



31.10.2022

## NOTICE TO MEMBERS

**Subject: Petition 0594/2019 by B. E. (German), bearing 6 signatures, on international child abduction in Japan**

**Petition No 0841/2019 by T. P. (Italian) concerning international child abduction in Japan**

**Petition No 0842/2019 by V. F. (French) concerning international child abduction in Japan**

**Petition No 0843/2019 by M. B. (Italian) concerning international child abduction in Japan**

### 1. Summary of petition 0594/2019

The petitioner claims that Japan is violating the 1980 Hague Convention on the civil aspects of international child abduction that it ratified in 2014. The petitioner points out that Japanese legislation makes no provision for shared custody, visiting rights or the right of access to their children for non-Japanese parents. He alleges that Japan also violates Article 9 of the 1989 Convention on the Rights of the Child, which guarantees access to children for both parents and requests that all necessary means be used to prevent further violations of international law.

### Summary of petition 0841/2019

The petitioner sets out his problems, indicating that his Japanese wife has abducted his two children, who also have the Italian nationality, and argues that Japan is infringing the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, which it ratified in 2014. He points out that Japanese legislation makes no provision for shared custody, visiting rights or the right of access to their children for non-Japanese parents. He is

accordingly asking the European Parliament to make representations to Japan, calling on it to do everything necessary to prevent further infringements of national and international law, in particular the 1989 UN Convention on the Rights of the Child.

### **Summary of petition 0842/2019**

The petitioner sets out his problems, indicating that his Japanese wife has abducted his two children, who are of French and Japanese nationality, and argues that Japan is infringing the 1980 Hague Convention on the Civil Aspects of International Child Abduction, which it ratified in 2014. He points out that Japanese legislation makes no provision for shared custody, visiting rights or the right of access to their children for non-Japanese parents. He is accordingly asking the European Parliament to make representations to Japan, calling on it to do everything necessary to prevent further infringements of national and international law, in particular the 1989 UN Convention on the Rights of the Child.

### **Summary of petition 0843/2019**

The petitioner sets out his problems, indicating that his Japanese wife has abducted his son, who also has the Italian nationality, and argues that Japan is infringing the 1980 Hague Convention on the Civil Aspects of International Child Abduction, which it ratified in 2014. He points out that Japanese legislation makes no provision for shared custody, visiting rights or the right of access to their children for non-Japanese parents. He is accordingly asking the European Parliament to make representations to Japan, calling on it to do everything necessary to prevent further infringements of national and international law, in particular the 1989 UN Convention on the Rights of the Child.

## **2. Admissibility**

Petition 0594/2019 was declared admissible on 3 December 2019.

Petitions 0841/2019, 0842/2019 and 0843/2019 were declared admissible on 10 January 2020.

Information requested from Commission under Rule 227(6).

## **3. Commission reply, received on 16 March 2020**

The Commission is fully aware of the problems raised by the petitioners. Indeed, the Commission is in close contact in particular with one of the petitioners with whom it has had an exchange of letters and information on the subject.

Return of abducted children by a Japanese parent (usually the mother) are rendered *de facto* impossible by the lack of enforcement of judicial decisions concerning The Hague Convention of 25 October 1980 on the civil aspects of international child abduction (herein after “the 1980 Convention”), to date ratified or acceded to by 101 States (including all EU Member States and Japan).

Indeed, notwithstanding the long-awaited ratification of the 1980 Convention by Japan in 2014, there are complaints by EU Member States and several third countries that its implementation needs to be improved as return of the child to his/her habitual residence is factually impossible without the agreement of the abducting parent, and this is also the case even if there is a

Japanese court decision ordering the return.

There is no Supervising Authority controlling the correct implementation of the 1980 Convention by State Parties, even if identified problems are discussed at the periodical Special Commissions organised by The Hague Conference on Private International Law.

The problems arising from this situation are closely followed at EU level as the 1980 Convention falls within EU exclusive external competence. Several attempts are being made in order to raise awareness of the Japanese authorities. On 2 August 2018, the Commissioner for Justice wrote to the Japanese Minister of Justice, at the time Ms Yoko Kamikawa. No reply was ever received. The EU Delegation in Japan and the authorities of EU Member States requested to meet the next Minister of Justice Takashi Yamashita but the meeting did not take place.

Following international pressure, the national parliament of Japan (the Diet) approved reforms to the Civil Execution Act and to the law to implement the Hague Convention on the Civil Aspects of International Child Abduction on 10 May 2019. The amendments now allow enforcement of court orders for release of the child without the presence of the taking parent. However, it seems that if the taking parent is present and obstructs transfer, the enforcement might still not take place out of concern by authorities for possible psychological harm to the child. Therefore, it remains to be seen what the impact of the legal reform will be in practice. The new law is supposed to enter into force in April 2020.

Shared custody is also not allowed between separated/divorced parents in the Japanese legal system and the parent who has not been granted custody has no visiting rights and is simply cut off from the child's life. This could be a reason of concern taking into account the principles enshrined in the United Nations Convention on the Rights of the Child of 20 November 1989, which Japan has ratified on 22 May 1994, in particular Article 9, which sets out that the child has the right to maintain personal relations and direct contact with both parents on a regular basis. It has to be underlined that the situation is the same also in respect to Japanese couples.

The United Nations Convention on the Rights of the Child is not part of the EU *acquis*. Nevertheless, the right of the child to maintain a regular contact with both parents is set out in Article 24(3) of the Charter of Fundamental Rights of the EU and as such it must be respected by the Union as well as by the Member States when they implement Union law.

The EU and Japan have concluded a Strategic Partnership Agreement (hereinafter “the EU-Japan SPA”) on 17 July 2018. According to Article 32(1) of the EU-Japan SPA, both sides have undertaken to “enhance judicial cooperation on civil and commercial matters, in particular as regards the promotion and effectiveness of conventions on civil judicial cooperation”. This provision covers also the 1980 Convention. However, the EU-Japan SPA has not yet entered into force and is pending ratification by EU Member States; only some parts of the agreement are provisionally applied, but Article 32 on judicial cooperation is not among them.

Therefore, the EU has raised the issue concerning the effective application of the 1980 Convention in the 2<sup>nd</sup> Joint Committee meeting on 31 January 2020 under the heading “human rights”.

## Conclusion

The Commission will continue to raise the issue in every possible forum, including the Joint

Committee of the EU-Japan SPA.

#### **4. Commission reply (REV I), received on 9 November 2020**

On 19 February 2020, under point 8 of the agenda, the Committee on Petitions examined four petitions, presented by EU Citizens (German, French and Italian nationals). The petitioners claimed that Japan is violating the 1980 Hague Convention on the civil aspects of international child abduction ratified in 2014. They pointed out that Japanese legislation makes no provision for shared custody, visiting rights or the right of access to their children for non-Japanese parents. Recent diplomatic interventions at a very high political level (French President Macron, Italian President Mattarella, and Italian Prime Minister Conte) were unsuccessful. The petitioners asked immediate sanctions against Japan for non-respect of fundamental rights of children and parents.

The Commission gave an overview of the legal concepts surrounding family in Japan, which led to the lack of enforcement of judicial decisions in civil matters, and recalled the various initiatives undertaken by the EU to raise awareness of Japanese authorities, in particular the second meeting of the Joint Committee under the Strategic Partnership Agreement with Japan on 31 January 2020, where the EU insisted with Japan on the respect of its international obligations and the effective enforcement of judicial decisions on the return of the child and visiting rights.

The Committee on Petitions asked the Commission for an update of the state of play of the issue.

#### The Commission's observations

As announced at the Committee on Petitions, the issue of child abduction and visiting rights was raised by the EU at the EU-Japan Human Rights consultations on 12 May 2020, held by videoconference.

Regarding parental child abduction, the EU raised its concerns about the lack of implementation of return decisions under the 1980 Hague Convention and cross-border visiting rights. The EU inquired also on the intention to revise the provisions which do not allow for shared custody of the child in case of divorce and on concrete results of the 2019 reforms which entered into force on 1 April 2020. Japan pointed out that, since the ratification of the 1980 Convention, 112 cases have been processed and 48 return decisions enforced including towards Member States. Japan stated that cooperation with Member States' Central Authorities under the 1980 Convention was excellent. The advantages of the 2019 reforms (Amendments to the Civil Execution Act and to the law to implement the Hague Convention on the Civil Aspects of International Child Abduction) were also illustrated. These changes are intended to expedite the implementation of court decisions on the transfer of children following divorce, for domestic and international abduction cases.

Japan welcomed the opening of a channel of communication with the EU on this issue and said that they are ready to provide assistance.

Japan pointed to the seminars organised for diplomats in Tokyo and to the education programs for lawyers. Japan invited the EU to observe how the amended Act will be implemented in future judicial orders.

On 21 April 2020, the Commissioner for Justice, Mr Reynders, wrote to the Japanese Minister of Justice, Ms Mori, in order to engage her on the EU concerns about the situation of children of EU citizens deprived of contacts with one of their parents. Minister Mori replied in June 2020. The positions expressed during the EU-Japan Human Rights consultations on 12 May 2020 were reiterated. Japan welcomed the idea of organising an EU–Japan workshop/seminar to deal with child abduction/visiting rights issues. The Commission, together with the European External Action Service and the EU Delegation to Japan, is currently preparing the seminar which is foreseen to include also representatives of the Permanent Bureau of The Hague Conference on Private International Law.

The Commission, in the framework of the European Judicial Network in civil and commercial matters, is also consulting the Member States' Central Authorities appointed under the 1980 Convention in order to assess whether there are pending cases between Japan and Member States.

On 8 July 2020, the European Parliament adopted, with overwhelming majority, a resolution on the international and domestic parental abduction of EU children in Japan. As a follow-up, Ambassador Flor, Head of the Delegation of the European Union to Japan, met the Speaker of the House of Representatives, Mr Tadamori Oshima, on 2 October 2020. Following this meeting, the Ministry of Justice provided the EU Delegation with a contact point of their study group on the possible reform of the current custody system. A meeting is planned in November to involve the study group in the preparation of the seminar

### Conclusion

The Commission, together with the European External Action Service and the EU Delegation, will continue to raise the issue with their respective Japanese interlocutors. As part of its ongoing efforts, it will be organising the EU-Japan seminar on child abduction/visiting rights that should take place in 2021.

### **5. Commission reply (REV II), received on 16 April 2021**

On 19 February 2020, the Committee on Petitions examined four petitions, presented by EU citizens (German, French and Italian nationals). The petitioners claimed that Japan is violating the 1980 Hague Convention on the civil aspects of international child abduction ratified in 2014. They pointed out that Japanese legislation makes no provision for shared custody, visiting rights or the right of access to their children for non-Japanese parents. Recent diplomatic interventions at a very high political level (French President Macron, Italian President Mattarella, and Italian Prime Minister Conte) were unsuccessful. The petitioners asked immediate sanctions against Japan for non-respect of fundamental rights of children and parents.

The Commission gave an overview of the legal concepts surrounding family in Japan, which led to the lack of enforcement of judicial decisions in civil matters, and recalled the various initiatives undertaken by the EU to raise awareness of Japanese authorities, in particular the second meeting of the Joint Committee under the Strategic Partnership Agreement with Japan on 31 January 2020, where the EU insisted with Japan on the respect of its international obligations and the effective enforcement of judicial decisions on the return of the child and visiting rights.

The Committee on Petitions asked the Commission for an update on the state of play of the issue.

### The Commission's observations

As announced at the meeting of the Committee on Petitions, the issue of child abduction and visiting rights was raised by the EU at the EU-Japan Human Rights consultations on 12 May 2020, held by videoconference.

Regarding parental child abduction, the EU raised its concerns about the lack of implementation of return decisions under the 1980 Hague Convention and cross-border visiting rights. The EU inquired also about the intention to revise the provisions which do not allow for shared custody of the child in case of divorce ( with reference to Japan's obligations under the United Nation Convention on the Rights of the Child) and on concrete results of the 2019 reforms which entered into force on 1 April 2020. Japan pointed out that, since the ratification of the 1980 Convention in 2014, 112 cases have been processed and 48 return decisions enforced including towards Member States. Japan stated that cooperation with Member States' Central Authorities under the 1980 Convention was excellent. The advantages of the 2019 reforms (amendments to the Civil Execution Act and to the law to implement the Hague Convention on the Civil Aspects of International Child Abduction) were also illustrated. These changes are intended to expedite the implementation of court decisions on the transfer of children following divorce, for domestic and international abduction cases.

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Japan pointed to the seminars organised for diplomats in Tokyo and to the education programs for lawyers and invited the EU to observe how the amended Act will be implemented in future judicial orders.

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The Commission, in the framework of the European Judicial Network in civil and commercial matters, has also consulted in November 2020 the Member States' Central Authorities



appointed under the 1980 Convention in order to assess whether there are pending cases between Japan and Member States and which present the greatest difficulties.

The consultation showed that the pending cases are very few, almost exclusively related to Germany, France and Italy. However, while cooperation with Central Authorities was deemed “excellent”, problems with enforcement of decisions on return of the child and visiting rights were highlighted. First experiences with the recent reforms were not encouraging. These problems will be addressed in the forthcoming seminar.

### Conclusion

The Commission, together with the EU Delegation, will continue to raise the issue with their respective Japanese interlocutors. As part of its ongoing efforts, it will be organising the EU-Japan seminar on child abduction/visiting rights which should take place later in 2021.

## **6. Commission reply (REV III), received on 31 October 2022**

This is the second update on the state of play of the issue of the implementation by Japan of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, possible national reform of the current custody system and related issues. The petitioners were concerned about the lack of enforcement of return decisions after a parental abduction and the impossibility to maintain contacts with the child both in cross-border cases and purely national cases when one of the parents is a foreign citizen.

### The Commission’s observations

#### a) Implementation of the 1980 Hague Convention and enforcement of visiting rights

Notwithstanding the adoption by Japan of the 2019 reforms (amendments to the Civil Execution Act and to the law to implement the Hague Convention on the Civil Aspects of International Child Abduction) that entered into force on 1 April 2020, progress seems rather slow. The reforms were intended to facilitate the return of the child to his/her place of habitual residence both after an international abduction and in domestic cases. Overall, it was expected that the enforcement of decisions on the return of the child and visiting rights (called “direct execution”) would have been more effective and that the number of direct executions in Japan would increase after April 2020. However, the success rate of executions is still stagnant and the fact that execution is, following the 2019 reforms, now possible at the home of the grandparents of the child (the parents of the taking parent) and at school has not changed anything in practice. Moreover, the difficulty to enforce visitation/contacts with the child remains. In order to allow enforcement, the decision of the court or the mediation agreement must provide specific conditions for the visitation such as the date, the time and the place where the visitation begins and ends. However, court decisions are often vague on this point, leaving the details to be agreed between the parents. In order to correctly implement the 1980 Hague Convention on International Child Abduction and the United Nations (UN) Convention on the Rights of the Child, Japan needs to reinforce the infrastructure of the family court and the specialists on child welfare to effectively address this issue. The Commission will again raise this problem at the next session of the EU-Japan Consultations on Human Rights (during in the second half of 2022), stressing the importance of respecting the rights of children to have a relationship with

both parents, as prescribed in the UN Convention on the Rights of the Child of which Japan is a Party.

b) Recent developments on the reform of child custody/visiting rights in Japan

The Japanese Civil Code provides for joint custody between parents during marriage, but after divorce only one parent has parental rights and duties and is granted sole custody of the child. From 30 March 2021, the Family Law Committee of the Legislative Council began a review of the current system. The first discussion ended on 25 January 2022 and the second round started on 22 February 2022. As for the general part of the civil code provisions regarding the parent–child relationship, it is proposed to consider the interests of the child as a priority. In addition, the child’s views should be taken into account when deciding on custody. However, the “interests of the child” is a concept that can be interpreted in different ways and, in any case, it seems that opinions are very cautious in relation to facilitating and enforcing visiting rights and access to the child. In November 2019, the National Association for Visitation and Access Support was established with the aim of creating a network of support groups for visitation and access. It is premature to say whether these activities will lead to concrete results; however, they show awareness of the existence of a problem.

c) EU–Japan workshop

The workshop on implementation of the 1980 Convention on International Child Abduction and enforcement of return decisions and visiting rights was postponed because of the COVID-19 pandemic and lately due to changes in the Japanese Ministry of Foreign Affairs. It could take place in 2023 even if, so far, commitment on the part of Japan has been weak.

Conclusion

The Commission, together with the EU Delegation, will continue to raise the issue with their respective Japanese interlocutors in all appropriate fora. As part of its ongoing efforts, it will try to push for the organisation of the EU-Japan seminar on child abduction/visiting rights also involving the Mission of Japan to the European Union.