

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

LIBYA

Overview

Article 2 of Libya's Constitutional Proclamation of 1969 declared that Islam is the religion of the State. This article was complemented in 1977 by the Declaration on the Establishment of the Authority of the People, which went further to state in Article 2 that the Holy Quran is the Constitution of the Libyan State. The Libyan legal system does contain elements of civil law, mainly influenced by French and Italian law, however, since the 1970s Libyan legislation has undergone a process of Islamisation. In 1971 a Legislative Review and Amendment Committee was established to ensure existing legislation did not contradict the principles of Islamic Law and to ensure the primacy of the Sharia. This led to amendments to the Civil Code and the Civil Code of Procedure.

The Libyan Law of Personal Status No.10 of 1984 is based on Islamic Law. In the absence of legal provisions, Article 72 stipulates that judges are to resort to those principles of Islamic Law most relevant to the issues presented for adjudication. Furthermore, Article 82 of the Law Regulating the Situation of Minors No.17 of 1992 states that the most appropriate principles of Islamic law shall apply in matters of guardianship, trusteeship and custodianship in cases where this law makes no provision.

Article 1 of the Civil Code establishes the sources of law as legislative provisions, Islamic principles, custom, natural law and rules of equity. Informally, judicial decisions and the doctrines of renowned jurists are also a source of law.

Libya has a majority Muslim population with a small Christian minority. The dominant school of Islamic jurisprudence in Libya is the Malaki School.

Foreign Orders

Foreign court orders can be enforced in Libya subject to certain conditions. Article 405 of the Libyan Civil and Commercial Code reads that an order for exequatur of a foreign judgement or order may be recognized and enforced if the requesting party can demonstrate that a Libyan judgement reflecting comparable circumstances would be enforced in the courts of the country of the original ruling. In addition to reciprocity, Article 407 of the Civil and Commercial Code lists 4 conditions that must be met before exequatur is granted:

- (1) The order must have been issued by a competent judicial body according to the law of the country in which it was issued.
- (2) The parties must have been summoned to appear and were properly represented.
- (3) The judgement must not conflict with a judgement previously issued by a Libyan court.
- (4) The judgement must not be contrary to morality or public order in Libya.

Court Structure

Because of the focus on establishing the primacy of Islamic legal principles throughout Libyan legislation, a dual religious-secular court system was deemed unnecessary and religious courts were abolished in the 1970s. Sharia judges were then incorporated into the main court system.

The Libyan court system has four levels. At the first level is the Summary Court. These courts are located in most towns and deal with minor misdemeanours. Cases are presided over by one judge. The next level is the Court of First Instance. One court is located in each of the former Governorates of Libya. These courts hear appeals from the Summary Courts and hear the more serious cases. They also hear personal status matters to which Sharia law is applied. Three judges preside over cases in these courts and judgements are made by majority decision.

There are three Appeal Courts located in Tripoli, Benghazi and Sabha. These courts hear appeals and cases involving major crimes. Again three

judges hear cases in this court. The Supreme Court is in Tripoli and is presided over by a chairman who is elected by the General People's Congress. This court has the power to review legislation as established by Act 17/1423 of 1994. This court has five chambers, which are civil and commercial, criminal, administrative, constitutional and Sharia. Sharia judges hear personal status appeals.

In addition to private legal service, Libya also has a public legal service established by law No. 4 of 1981. This service is similar to the official legal aid systems as practised in Europe. Public lawyers are employed by the Ministry of Justice and their legal advice is available free of charge.

Filiation

Filiation, which establishes the relation between the father and his family, is dealt with in Book 3, Chapters 2 and Articles 53-59 of the Law of Personal Status 1984. Filiation is established by the birth of a child within a valid marriage when the child is born after the minimum time recognised for pregnancy has passed, unless it is shown that spouses have not had the opportunity to consummate the marriage. In Libya the minimum period recognised for pregnancy is six months. If these two conditions are met the father cannot deny paternity unless he swears an oath. If these conditions are not met paternity is not established unless the father makes a declaration acknowledging paternity. Filiation is also established even if the marriage is invalid as long as at least six months have passed between the signing of the marriage contract and the birth of the child.

Extra-marital relations are severely punished according to the traditional Islamic *hadd* penalties.

Custody

The provisions relating to child custody are contained in the Personal Status Law, Chapter 6 Articles 62-70. According to Article 62(a) *Hadana* or custody is the protection and raising of a child and the looking after his or her affairs. During the subsistence of a marriage Article 62(b) accords the right of custody to both parents. In the event of divorce the right to custody is the mother's. The period of custody follows normal Maliki rules and lasts until a male child reaches puberty and until a female child marries, but this

should not interfere with the authority of the guardian over the upbringing of the children.

If the mother is unable to exercise this right to custody it is then accorded to her mother, then the father, then the father's mother, then females within the prohibited degree of relationship to the child and then males within the prohibited degree. Article 62(c) states that the court must follow this order as regards the mother, her mother, the father and his mother but then has discretion to award custody to any of the relatives mentioned in the previous paragraph in accordance with the child's best interest. The custodian is entitled to wages for caring for the child. If the custodian is the mother she will receive this only after being divorced. If the custodian is also the divorced wife she should be provided with living accommodation for as long as she exercises custody.

In order to be eligible to exercise custody, Article 65 states that the person, male or female, must be sane, trustworthy, free of terminal illness and capable of raising the child. A woman may not marry someone who is not within the prohibited degree of relationship to the child. A man must be able to show that there is a female who would be able to assist him in raising the child. If the mother is *kitabiyah*, a follower of Judaism or Christianity, she will still be awarded custody of a Muslim child as long as she raises the child in the religion of the father.

Although the current legislation favours granting custody to mothers, discretionary judicial practice on the other hand, tends to pass custody to the father upon divorce, particularly if the mother is not Libyan.

Guardianship

Law 17 of 1992 on the Regulation of the Situation of Minors includes provisions on the guardianship of a minor child. Article 34 stipulates that the guardian must be discerning, wise, trustworthy, of the same religion as the child and able to meet the requirements of guardianship. The right to guardianship can also be lost if the guardian is convicted of certain crimes. Guardianship lasts until the child reaches the age of eighteen.

Access

Article 67(b) of the Libyan Personal Status Law establishes the right of the custodian or the guardian to travel within Libya, temporarily or for settlement, without jeopardising the right of the custodian to custody of a child. This right is upheld as long as the welfare of the child is not adversely affected. However, paragraph C reinforces the authority of the guardian in that it is not permitted for the custodian to travel abroad with the child without permission of the guardian. If there is a dispute between the custodian and the guardian over travel abroad the issue can be raised in the competent court.

Article 25 of the Promotion of Freedom Act No.20 guarantees the right of the child who is separated from his or her parents to maintain regular direct contact with them. If there is a dispute over visitation rights the matter may be taken to court and a judge will issue an order giving full details of the time, dates and location for contact visits. According to Article 68 this order is subject to immediate enforcement.

Nationality

Libyan fathers pass on their nationality to their children automatically and dual nationals are subject to Libyan law.

Leaving the Jurisdiction

A child under the age of 18 needs the permission of the father to leave Libya. It is also possible for a husband to take legal action to prevent his wife from leaving the country. A foreign national leaving Libya temporarily must apply for a re-entry permit from the Ministry of Justice if they intend to return.

Passports must be translated into Arabic and visas are usually only issued for tour groups. A woman married to a national of an Arab State may not enter Libya without her husband unless he meets her at the airport or a relative resident in Libya applies for a No-Objection Certificate and meets her at the airport. Libyan children travelling with a non-Libyan mother must travel on a separate passport.

International Law

Libya signed the UN Convention on the Rights of the Child in 1993 making no reservations.

Parental Child Abduction

Removal of a child by one of the parents is not specifically mentioned as a punishable offence, although if the non-custodial parent abducts he or she could be forced to return the child to the custodian. Chapter Two, Article 36(9) of the law on the Regulation of the Status of Minors reads that a guardian will be stripped of his right to exercise guardianship of his children if he is convicted more than once of the kidnapping of a willing person under the age of 14 or person who is mentally incapacitated. Furthermore, Article 428 of the Libyan Penal Code states that depriving another person of personal freedom by force is punishable by up to five years in prison. If this offence is committed against an ascendant, descendent or spouse then the punishment is up to seven years imprisonment.

Contacts

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