

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

KAZAKHSTAN

Overview

Kazakhstan was formerly a part of the USSR and the Kazakh legal system has been heavily shaped by the Soviet legal tradition. The sources of law are the Constitution, international treaties, normative legal acts and normative decrees of the Constitutional Council and Supreme Court.

Kazakhstan does not have a State religion and Article 1 of the Constitution of 1995 establishes Kazakhstan as a secular republic. Kazakh family law is not based on the Sharia. The main legislation in the area of child custody is the Law on Marriage and Family, which was promulgated in 1998.

Court Structure

The highest judicial body is the Supreme Court. There is also a system of Local Courts, which are the courts of first instance in all cases. There are no separate religious courts for family matters. There is a separate Juvenile Court.

Filiation

Provided that the father is known, children born outside of a marital relationship have the same rights and responsibilities with regard to their parents and relatives as those children born within marriage. The father can be identified as such by submitting a joint application with the mother to the appropriate body that records the acts of civil status. If the parents fail to do this, the father can be identified by a judicial procedure on the basis of an application by one or other of the parents or the child when he or she has attained majority. Article 17 of the Civil Code reads that majority is attained

at the age of eighteen. Legal capacity can be attained before the age of eighteen by contracting a marriage.

Adoption is permitted

Custody

Because Kazakh law is not based on Islamic principles there is no separation of the care of the child by his or her parents into spheres of custody and guardianship. Article 27 of the Constitution states that the care and upbringing of children is the right and responsibility of both parents and all issues should be addressed by the parents in the light of the child's interests and the child's opinion. In the event of disagreement between the parents on this matter, one or both parents have the right to request the guardianship authorities or a court to resolve the matter. Either or both parents can be deprived of parental rights in extreme cases of neglect or inability of the parents to raise a child, for example due to drug addiction or alcohol abuse.

In the event of divorce it is preferable that the parents agree with whom the children will reside. If no agreement can be made the case can be taken to court where a decision will be taken with regard to the best interests of the child. When considering the child's welfare the court will consider the character of the parents, their relations with the children, financial circumstances, working arrangements, marital status, and if possible the opinion of the children.

Access

Parents, grandparents, siblings and other relatives have the right of access unless this is contrary to the best interests of the child. If the guardian is not the parent he or she has no right to impede the children's access to their relatives. If an agreement on access arrangements cannot be reached the matter can be settled in court.

Nationality

According to Article 3 of Law 1017-XII on Citizenship (1991), the foreign citizenship of a Kazakh citizen is not recognized and therefore the parents cannot pass on two different nationalities. Kazakh nationality shall be

passed on to a child, irrespective of the place of birth, if both parents have Kazakh nationality. Article 12 states that if one of the parents has Kazakh nationality the child shall inherit this nationality if he or she was born within the Republic of Kazakhstan or if the child is born outside Kazakhstan but one or both of the parents were permanent residents in Kazakhstan at that time. If the child is born outside Kazakhstan both parents must consent to the child's acquisition of Kazakh nationality.

Leaving the Jurisdiction

Children do not need to submit official written permission of the parents to obtain a passport or to leave the Republic of Kazakhstan.

International Law

The Republic of Kazakhstan ratified the UN Convention on the Rights of Children in 1994.

Parental Child Abduction

Kidnapping is a criminal offence punishable by imprisonment according to Article 125 of the Criminal Code of 1997.

Contacts

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