 - 3.2. the date of birth of the child;
 - 3.3. the grounds on which the applicant's claim for return of the child is based;
 - 3.4. all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.
4. The application may be accompanied or supplemented by:
 - 4.1. an authenticated copy of any relevant decision or agreement;
 - 4.2. a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence or from a qualified person, concerning the relevant law of that State;
 - 4.3. any other document relevant for the case.

**Article 7
Procedures to seek a voluntary return**

1. Upon receipt of a foreign application and upon being satisfied that the application is in accordance with the requirements in Article 6 of this law, the Ministry of Justice shall inform the temporary guardian of a wrongfully removed child about the application and suggest the voluntary return of the child or to bring about an amicable resolution.
2. If the temporary guardian does not comply within seven (7) days from the receipt of the letter, the Ministry of Justice shall initiate court proceedings and transmit the application to the District Court of Pristina and it is authorized to act in the interest of the applicant for the return of the child.
3. If the Ministry of Justice, which receives an application for the return of a child from Kosovo, has reason to believe that the child is in another State, it shall directly and without delay transmit the application to the Central Authority of that State and inform the requesting Central Authority, or the applicant, as the case may be.

CHAPTER III COURT PROCEEDINGS

Article 8 Jurisdiction of the Court

1. The District Court of Pristina shall have exclusive first instance jurisdiction in Kosovo.
2. The review of an application and the issuance of orders and rulings under this law shall be conducted in accordance with the law on Out Contentious Procedure.
3. If an application is not determined by the District Court of Pristina within forty two (42) days from the submission of application:
 - 3.1. the Ministry of Justice may request the President of the District Court of Pristina to state in writing the reasons for the application not having been determined within that period; and
 - 3.2. the President of the District Court of Pristina shall give the reasons in writing to the Ministry of Justice within five (5) days of receipt of the Ministry's request. Upon receipt of such reasons, the Ministry of Justice shall convey them to the applicant.
4. The Courts shall prioritize the proceedings on the application for return of a child.
5. The review of a request and issue of orders and decision according to this Law shall be processed from a higher instance, by a professional judge with expertise on family law.
6. Judicial proceedings shall be conducted in compliance with the Law on Out Dispute Procedure, unless otherwise provided by this Law.
7. The Courts shall prioritize the proceedings on the application for return of a child.

Article 9 Effect of other proceedings

When the District Court of Pristina accepts of an application under this Law, proceedings in any other court in Kosovo relating to the custody issue of the child shall be stayed, until the proceedings for the return of the child are concluded.

Article 10 Court's Powers

1. The Court may:
 - 1.1. order the return of the child to Requesting State;
 - 1.2. make a declaration that the child's removal from or retention outside of the Republic of Kosovo, was unlawful;
 - 1.3. make any other order or ruling as necessary or desirable in order to remedy the wrongful removal of the child or to implement a return order;
 - 1.4. give specific orders to the temporary guardian in order to ensure the expeditious return of the child.
2. The court may order that failure of the temporary guardian to comply with the court order results in a fine of up ten thousand (10.000) € for every violation of the court's order.

3. A decision under this law shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this law or unless an application under this law is not lodged within a reasonable time following receipt of the notice.

4. The Court may, prior to the making of a return order, may request that the applicant take a decision from the authorities of the habitual residence that the removal or retention was wrongful, according to Article 3 of this law, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

5. Where the court has reason to believe that the child has been taken to another State, it shall stay the proceedings for the return of the child.

Article 11 Return Order

1. The Court shall mandatory order the return of a child from Kosovo to Requesting State if:

1.1. the child has been wrongfully removed to or retained in Kosovo; and

1.2. from the date the application was received by the Ministry of Justice a period of less than one (1) year has elapsed from the date of the wrongful removal to or retention of the child in Kosovo.

2. The Court shall also order the return of a wrongfully removed child even where the application was received after the expiration of the period of one (1) year referred to in paragraph 1 of this Article, unless it is demonstrated that the child is now settled in its new environment.

Article 12 Exceptions to Mandatory Return Order

1. The Court is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention.

2. Under exceptional circumstances the Court is not bound to order the return of the child if there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

3. The Court may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

4. In considering the circumstances referred to in this Article, the information shall be taken into account relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

5. A decision under this Article concerning the non-return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 13 Termination of the existing effect of custody orders

Where a return order is made by the Court, any other order regarding the rights of custody of the same child made by a court in Kosovo shall cease to have effect.

Article 14 Effect of Custody Order in Kosovo

The fact that a decision relating to custody has been made in Kosovo, is not a ground for refusing to return a child under this law, but the Court may take account of the reasons for that decision in applying the provisions of this law.

Article 15 Interim Measures

Upon application by the Ministry of Justice, or ex-officio the District Court of Prishtina may, at any time prior to any decision under this law, order interim measures directions/rulings and make such interim orders as it considers appropriate for the purpose of:

1.1. the welfare of the child; and

1.2. preventing changes in the circumstances relevant to the application, particularly with regard to secure the whereabouts of the child during the proceedings and to prevent the circumvention of the return of the child, including orders relating to the child's place of residence, care or education of the child.

Article 16 Execution

The District Court of Prishtina shall execute ex-officio any order made under this law and make any ruling for the expeditious execution as deemed appropriate.

CHAPTER IV RIGHTS IN ACCESS

Article 17 Access

1. An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Ministry of Justice or Central Authorities of other States in the same way as an application for the return of a child.

2. The Ministry of Justice is bound by the obligations of co-operation which are set forth in Article 4 of this law, to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Ministry of Justice shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

3. The Ministry of Justice may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V FINAL PROVISIONS

Article 18 Communication language

Any application, communication or other document sent to the Ministry of Justice must be in the original language and shall be accompanied by a translation into one of the official languages of Republic of Kosovo.

Article 19
Costs

1. The costs of judicial proceedings, including the provision of legal aid pursuant to paragraph 2, shall be borne by the Kosovo Budget. If the District Court makes an order in favor of the applicant, it may order the respondent to pay the costs of the proceedings and the costs for the return of the child.
2. Legal aid shall be made available to the applicant and respondent to cover the costs of legal representation upon request.
3. The Court may release the responsible person from compensate of the costs of the proceedings, in case if the same person is in a bad financial position.

Article 20
Hague Convention

This Law shall be interpreted and applied in accordance with the Hague Convention and guides on best practices provided by the Hague Conference on Private International Law.

Article 21
Authority for sub-legal acts

Kosovo Government on the proposal of the Ministry of Justice issues sub-legal acts for the implementation of this law.

Article 22
Transitional Provisions

Until entry into force of the Law on Courts, the competent court for execution of this law shall be the District Court in Prishtina. With the entry into force of the Law on Courts, competent court for execution of this law shall be the Basic Court in Prishtina.

Article 23
Abrogation Provisions

With the entry into force of this law the UNMIK Regulation No. 2004/29 on Protection against International Child Abduction is abrogated.

Article 24
Entry into force

This law shall enter into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo.

Law No. 03/L-238
28 October 2010

Promulgated by Decree No. DL-068-2010, dated 09.11.2010, Acting President of the Republic of Kosovo, Dr. Jakup Krasniqi.