

DISCLAIMER: This document was produced in 2005 and is a summary of the laws of Egypt that appertain to international parental child abduction, contact and relocation as they were at that time. reunite International Child Abduction Centre cannot vouch for the accuracy of this information for use in litigation and it is not intended to provide case specific advice.

EGYPT

Overview

In 1980 Article 2 of the Constitution was amended to read that “Islamic jurisprudence is the principal source of legislation.” However, the majority of Egyptian Law is based on civil law. The exception to this being family law, for the Muslim population is based on the Sharia. Article 2 of the Constitution of 1971 reads that Islam is the State religion.

The dominant school of Islamic Law is Hanafi. The Egyptian Civil Code 131 of 1948 allows recourse to Hanafi doctrine where a matter is not legislated on. However, Egypt has adopted a flexible approach and incorporated the jurisprudence of the other orthodox schools into the family laws, especially doctrines from the Maliki School, that provide flexibility to the traditional law. While Egypt has a majority Muslim population there is a significant Christian minority, which is permitted to apply its own family laws.

Foreign Orders

Foreign court orders can be recognised and enforced in commercial matters. A foreign order regarding a family matter would be considered in an Egyptian court but would only be applied if it is consistent with public order and morality. Returning a Muslim child to a non-Muslim country is likely to be seen as being in conflict with the public morality of a state which is Islamic.

Court Structure

The two main types of court system in Egypt are the Administrative Courts and the National Courts. The National Courts deal with civil, criminal and commercial matters. The highest authority in the administrative system is The High Administrative Appellate Court. At the apex of the courts system is the Supreme Constitutional Court, which deals mainly with issues of the constitutionality of legislative provisions.

The National Courts are broken down into four levels. Each court has subdivisions for criminal, civil, commercial and personal status matters. Judges tend to specialise in one or more of these areas. The Sharia Courts were integrated into the National Courts by the Sharia Courts and Community Tribunals (Abolition) Act of 1955. Family Law cases are heard by the Special Family Courts. These Family Courts were established by Law No.11 of 2004 Promulgating the Law on the Establishment of the Family Courts. These courts will offer mediation, counselling and other services to families. There are separate courts for Egyptians Christians.

At the first level Summary Courts (*al mahkama al guziya*) have jurisdiction over minor issues, including matters of personal status and minor offences. One judge presides over hearings. At the next level the Courts of First Instance (*al mahkama al ibtida'iya*) hear major matters, for example commercial matters involving sums of over LE 5000, major matter of personal status and also appeals from the Summary Courts. Three judges preside over hearings in this court. The Courts of Appeal (*mahkamat al isti'naf*) are the next tier. These courts have jurisdiction to hear appeals from the Court of First Instance in all matters. At the highest level is the Court of Cassation (*mahkamat al naqd*).

Filiation

Paternity cannot be established if the wife has not had sexual relations with the husband following marriage, or if the child is born more than one year after the absence or death of the husband or a divorce. The minimum period recognised for pregnancy is six months and the maximum is one solar year.

Adoption does not give rise to legal relationships.

Custody

Family Law in Egypt is governed by various laws including the Personal Status Law 25 of 1929 as amended by Laws 100 of 1985 and 1 of 2000. These amendments were introduced in order to reform some aspects of Family Law using the practise of *talfiq* or patching. This allows legislators to incorporate parts of the doctrines from the different schools of Islamic Law into one code . Egyptian family law has also gone some way to adapt to the changing social realities of contemporary Egypt.

Law No. 4 of 2005 amends Article 20 of Law 25/1929 and reads that the woman's right to custody of her children shall terminate at the age of 15 for both male and female children. The judge shall then give the child the choice whether or not to remain with the custodian without maintenance until the male reaches legal age or the female marries. This is a significant departure from the principles of the traditional Hanafi position that has shaped Egyptian family law. However, there are conditions attached to the right of the mother to custody. She will lose custody if she remarries or is shown to be an "unfit" mother. If the father is Muslim but the mother is not, she must raise the child as a Muslim in order to retain custody. Often the court will not grant custody to a non-Muslim mother since this could harm the child's religious upbringing. In some cases foreign Muslim mothers have been allowed to exercise custody outside Egypt if an agreement is made to ensure regular contact between the child and the father. If the parents are not married the courts may rule that there is only a legal relationship between mother and child and therefore the court would permit the child to leave Egypt with the mother.

If the mother is not able to exercise custody of her children then custody is awarded to relatives in the following order; the mother's mother and maternal grandmothers, the father's mother and his maternal grandmothers, full sisters, uterine sisters, consanguine sisters, the daughter of a full sister, the daughter of a uterine sister, maternal aunts, the daughter of a consanguine sister, the daughter of a brother, maternal aunts of the mother, maternal aunts of the father, paternal aunts of the mother, paternal aunts of the father. If no female custodian can be found or the period of female custody has expired then custody is given to the father. If the father is unable to exercise custody then custody is awarded to his male agnatic relatives and then the non-agnatic relatives.

Article 65 of Law No.1 of 2000 reads that the rulings and decisions issued for handing over a young child or contact with the child or maintenance shall be enforceable by the force of law and without bail.

Guardianship

Guardianship lasts until a child reaches the age of majority at 21. The person with the most right to guardianship is the father. Guardianship can be withdrawn if the natural guardian commits a crime against the child or is negligent.

Access

The amendment to Article 20 of Law 25/1929 by Law 100/1985, gives both parents rights of access to their child and where there are no parents the grandparents have the same right. However, according to this Article, if the custodian does not comply this is not automatically enforceable but the judge will issue a notice. If the custodian still does not comply with access agreements the judge can order that custody be awarded to another person temporarily.

Article 65 of Law 1 of 2000 states that court rulings regarding access, handing over a child or paying maintenance, carry the force of the law and must be implemented. According to Article 67, an order issued giving access to a child is to be carried out in a specific location that is safe and secure for the child.

Non-Muslim Family Law

Egypt has a significant Christian population, the majority being Coptic Orthodox. There are separate courts that apply family law to Christians. According to this law the period of the mother's custody is until seven for a male child and nine for a female child. The order for awarding custody is the mother, the maternal grandmother, the paternal grandmother, adult sisters, maternal aunts and paternal aunts. Remarriage of the custodian normally results in the loss of custody.

Nationality

Children born in any country to an Egyptian father automatically obtain Egyptian citizenship. Law No. 154/2004 amending the 1975 Nationality Law reads that women married to a foreign national also pass on Egyptian citizenship. Any children born before the effective date of this amendment to an Egyptian mother and non-Egyptian father may apply to the Minister of the Interior for a decree conferring nationality upon them.

Egyptian law is applied to all children with Egyptian nationality, in accordance with Article 16 of the Civil Code.

Leaving the Jurisdiction

Until recently, Egyptians under the age of 21 need the permission of their father in order to obtain a passport and required permission of the father to travel abroad., however this has now changed to allow minors to travel and apply for passports without paternal permission although official wording has not yet been received.

A decision of the Supreme Constitutional Court issued a decision in November 2000 (Case 243 of the 21st Judicial Year) stated that women have the right to obtain passports and to travel. Previously a woman needed the permission of her husband or father. However, a husband can still seek a court order to prevent his wife travelling with or without their children. Unmarried women over the age of twenty-one do not need permission to travel.

International Law

Egypt has bilateral agreements with the USA (2003), Australia (2000), Canada (1997) and France (1982). Discussions on the signing of a protocol with the UK are currently being undertaken. Egypt is also a signatory to the Convention on the Rights of the Child with a general reservation with respect to all clauses regarding adoption and particularly Articles 20 and 21. Egypt has recognised the principle of derived rights from the norms of International Law (see decision of the Supreme Constitutional Court Case 8 of the 18th Judicial Year 1996).

Child Abduction

The abduction of a child by either parent or grandparent from the person who, by a decision of the judicial authority, has the right of guardianship or custody of the child is an offence according to Article 292 of the Egyptian Penal Code. In addition, the refusal of a parent or grandparent to deliver a child to a person with the right to claim the child according to a judicial decision is a crime according to the same article.

Contacts

Ministry of Justice
Department of International & Cultural Co-operation
Maglis El Shaab Street, 9th floor
Midan Lazoghly
CAIRO

Fax:+202 795 8103
mojeb@idsc1.gov.eg

Approved by Cherifa Kalaoui, Family Lawyer
El Kalaoui Law Firm
1123 Corniche el Nil
Cairo
Egypt

EI 26/07/05