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## The Thailand Child Abduction Act: legal recourse

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What can one parent do if the other parent kidnaps their child and flees to Thailand? The response to this question before 2013 would have been, "nothing, except try to negotiate for the child's return". Even though Thailand is a signatory to the Hague Convention on the Civil Aspects of International Child Abduction, there was no clear domestic legal framework in place to deal with abduction by custodial parents prior to 2013.

This has led to a number of problematic cases, with one past example being an Italian father and Thai mother, both having custody of their child and habitually residing in Italy. One day, the Thai mother decided to move with the child to Thailand without the father's consent. With the lack of a central authority (CA) to allow initiation of the Hague process and the absence of a treaty between Thailand and Italy to give effect to the Hague Convention between the countries, the father faced significant difficulty trying to enforce his custodial rights in a foreign jurisdiction. He had to rely heavily on Interpol, the Thai police and private detectives.

The International Civil Cooperation on the Breach of Rights of Custody Act, BE 2555 (2012), also known as the Thailand Child Abduction Act, took effect on April 9, 2013 and provides a legal platform to support the intentions of the Hague Abduction Convention.

The Act provides custodial parents with a civil remedy, specifically the right to make a claim against the other parent to return a child to the child's habitual residence.

A parent with rights of custody or rights of access to a child may seek assistance from the CA, which will verify whether, at the time of the abduction, the person who took the child away had rights of access or rights of sole custody. If either circumstance exists, then the left-behind parent may not file a claim against that person under the Hague Convention.

The process taken by the CA would typically take months, starting with instructing the national police to investigate the whereabouts of the child. Only after the authority is aware of the whereabouts of the child will it be able to carry out further proceedings. However, the assistance of the national police in locating the child may take some time depending on their workload. Hiring a private detective or investigator may be required to speed up the process.

Alternatively, persons having care of the child, or a custodial parent and those having rights of access, may directly apply for a court order from the Thai Central Juvenile and Family Court. In the instance where the CA had earlier denied the application for assistance under the Hague Convention, only a person with rights of custody may directly apply for a court order.

However, while the Act does not expressly place a restriction on those having the right to apply for this civil remedy, it is unlikely that a parent with mere rights of access would succeed in obtaining a court order. This is because there are provisions specifying that only persons whose rights of custody have been breached may apply for the return of the child.

The court may further require the applicant to obtain a decision that there was breach of rights of custody. It is therefore highly recommended that an applicant should have custody, whether by operation of the law, or orders of the courts or state authorities, or by lawfully applicable agreements, before applying for a court order. This practice is in line with the Hague Convention.

In the case where a parent applying for assistance only has rights of access, such as visitation rights for a certain time, it is possible that the court may not order the return of the child, and may instead rely on other orders that would be sufficient to allow effective exercise of rights of access.

Even when there has been a breach in a person's custodial rights, the court has the discretion to refuse to order the return of the child if it would be in the best interest of the child. For example, if one year has lapsed and the court sees that the child has settled into a new environment, or if the return would place the child at grave risk of physical or mental harm or an inhospitable environment, then a request for the child's return would be denied.

The Thailand Child Abduction Act provides a clearer pathway for those whose rights may have been breached to apply for assistance directly with the CA or a local court. While difficulties may arise when attempting to locate a child, Thailand is on the correct path to strengthening the enforceability of rights of custody and rights of access in child abduction cases.

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