

DISCLAIMER: This document was produced in 2005 and is a summary of the laws of Iran 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.

## **IRAN**

### **Overview**

In Iran the sources of law are Islamic principles, constitutional law, legislation, Government by-laws, custom and revolutionary principles. Article 12 of the 1979 Constitution declares that Islam is the religion of the State and the dominant school of law is the Jaafari School, which is the largest branch of Shia jurisprudence. Article 4 establishes that all laws should adhere to Islamic criteria. This includes the family law legislation, which is contained in the Iranian Civil Code. The 1967 Family Protection Act, which had accorded women more equality within the family, was repealed after the 1979 Islamic Revolution.

The majority of the population are Shia Muslims. There are Sunni Muslim, Christian, Jewish, Zoroastrian and Ba'hai minorities, although the latter is not a formal religion according to Constitutional Act.

### **Foreign Orders**

A foreign order may be enforced in Iran, subject to certain requirements. The order can be recognised by an Iranian court if it is not in conflict with Iranian public order or decency and if the award was issued by a competent body that is considered as being capable of governing the case.

### **Court Structure**

The regular courts in Iran, known as public courts, are divided into Public Civil Courts and Public Penal Courts. In the first instance family matters, including marriage and custody, come under the jurisdiction of the Special Civil Court allocated to family affairs. Whereas personal status matters such as citizenship and probate come under the jurisdiction of the Public Civil

Courts. Sub-Article 3 of Unique Article of Allocation of some of the Public Courts to Family Affairs ratified in 1997 requires a female legal consultant to be present during child custody court hearings.

All non-financial matters and financial affairs evaluated at above 2,000,000 RI from these courts can be appealed to the appellate courts. The court of final appeal is the Supreme Court. Two judges, an advisory judge and a chief judge, hear cases in this court.

There is also a system of Revolutionary Courts. These courts have jurisdiction in cases of security, smuggling, drugs crimes and slander of the leader of the Iranian revolution Khomeini. The Administrative Court of Justice investigates complaints against Government agencies and a Disciplinary Court for Judges was established in 1987.

### **Filiation**

According to Article 1158 of the Iranian Civil Code kinship with the father is established for a child born within marriage at least six months after the marriage was contracted and no more than ten months after separation.

### **Custody**

Custody in Farsi is called *hazanat*. During marriage both spouses must cooperate in the raising of the children, however if separation occurs the mother has the priority in having custody of her young children. For a female child the period of the mother's custody lasts until she reaches the age of seven. An amendment of Article 1169 of the Civil Code extended the period of custody of a male child until he is seven years old. Previously the mother's custody of the male child ended when he reached the age of two. If the father is deceased the mother has priority for custody even if the paternal grandfather is alive. If both parents are deceased custody passes to the paternal grandfather, followed by the *wassi* (executor). In their absence the court can appoint a guardian called a *ghayem*.

The mother will lose custody if she remarries, however custody can be recovered if this marriage ends. If the father dies then the mother has custody even if she has remarried. The mother will lose custody if she relocates at a distance from the guardian that prevents from carrying out his

duties as guardian. A non-Muslim mother will not be permitted to obtain custody of a Muslim child. If the mother is prevented from obtaining custody for any reason, the right to custody will pass to the father.

### **Guardianship**

In Farsi guardianship is called *vali-e-qahri*. The financial and legal guardian of the child is the father. After the father the paternal grandfather has the most right to guardianship. The father and the paternal grandfather can also appoint a guardian in their wills called a *wassi*. The guardian is responsible for the upbringing and maintenance of the child and the management of his or her finances. Article 1184 was amended in 2000 to give the court the power to place restrictions on the authority of the guardian and to remove guardianship from the father or paternal grandfather if their guardianship harms the child. Appointed guardians can be removed for reasons of dishonesty, incompetence, bankruptcy or insanity. The court can appoint a trustee to supervise guardianship if there is evidence of dishonesty or incompetency. If the only natural guardian is incapacitated the court may appoint a guardian.

Guardianship will not pass to the mother unless she is appointed in the will of the father or paternal grandfather to supervise the child's affairs after their death or by the court. After the death or removal of the father, paternal grandfather and appointed guardian the court should appoint a legal guardian (*ghayem*) for the child. The mother can act as a court-appointed guardian if she is unmarried, although she will not automatically become the guardian. If the mother is awarded guardianship and subsequently remarries she must inform the court within one month. If she does this she will not necessarily lose the right to guardianship of her children. The stepfather is not considered to be a suitable guardian of his stepchild.

### **Access**

Article 1174 of the Civil Code guarantees the non-custodial parent the right of access to the child. If there is a dispute between the parents the time and place of contact can be determined by the court.

## **Non-Muslim Family Law**

Article 7 of the Civil Code states that the personal status of foreign residents in Iran is decided according to the law of their own State. According to the 1923 Law Permitting Personal Statutes of Non-Shiite Iranians the courts apply the religious law of each individual.

## **Nationality**

Article 976 of the Civil Code states that an Iranian father automatically passes on Iranian citizenship to his child. If a child is born in Iran and lives there for at least one year before the age of eighteen then he or she can obtain Iranian nationality. Article 976 of the Civil Code reads that a woman of foreign nationality who marries an Iranian will be considered to have Iranian nationality.

## **Leaving the Jurisdiction**

Article 18 of the 1972 Passport Act states that an Iranian under the age of eighteen must have the written consent of his or her guardian in order to obtain a passport. Married women must have the permission of the husbands to travel overseas.

## **International Law**

Iran is party to the UN Convention on the Rights of the Child on a “reservation basis”, which means it is applicable except in cases of conflict with domestic law, which is based on Islamic Law.

## **Parental Child Abduction**

Article 1175 of the Civil Code states that a child should not be taken from his or her parents or from the mother or father to whom custody has been entrusted, except for lawful reason. Under Iranian law parental child abduction is not a specified crime, therefore the removal of a child by the father or mother is not abduction but the deprivation of the other parent’s right of permanent access to the child.

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