

Ο περί της Σύμβασης για Δικαιοδοσία, Εφαρμοστέο Δίκαιο, Αναγνώριση, Επιβολή και Συνεργασία σε σχέση με Γονική Ευθύνη και Μέτρα για την Προστασία Παιδιών (Κυρωτικός) Νόμος του 2004 εκδίδεται με δημοσίευσή στην Επίσημη Εφημερίδα της Κυπριακής Δημοκρατίας σύμφωνα με το Άρθρο 52 του Συντάγματος.

Αριθμός 24(ΙΙΙ) του 2004

**ΝΟΜΟΣ ΠΟΥ ΚΥΡΩΝΕΙ ΤΗ ΣΥΜΒΑΣΗ ΓΙΑ ΔΙΚΑΙΟΔΟΣΙΑ, ΕΦΑΡΜΟΣΤΕΟ ΔΙΚΑΙΟ, ΑΝΑΓΝΩΡΙΣΗ, ΕΠΙΒΟΛΗ ΚΑΙ ΣΥΝΕΡΓΑΣΙΑ ΣΕ ΣΧΕΣΗ ΜΕ ΓΟΝΙΚΗ ΕΥΘΥΝΗ ΚΑΙ ΜΕΤΡΑ ΓΙΑ ΤΗΝ ΠΡΟΣΤΑΣΙΑ ΠΑΙΔΙΩΝ**

Η Βουλή των Αντιπροσώπων ψηφίζει ως ακολούθως:

- Συνοπτικός τίτλος. 1. Ο παρών Νόμος θα αναφέρεται ως ο περί της Σύμβασης για Δικαιοδοσία, Εφαρμοστέο Δίκαιο, Αναγνώριση, Επιβολή και Συνεργασία σε σχέση με Γονική Ευθύνη και Μέτρα για την Προστασία Παιδιών (Κυρωτικός) Νόμος του 2004.
- Ερμηνεία. 2. Στον παρόντα Νόμο εκτός αν από το κείμενο προκύπτει διαφορετικά έννοια-  
«Σύμβαση» σημαίνει τη Σύμβαση για Δικαιοδοσία, Εφαρμοστέο Δίκαιο, Αναγνώριση, Επιβολή και Συνεργασία σε Σχέση με Γονική Ευθύνη και Μέτρα για την Προστασία Παιδιών, που έγινε στη Χάγη στις 19 Οκτωβρίου 1996.
- Κύρωση της Σύμβασης. 3.-(1) Με τον παρόντα Νόμο, κυρώνεται η Σύμβαση, η υπογραφή της οποίας εγκρίθηκε με την απόφαση του Υπουργικού Συμβουλίου με αριθμό 58.276 και ημερομηνία 23 Ιουλίου 2003, και της οποίας το κείμενο στο αγγλικό πρωτότυπο εκτίθεται στο Μέρος Ι του Πίνακα και σε Ελληνική μετάφραση στο Μέρος ΙΙ αυτού.
- Πίνακας Μέρους Ι.  
Πίνακας Μέρους ΙΙ.  
(2) Σε περίπτωση οποιασδήποτε διαφοράς μεταξύ του κειμένου στο Μέρος Ι και εκείνου στο Μέρος ΙΙ του Πίνακα, θα υπερισχύσει το κείμενο που εκτίθεται στο Μέρος Ι του Πίνακα.
- Αρμόδια Αρχή. 4. Για σκοπούς εφαρμογής του άρθρου 1 της Σύμβασης, ως Αρμόδια Κεντρική Αρχή ορίζεται ο Υπουργός Δικαιοσύνης και Δημοσίας Τάξεως.

ΠΙΝΑΚΑΣ  
(άρθρο 3)  
ΜΕΡΟΣ Ι

**CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION,  
ENFORCEMENT AND COOPERATION IN RESPECT OF PARENTAL RESPONSIBILITY  
AND MEASURES FOR THE  
PROTECTION OF CHILDREN**

(Concluded 19 October 1996)

The States signatory to the present Convention,

Considering the need to improve the protection of children in international situations,

Wishing to avoid conflicts between their legal systems in respect of jurisdiction, applicable law, recognition and enforcement of measures for the protection of children,

Recalling the importance of international cooperation for the protection of children,

Confirming that the best interests of the child are to be a primary consideration,

Noting that the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors is in need of revision,

Desiring to establish common provisions to this effect, taking into account the United Nations Convention on the Rights of the Child of 20 November 1989,

Have agreed on the following provisions:

CHAPTER I

*Article 2*

SCOPE OF THE CONVENTION

The Convention applies to children from the moment of their birth until they reach the age of 18 years.

*Article 1*

1. The objects of the present Convention are:

- (a) to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child;
- (b) to determine which law is to be applied by such authorities in exercising their jurisdiction;
- (c) to determine the law applicable to parental responsibility;
- (d) to provide for the recognition and enforcement of such measures of protection in all Contracting States;
- (e) to establish such cooperation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention.

2. For the purposes of this Convention, the term 'parental responsibility' includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child.

*Article 3*

The measures referred to in Article 1 may deal in particular with:

- (a) the attribution, exercise, termination or restriction of parental responsibility, as well as its delegation;
- (b) rights of custody, including rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence;
- (c) guardianship, curatorship and analogous institutions;
- (d) the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;
- (e) the placement of the child in a foster family or in institutional care, or the provision of care by 'kafala' or an analogous institution;

- (f) the supervision by a public authority of the care of a child by any person having charge of the child;
- (g) the administration, conservation or disposal of the child's property.

*Article 4*

The Convention does not apply to:

- (a) the establishment or contesting of a parent-child relationship;
- (b) decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;
- (c) the name and forenames of the child;
- (d) emancipation;
- (e) maintenance obligations;
- (f) trusts or succession;
- (g) social security;
- (h) public measures of a general nature in matters of education or health;
- (i) measures taken as a result of penal offences committed by children;
- (j) decisions on the right of asylum and on immigration.

CHAPTER II

JURISDICTION

*Article 5*

1. The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.

2. Subject to Article 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.

*Article 6*

1. For refugee children and children who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting State on the territory of which these children are present as a result of their displacement have the jurisdiction provided for in Article 5(1).

2. The provisions of the preceding paragraph also apply to children whose habitual residence cannot be established.

*Article 7*

1. In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State, and

- (a) each person, institution or other body having rights of custody has acquiesced in the removal or retention; or
- (b) the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment.

2. The removal or the retention of a child is to be considered wrongful where:

- (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in subparagraph a above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

3. So long as the authorities first mentioned in paragraph 1 keep their jurisdiction, the authorities of the Contracting State to which the child has been removed or in which he or she has been retained can take only such urgent measures under Article 11 as are necessary for the protection of the person or property of the child.

*Article 8*

1. By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or Article 6, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, may either:

- request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or
- suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State.

2. The Contracting States whose authorities may be addressed as provided in the preceding paragraph are:

- (a) a State of which the child is a national;
- (b) a State in which property of the child is located;
- (c) a State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage;
- (d) a State with which the child has a substantial connection.

3. The authorities concerned may proceed to an exchange of views.

4. The authority addressed as provided in paragraph 1 may assume jurisdiction, in place of the authority having jurisdiction under Article 5 or Article 6, if it considers that this is in the child's best interests.

*Article 9*

1. If the authorities of a Contracting State referred to in Article 8(2), consider that they are better placed in the particular case to assess the child's best interests, they may either:

- request the competent authority of the Contracting State of the habitual residence of the child, directly or with the assistance of the Central Authority of that State, that they be authorised to exercise jurisdiction to take the measures of protection which they consider to be necessary, or
- invite the parties to introduce such a request before the authority of the Contracting State of the habitual residence of the child.

2. The authorities concerned may proceed to an exchange of views.

3. The authority initiating the request may exercise jurisdiction in place of the authority of the Contracting State of the habitual residence of the child only if the latter authority has accepted the request.

*Article 10*

1. Without prejudice to Articles 5 to 9, the authorities of a Contracting State exercising jurisdiction to decide upon an application for divorce or legal separation of the parents of a child habitually resident in another Contracting State, or for annulment of their marriage, may, if the law of their State so provides, take measures directed to the protection of the person or property of such child if:

- (a) at the time of commencement of the proceedings, one of his or her parents habitually resides in that State and one of them has parental responsibility in relation to the child, and
- (b) the jurisdiction of these authorities to take such measures has been accepted by the parents, as well as by any other person who has parental responsibility in relation to the child, and is in the best interests of the child.

2. The jurisdiction provided for by paragraph 1 to take measures for the protection of the child ceases as soon as the decision allowing or refusing the application for divorce, legal separation or annulment of the marriage has become final, or the proceedings have come to an end for another reason.

*Article 11*

1. In all cases of urgency, the authorities of any Contracting State, in whose territory the child or property belonging to the child is present, have jurisdiction to take any necessary measures of protection.

2. The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken the measures required by the situation.

3. The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in each Contracting State as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

*Article 12*

1. Subject to Article 7, the authorities of a Contracting State, in whose territory the child or property belonging to the child is present, have jurisdiction to take measures of a provisional character for the protection of the person or property of the child which have a territorial effect limited to the State in question, in so far as such measures are not incompatible with measures already taken by authorities which have jurisdiction under Articles 5 to 10.

2. The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken a decision in respect of the measures of protection which may be required by the situation.

3. The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in the Contracting State where the measures were taken as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

*Article 13*

1. The authorities of a Contracting State which have jurisdiction under Articles 5 to 10 to take measures for the protection of the person or property of the child must abstain from exercising this jurisdiction if, at the time of the commencement of the proceedings, corresponding measures have been requested from the authorities of another Contracting State having jurisdiction under Articles 5 to 10 at the time of the request and are still under consideration.

2. The provisions of the preceding paragraph shall not apply if the authorities before whom the request for measures was initially introduced have declined jurisdiction.

*Article 14*

The measures taken in application of Articles 5 to 10 remain in force according to their terms, even if a change of circumstances has eliminated the basis upon which jurisdiction was founded, so long as the authorities which have jurisdiction under the Convention have not modified, replaced or terminated such measures.

## CHAPTER III

## APPLICABLE

## LAW

*Article 15*

1. In exercising their jurisdiction under the provisions of Chapter II, the authorities of the Contracting States shall apply their own law.

2. However, in so far as the protection of the person or the property of the child requires, they may exceptionally apply or take into consideration the law of another State with which the situation has a substantial connection.

3. If the child's habitual residence changes to another Contracting State, the law of that other State governs, from the time of the change, the conditions of application of the measures taken in the State of the former habitual residence.

*Article 16*

1. The attribution or extinction of parental responsibility by operation of law, without the intervention of a judicial or administrative authority, is governed by the law of the State of the habitual residence of the child.

2. The attribution or extinction of parental responsibility by an agreement or a unilateral act, without intervention of a judicial or administrative authority, is governed by the law of the State of the child's habitual residence at the time when the agreement or unilateral act takes effect.

3. Parental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State.

4. If the child's habitual residence changes, the attribution of parental responsibility by operation of law to a person who does not already have such responsibility is governed by the law of the State of the new habitual residence.

*Article 17*

The exercise of parental responsibility is governed by the law of the State of the child's habitual residence. If the child's habitual residence changes, it is governed by the law of the State of the new habitual residence.

*Article 18*

The parental responsibility referred to in Article 16 may be terminated, or the conditions of its exercise modified, by measures taken under this Convention.