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EUROPEAN CONVENTION ON THE REPATRIATION OF MINORS

The Hague, 28.V.1970

Preamble

The member States of the Council of Europe, signatory hereto,

Considering that their close unity is manifested particularly in increased movements of persons;

Considering that although this generally has beneficial consequences, certain problems are nevertheless involved, in particular when a minor is in the territory of a State against the will of those responsible for protecting his interests or when his presence in the territory of a State is incompatible either with his own interests or those of that State;

Convinced of the necessity for mutual co-operation to enable such minors to be compulsorily transferred from one State to another,

Have agreed as follows:

Section I – General information**Article 1**

For the purposes of this Convention:

- a the term “minor” shall mean any person not having attained his majority under the law applicable according to the rules of private international law of the requesting State and who under this same law has not the right himself to determine his own place of residence;
- b the term “parental authority” shall mean the authority devolving upon natural or legal persons under the law or by a legal or administrative decision, to determine a minor's place of residence;
- c the term “repatriation” shall mean the transfer, in implementation of this Convention, of a minor from one Contracting State to another Contracting State, whether or not the latter is the State of which he is a national.

Article 2

- 1 This Convention shall apply to minors in the territory of a Contracting State whose repatriation is requested by another Contracting State for one of the following reasons:
 - a the presence of the minor in the territory of the requested State is against the will of the person or persons having parental authority in respect of him;
 - b the presence of the minor in the territory of the requested State is incompatible with a measure of protection or re-education taken in respect of him by the competent authorities of the requesting State;
 - c the presence of the minor is necessary in the territory of the requesting State because of the institution of proceedings there with a view to taking measures of protection and re-education in respect of him.

- 2 This Convention shall also apply to the repatriation of minors whose presence in its territory a Contracting State deems to be incompatible with its own interests or with the interests of the minors concerned, provided that its legislation authorises removal of the minor from its territory.

Article 3

Each Contracting State shall designate a central authority to formulate, issue and receive requests for repatriation and notify the Secretary General of the Council of Europe of the authority so designated.

Section II – Repatriation of a minor on the request of a state other than the state of sojourn

Article 4

- 1 Applications for the repatriation of a minor for one of the reasons set out in Article 2, paragraph 1, shall be addressed to the central authority of the State to which the minor is to be repatriated.
- 2 If the competent authorities of that State consider that the application is well founded and reasonable, the central authority shall issue a request for repatriation to the central authority of the State of sojourn of the minor.

Article 5

- 1 No decision shall be taken concerning a request for repatriation until the minor, if his capacity for discernment allows, has been heard in person by a competent authority in the requested State.
- 2 The said authority shall also endeavour to obtain the views of those persons having an interest in the decision, in particular, those having parental authority or those who, in the territory of the requested State, have *de facto* custody of the minor. This ascertainment of views shall not take place in so far as it is likely to prejudice the interests of the minor by reason of the delay which it may cause.

Article 6

The requested State shall grant any request for repatriation which is in conformity with the provisions of the present Convention and grounded on Article 2, paragraph 1, unless it exercises its right to refuse a request in accordance with Articles 7 and 8.

Article 7

A request may be refused:

- a if the minor, according to the law applicable under the rules of private international law of the requested State, has the right himself to determine his place of residence, or if such a right follows from the national law of the requested State;
- b if it is grounded on Article 2, paragraph 1.a and is designed to submit the minor to the authority of a person or persons who do not have parental authority according to the law applicable under the rules of private international law of the requested State or do not

have parental authority under the national law of the requested State;

- c if the requested State considers that the requesting State is not competent to take the measures referred to in Article 2, paragraph 1.b and c;
- d if the requested State considers that the repatriation of the minor would be contrary to *ordre public*;
- e if the minor is a national of the requested State;
- f if the minor in question is a national of a State which is not a Party to the Convention, and whose repatriation would not be compatible with the obligations existing between that State and the requested State.

Article 8

The requested State may, moreover, having regard to all the aspects of the case, refuse the request:

- a if, being present in the territory of the requested State, the person or persons having parental authority or those having care of the minor, oppose repatriation;
- b if the repatriation is considered by the requested State to be contrary to the interests of the minor, in particular when he has effective family or social ties in that State or when repatriation is incompatible with a measure of protection or re-education taken in the said State.

Article 9

The decision of the requested State on the request may be postponed:

- a if the parental authority upon which the request is based is contested on serious grounds;
- b if it considers it necessary to prosecute the minor for an offence or to require him to submit to a penal sanction involving deprivation of liberty.

Article 10

If the request is granted the competent authorities in the requesting State and the requested State shall agree as promptly as possible on the repatriation procedure.

Article 11

The requested State may take such provisional measures as seem necessary for the purpose of repatriation, in particular placing the minor in a home for juveniles. It may at any time terminate these measures which shall, in any case, be terminated after the expiration of a period of 30 days if the request has not been granted. The measures in question are governed by the domestic law of the requested State.

Article 12

In urgent cases, the central authority in the requesting State may ask that the provisional measures mentioned in Article 11 be taken before the requested State has received the request

for repatriation. Such measures shall cease if the request for repatriation has not been received within ten days.

Article 13

- 1 No prosecution may be initiated or continued in the requesting State against a person repatriated in accordance with the provisions of this section for offences committed prior to his repatriation, unless the requested State expressly consents to such prosecution. Such consent shall also be required in order to enforce a penal sanction involving deprivation of liberty or any more severe sentence passed in the requesting State before repatriation.
- 2 The consent referred to in paragraph 1 shall be governed by the rules regulating extradition in the requested State or by such other rule established there for the implementation of this article.
- 3 Consent may not be withheld in cases where the requested State would be obliged to grant extradition, were extradition to be requested.

Section III – Repatriation on the request of the state of sojourn

Article 14

- 1 In the cases provided for in Article 2, paragraph 2, the State of sojourn of the minor may request another Contracting State to agree to the repatriation of such a minor as hereinafter provided:
 - a when the person or persons having parental authority are in another Contracting State, the request shall be addressed to that other State;
 - b when the person or persons having parental authority are in a State which is not a party to this Convention, the request shall be addressed to the Contracting State where the minor has his habitual residence;
 - c when it is not known in what State the person or persons having parental authority are to be found or when no one has parental authority, the request shall be addressed to the Contracting State where the minor has his habitual residence or, if repatriation to that State is not agreed to or otherwise proves impossible, to the Contracting State of which the minor is a national.
- 2 The provisions of paragraph 1 shall not affect the powers which Contracting States enjoy under their own legislation in respect of foreign nationals.

Article 15

- 1 If the requested State agrees to receive the minor the competent authorities in the requesting State and in the requested State shall agree as promptly as possible on the repatriation procedure.
- 2 The request relating to repatriation may be accompanied by a request that measures be taken which are deemed appropriate because of the conduct, or the situation, of the minor in the requesting State. The request may also specify all other conditions with which the repatriation must comply.

Section IV – Common provisions**Article 16**

- 1 All requests relating to repatriation shall be submitted in writing and shall state, in particular:
 - a the name of the issuing central authority;
 - b the identity and nationality of the minor whose repatriation is requested and, if possible, his address in the requested State;
 - c the reasons invoked in support of the request;
 - d if applicable, the authority or person making the application for repatriation as well as their legal relations with the minor.
- 2 In cases grounded on Article 2, paragraph 1, the request shall be accompanied, where appropriate, by the original or a certified copy either of the document proving parental authority except where such authority derives directly from law, or of the decision ordering a measure of protection or re-education of the minor concerned or of the documents proving the necessity for the minor to appear at the proceedings in course in the requesting State and the purpose of such proceedings.
- 3 If the requested State considers that the information supplied by the requesting State is not sufficient to enable it to decide on the request, it shall ask for the necessary additional information. It may fix a time-limit for the receipt of such information.

Article 17

- 1 Subject to paragraph 2 of this article, no translation of requests or of the supporting documents shall be required.
- 2 Any Contracting State may, when signing or depositing its instrument of ratification, acceptance or accession, by a declaration addressed to the Secretary General of the Council of Europe, reserve the right to stipulate that requests and supporting documents shall be accompanied by a translation into its own language or one of its languages or into one of the official languages of the Council of Europe or into such one of those languages as it shall indicate. The other Contracting States may apply reciprocity.
- 3 This article shall be without prejudice to any provision concerning translation of requests and supporting documents contained in agreements or arrangements now in force or which may be concluded between two or more Contracting States.

Article 18

Evidence and documents transmitted in connection with this Convention shall be exempt from all formalities of legalisation.

Article 19

- 1 The transit of a minor in process of repatriation, in pursuance of the present Convention, through the territory of a Contracting State, shall be authorised upon simple notification, of which there shall be a written record by the State from which the repatriation is to be effected.
- 2 Transit may be refused when:
 - a the minor is the subject of a criminal prosecution in the State of transit or if he is required to submit to a penal sanction involving deprivation of liberty or a more severe penalty;
 - b the minor is a national of the State of transit.
- 3 If transit is not refused, the minor may neither be arrested nor detained in the State of transit for offences committed before his entry into that State.
- 4 The State of transit shall seek to ensure that the minor does not elude repatriation.

Article 20

Reasons shall be given for any refusal of repatriation or transit.

Article 21

Communications between central authorities in connection with the implementation of this Convention may be transmitted through the International Criminal Police Organisation (Interpol).

Article 22

- 1 Any costs incurred in implementing this Convention shall be borne by:
 - a the requested State, if such costs are incurred in its territory;
 - b the requesting State, in all other cases.
- 2 This article shall not prevent the recovery of costs from the minor or other persons responsible for them.

Section 1 V – Final clauses**Article 23**

- 1 This Convention shall be open to signature by the member States represented on the Committee of Ministers of the Council of Europe. It shall be subjected to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
- 2 This Convention shall enter into force three months after the date of deposit of the third instrument of ratification or acceptance.
- 3 In respect of a signatory State ratifying or accepting subsequently, the Convention shall come into force three months after the date of deposit of its instrument of ratification or acceptance.

Article 24

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State to accede thereto.
- 2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

Article 25

Any Contracting State may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, make a declaration defining, as far as it is concerned, the term “nationals” as used in this Convention.

Article 26

- 1 Any Contracting State may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any Contracting State may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
- 3 Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 29 of this Convention.

Article 27

- 1 Subject to the provisions of paragraphs 3 and 4 of this article, this Convention shall, in respect of the territories to which it applies, supersede the provisions of any treaties, conventions or bilateral agreements between Contracting States governing the repatriation of minors for the reasons specified in Article 2, to the extent that the Contracting States may always avail themselves of the facilities for repatriation provided for in this Convention.
- 2 This Convention shall not prevent repatriation or extradition founded either on international agreements or conventions, or on the internal law of the State in question.
- 3 Contracting States may conclude between themselves bilateral or multilateral agreements on matters governed by this Convention; however, such agreements shall only be made in order to supplement the provisions of this Convention or to facilitate the application of the principles contained herein. Such bilateral or multilateral agreements or arrangements may provide, in particular, for direct relations between competent national authorities.

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- 4 Furthermore, where two or more Contracting States have established or establish relations on the basis of uniform legislation or a special system, these States shall, notwithstanding the provisions of this Convention, be free to regulate their mutual relations in this field exclusively in accordance with such legislation or system. Contracting States which, in accordance with this paragraph, exclude, as between themselves, the application of this Convention, shall notify the Secretary General of the Council of Europe accordingly.

Article 28

The Council of Europe shall keep itself informed concerning the application of this Convention and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

Article 29

- 1 This Convention shall remain in force indefinitely.
- 2 Any Contracting State may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 3 Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

Article 30

The Secretary General of the Council of Europe shall inform the member States represented on the Committee of Ministers of the Council and any State which has acceded to this Convention of:

- a any signature;
- b any deposit of an instrument of ratification, acceptance or accession;
- c any notification received in accordance with Article 3 of this Convention;
- d any date of entry into force of this Convention in accordance with Article 23 thereof;
- e any declaration received in accordance with Article 25;
- f any notification received in accordance with Article 26;
- g any notification received in accordance with Article 27, paragraph 4;
- h any notification received in pursuance of Article 29 and the date on which the denunciation takes effect.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague this 28th May 1970 in English and in French, both texts being equally authoritative, in a single copy, which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory and acceding governments.