

UK-Pakistan Judicial Protocol on Children Matters

The President of the Family Division and the Hon. Chief Justice of Pakistan in consultation with senior members of the family judiciary of the United Kingdom ("the UK") and the Islamic Republic of Pakistan ("Pakistan"), having met on 15th to 17th January 2003 in the Royal Courts of Justice in London, reach the following consensus:

Whereas:

- a. Desiring to protect the children of the UK and Pakistan from the harmful effects of wrongful removal or retention from one country to the other;
- b. Mindful that the UK and Pakistan share a common heritage of law and a commitment to the welfare of children;
- c. Desirous of promoting judicial cooperation, enhanced relations and the free flow of information between the judiciaries of the UK and Pakistan; and
- d. Recognising the importance of negotiation, mediation and conciliation in the resolution of family disputes;

It is agreed that:

1. In normal circumstances the welfare of a child is best determined by the courts of the country of the child's habitual/ordinary residence.
2. If a child is removed from the UK to Pakistan, or from Pakistan to the UK, without the consent of the parent with a custody/residence order or a restraint/interdict order from the court of the child's habitual/ordinary residence, the judge of the court of the country to which the child has been removed shall not ordinarily exercise jurisdiction over the child, save in so far as it is necessary for the court to order the return of the child to the country of the child's habitual/ordinary residence.
3. If a child is taken from the UK to Pakistan, or from Pakistan to the UK, by a parent with visitation/access/contact rights with the consent of the parent with a custody/residence order or a restraint/interdict order from the court of the child's habitual/ordinary residence or in consequence of an order from that court permitting the visit, and the child is retained in that country after the end of the visit without the consent or in breach of the court order, the judge of the court of the country in which the child has been retained shall not ordinarily exercise jurisdiction over the child, save in so far as it is necessary for the court to order the return of the child to the country of the child's habitual/ordinary residence.
4. The above principles shall apply without regard to the nationality, culture or religion of the parents or either parent and shall apply to children of mixed marriages.
5. In cases where the habitual/ordinary residence of the child is in dispute the court to which an application is made should decide the issue of habitual/ordinary residence before making any decision on the return or the general welfare of the child, and upon determination of the preliminary issue as to habitual/ordinary residence should then apply the general principles set out above.
6. These applications should be lodged by the applicant, listed by the court and decided expeditiously.

7. It is recommended that the respective governments of the UK and Pakistan give urgent consideration to identifying or establishing an administrative service to facilitate or oversee the resolution of child abduction cases (not covered by the 1980 Hague Convention on the Civil Aspects of International Child Abduction).
8. It is further recommended that the judiciaries, the legal practitioners and the non-governmental organisations in the UK and Pakistan use their best endeavours to advance the objects of this protocol.
9. It is agreed that the UK and Pakistan shall each nominate a judge of the superior court to work in liaison with each other to advance the objects of this protocol.

Dame Elizabeth Butler-Sloss, DBE
President of the Family Division
of the High Court of England and Wales

The Hon. Mr. Justice Sh. Riaz Ahmad
Chief Justice of the Supreme Court
of Pakistan

Supplemental Judicial Guidelines on UK-Pakistan Protocol

UK-Pakistan Second Judicial Conference - Held at Islamabad on 22nd and 23rd September 2003

Agreed Guidelines

1. Raising public awareness of protocol, maintaining awareness and providing continuing education to judiciary and practitioners involved in family-child cases.
2. Securing access to justice to 'left behind' parents including knowledge of their rights and the opportunity to assert them.
3. To that end, instituting a system whereby the Judge in each Province of Pakistan is tasked with over-seeing the formation of a Committee to provide legal assistance to such parents.
4. Recognition of the importance of mediation within the extended family.
5. Recognition of the importance of liaison between Pakistan and the United Kingdom and, in particular, the importance of using the liaison Judges who need to know about all relevant cases which are pending or determined. The role of liaison Judge is to exchange orders by the Courts of respective countries in relation to the cases covered by the protocol for information. In case of breach of any such orders, further information is to be exchanged about those cases for appropriate steps to be taken by them in their respective functions. This role of the liaison Judge shall be given proper publicity.
6. Recognition of the importance of retaining judicial links between Pakistan and the United Kingdom, suggesting that Judges of both the countries should meet from time to time to discuss the working/implementation of the protocol, possibly through at least two Judges from each country meeting every two years. Also keeping in regular contact using, if appropriate, video link.
7. Recognition of the need to address the problems that arise upon relocation after the return of a child to the country of his habitual residence. In particular, recognition of the need to afford respect to any undertakings given to the Judge who ordered return or retention of a child.
8. Recommending the establishment of a Body in each country open to approach by an aggrieved person in United Kingdom - Pakistan seeking legal assistance in cases relating to wrongful and illegal removal of children.

Dame Elizabeth Butler-Sloss, DBE
President of the Family Division
of the High Court of England and Wales
The Hon. Lady Anne Smith
Supreme Court of Scotland

The Hon. Mr. Justice Sh. Riaz Ahmad
Chief Justice of Pakistan
Supreme Court of Pakistan
The Hon. Mr. Justice Gillen
Family Division of the High Court
of Northern Ireland