



P.Z.E. br. 335

HRVATSKI SABOR

Klasa: 552-01/09-01/01

Urbroj: 65-09-02

Zagreb, 15. svibnja 2009.

**ZASTUPNICAMA I ZASTUPNICIMA
HRVATSKOGA SABORA**

**PREDSJEDNICAMA I PREDSJEDNICIMA
RADNIH TIJELA**

Na temelju članaka 137. i 153. Poslovnika Hrvatskoga sabora u prilogu upućujem *Prijedlog zakona o potvrđivanju Konvencije o nadležnosti, mjerodavnom pravu, priznanju, ovrsi i suradnji u odnosu na roditeljsku odgovornost i o mjerama za zaštitu djece, s Konačnim prijedlogom zakona*, koji je predsjedniku Hrvatskoga sabora dostavila Vlada Republike Hrvatske, aktom od 14. svibnja 2009. godine uz prijedlog da se sukladno članku 161. Poslovnika Hrvatskoga sabora predloženi Zakon donese po hitnom postupku.

Ovim zakonskim prijedlogom usklađuje se zakonodavstvo Republike Hrvatske sa zakonodavstvom Europske unije, te se u prilogu dostavlja i Izjava o njegovoj usklađenosti s pravnom stečevinom Europske unije i pravnim aktima Vijeća Europe.

Za svoje predstavnike, koji će u njezino ime sudjelovati u radu Hrvatskoga sabora i njegovih radnih tijela, Vlada je odredila Jadranku Kosor, dipl. iur., potpredsjednicu Vlade Republike Hrvatske i ministricu obitelji, branitelja i međugeneracijske solidarnosti, mr. sc. Stjepana Adanića, državnog tajnika Ministarstva obitelji, branitelja i međugeneracijske solidarnosti i Zdenka Žunića, ravnatelja u Ministarstvu obitelji, branitelja i međugeneracijske solidarnosti.

PREDSJEDNIK

Luka Bebić



P.Z.E. br. 335

VLADA REPUBLIKE HRVATSKE

Klasa: 552-01/08-04/01

Urbroj: 5030104-09-1

Zagreb, 14. svibnja 2009.

REPUBLIKA HRVATSKA
61 - HRVATSKI SABOR
ZAGREB, Trg Sv. Marka 6

Prilježeno: 15-05-2009		
Klasifikacijska oznaka:	Org. jed.	
552-01/09-01/01	65	
Urudžbeni broj:	Pril.	Vrij.
50-09-01	1	1

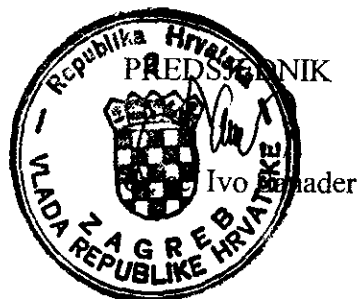
PREDSJEDNIKU HRVATSKOGA SABORA

Predmet: Prijedlog zakona o potvrđivanju Konvencije o nadležnosti, mjerodavnom pravu, priznanju, ovrsi i suradnji u odnosu na roditeljsku odgovornost i o mjerama za zaštitu djece, s Konačnim prijedlogom zakona

Na temelju članka 84. Ustava Republike Hrvatske i članaka 129., 159. i 161. Poslovnika Hrvatskoga sabora, Vlada Republike Hrvatske podnosi Prijedlog zakona o potvrđivanju Konvencije o nadležnosti, mjerodavnom pravu, priznanju, ovrsi i suradnji u odnosu na roditeljsku odgovornost i o mjerama za zaštitu djece, s Konačnim prijedlogom zakona za hitni postupak.

Ovim zakonskim prijedlogom usklađuje se zakonodavstvo Republike Hrvatske sa zakonodavstvom Europske unije, a budući da se radi o potvrđivanju međunarodnog ugovora nije potrebna Izjava o njejoj usklađenosti s pravnom stečevinom Europske unije i pravnim aktima Vijeća Europe.

Za svoje predstavnike, koji će u njezino ime sudjelovati u radu Hrvatskoga sabora i njegovih radnih tijela, Vlada je odredila Jadranku Kosor, dipl. iur., potpredsjednicu Vlade Republike Hrvatske i ministricu obitelji, branitelja i međugeneracijske solidarnosti, mr. sc. Stjepana Adanića, državnog tajnika u Ministarstvu obitelji, branitelja i međugeneracijske solidarnosti i Zdenka Žunića, ravnatelja u Ministarstvu obitelji, branitelja i međugeneracijske solidarnosti.



**PRIJEDLOG ZAKONA O POTVRĐIVANJU KONVENCIJE
O NADLEŽNOSTI, MJERODAVNOM PRAVU, PRIZNANJU, OVRSI
I SURADNJI U ODNOSU NA RODITELJSKU ODGOVORNOST I O
MJERAMA ZA ZAŠTITU DJECE, S KONAČNIM PRIJEDLOGOM ZAKONA**

**PRIJEDLOG ZAKONA O POTVRĐIVANJU
KONVENCIJE O NADLEŽNOSTI, MJERODAVNOM PRAVU, PRIZNANJU,
OVRSI I SURADNJI U ODNOSU NA RODITELJSKU ODGOVORNOST
I O MJERAMA ZA ZAŠTITU DJECE**

I. USTAVNA OSNOVA

Ustavna osnova za donošenje Zakona o potvrđivanju Konvencije o nadležnosti, mjerodavnom pravu, priznanju, ovrsi i suradnji u odnosu na roditeljsku odgovornost i o mjerama za zaštitu djece sadržana je u odredbi članka 139. stavka 1. Ustava Republike Hrvatske.

**II. OCJENA STANJA I CILJ KOJI SE DONOŠENJEM ZAKONA ŽELI
POSTIĆI**

Ustavom Republike Hrvatske, člankom 62., propisana je dužnost države da štiti materinstvo, djecu i mladež te stvara socijalne, kulturne, odgojne, materijalne i druge uvjete kojima se promiče ostvarivanje prava na dostojan život, a odredbom članka 63. stavka 5. propisano je da država osobitu skrb posvećuje maloljetnicima bez roditelja i onima za koje se roditelji ne brinu.

Republika Hrvatska je stranka ili potpisnica niza relevantnih međunarodnih ugovora na području zaštite djece i dječjih prava koji zajedno s nacionalnim zakonodavstvom, posebice Obiteljskim zakonom („Narodne novine“, br. 116/03., 17/04., 136/04. i 107/07.) čine zakonodavno-pravni okvir za učinkovitu pravnu zaštitu djece.

Konvencija Ujedinjenih naroda o pravima djeteta, kao temeljni dokument o dječjim pravima, člankom 4. obvezuje države stranke da poduzmu sve odgovarajuće zakonodavne, upravne i druge mjere za primjenu prava priznatih u ovoj Konvenciji.

Republika Hrvatska je stranka Konvencije Ujedinjenih naroda o pravima djeteta od 08. listopada 1991. godine, na temelju Odluke Vlade Republike Hrvatske o objavljivanju mnogostranih međunarodnih ugovora kojih je Republika Hrvatska stranka temeljem notifikacije o sukcesiji («Narodne novine», MU br. 12/93). Kao stranka Konvencije o pravima djeteta, Republika Hrvatska kroz cjelovitu reformu zakonodavstva usuglašava svoja zakonska rješenja s Konvencijom o pravima djeteta te međunarodnim dokumentima koji iz nje proizlaze ili se na njoj temelje.

U okviru Haške konferencije o međunarodnom privatnom pravu u posljednjih 30 godina usvojena su tri relevantna međunarodnopravna instrumenta u području zaštite djece: Konvencija o građanskopravnim aspektima međunarodne otmice djece iz 1980., Konvencija o zaštiti djece i suradnji u svezi s međunarodnim posvojenjem iz 1993. i Konvencija o nadležnosti, mjerodavnom pravu, priznanju, ovrsi i suradnji u odnosu na roditeljsku odgovornost i o mjerama za zaštitu djece iz 1996., čija je osnovna svrha osigurati praktičan mehanizam koji će omogućiti državama koje dijele zajedničke interese u zaštiti djece da na tom području međusobno surađuju. Republika Hrvatska je, od 8. listopada 1991. godine, na temelju sukcesije, stranka Konvencije o građanskopravnim aspektima međunarodne otmice djece.

Konvencija o nadležnosti, mjerodavnom pravu, priznanju, ovrsci i suradnji u odnosu na roditeljsku odgovornost i o mjerama za zaštitu djece (dalje u tekstu: Konvencija) sastavljena je u Hag-u 19. listopada 1996. godine, a stupila je na snagu dana 1. siječnja 2002. godine.

Konvenciju je potpisalo 34 država, a ratificiralo 15 država, u odnosu na koje je Konvencija i stupila na snagu (Albanija, Armenija, Australija, Bugarska, Češka Republika, Ekvador, Estonija, Mađarska, Latvija, Litva, Monako, Maroko, Slovačka, Slovenija i Ukrajina).

Vlada Republike Hrvatske je donijela Odluku o pokretanju postupka za sklapanje Konvencije o nadležnosti, mjerodavnom pravu, priznanju, izvršenju i suradnji na području roditeljske odgovornosti i mjerama za zaštitu djece, a u ime Republike Hrvatske, Konvenciju je dana 30. listopada 2008. godine, temeljem punomoći Vlade Republike Hrvatske potpisao mr. sc. Frane Krnić, veleposlanik Republike Hrvatske u Kraljevini Nizozemskoj.

Konvencija uređuje pitanja zaštite djece glede određivanja: države čija tijela su nadležna za poduzimanje mjera za zaštitu osobe i imovine djeteta, prava koje će primjenjivati ta tijela u okviru svoje nadležnosti te prava koje se primjenjuje na roditeljsku odgovornost, načina osiguranja izvršenja tih mjera zaštite u svim državama članicama te načina suradnje među državama strankama radi postizanja ciljeva Konvencije. Konvencija se ocjenjuje posebice važnom za izbjegavanje mogućih sukoba između pravnih poredaka glede nadležnosti, mjerodavnog prava, priznanja te ovrhe odluka na području zaštite djece, što je u praksi moguće jer u pravilu svaka država svojim propisima rješava pitanje sukoba zakona s propisima drugih država u određenim odnosima, a koji mogu sadržavati protivna pravna rješenja za određeni slučaj.

Hrvatski pravni poredak uvelike je usklađen s općim pravnim smjernicama zaštite djece, a provedba Konvencije predstavljat će način njegova daljnjeg usavršavanja jer se Konvencijom uspostavlja suvremen i efikasan sustav zaštite prava djeteta.

U odnosu na hrvatsko zakonodavstvo potvrđivanje Konvencije ne zahtjeva izmjene i dopune postojećih propisa, s obzirom na neposrednu primjenu Konvencije i položaj međunarodnih ugovora sukladno odredbama Ustava Republike Hrvatske. Obiteljski zakon koji uređuje institute obiteljskog prava i postupanje u obiteljskim predmetima u unutarnjem pravnom poretku Republike Hrvatske ne sadrži odredbe koje bi priječile primjenu rješenja usvojenih u Konvenciji. Nadalje, odredbe hrvatskog unutarnjeg prava o određivanju mjerodavnog prava i međunarodne nadležnosti koje su utvrđene u Zakonu o rješavanju sukoba zakona s propisima drugih zemalja u određenim odnosima («Narodne novine», br. 53/91) zbog ratifikacije Konvencije ne trebaju se mijenjati. Također ni Zakon o parničnom postupku («Narodne novine», br. 53/91, 91/92, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08 i 123/08) kao ni Ovršni zakon («Narodne novine», br. 57/96, 29/99, 42/00, 173/03, 194/03, 151/04, 88/05, 121/05 i 67/08) ne sadrže odredbe koje bi priječile primjenu rješenja usvojenih u Konvenciji.

III. OSNOVNA PITANJA KOJA SE PREDLAŽU UREDITI ZAKONOM

Ovim zakonom potvrđuje se Konvencija o nadležnosti, mjerodavnom pravu, priznanju, ovrsci i suradnji u odnosu na roditeljsku odgovornost i o mjerama za zaštitu djece, kako bi njezine odredbe u smislu članka 140. Ustava Republike Hrvatske postale dio unutarnjeg pravnog poretka Republike Hrvatske.

Cilj ovog zakona je potvrđivanje Konvencije o nadležnosti, mjerodavnom pravu, priznanju, ovrši i suradnji u odnosu na roditeljsku odgovornost i o mjerama za zaštitu djece kako bi se stvorio pravni okvir za olakšavanje rada nadležnim tijelima vezano uz pitanja nadležnosti, mjerodavnog prava, priznanja, ovrhe i suradnje na području roditeljske odgovornosti i mjerama za zaštitu djece te u postupcima koji se vode na temelju nekih drugih međunarodnih ugovora kojih je Republika Hrvatska stranka, primjerice prema Haškoj konvenciji o građanskopravnim aspektima međunarodne otmice djece.

Ovim zakonskim prijedlogom određuje se da će središnje tijelo za postupanje po Konvenciji odnosno zaprimanje zahtjeva u vezi s pitanjima obuhvaćenih Konvencijom biti Ministarstvo zdravstva i socijalne skrbi. Slijedom navedenog, prilikom polaganja svoje isprave o ratifikaciji, Republika Hrvatska će dati izjavu sukladno članku 29. stavku 1. i članku 44. Konvencije kojom se kao središnje tijelo određuje Ministarstvo zdravstva i socijalne skrbi. Ministarstvo zdravstva i socijalne skrbi već postupa kao provedbeno tijelo po nekim drugim konvencijama u području zaštite djece (Haška Konvencija o građanskopravnim aspektima međunarodne otmice djece, Konvencija Vijeća Europe o kontaktima s djecom te Konvencija Ujedinjenih naroda o ostvarivanju alimentacijskih zahtjeva u inozemstvu.

U odnosu na moguće izjave i rezerve kojima se ograničava primjena Konvencije, ovim zakonskim prijedlogom određuje se da će Republika Hrvatska dati izjavu iz članka 34. stavka 2. Konvencije da se tijelima Republike Hrvatske zahtjevi iz članka 34. stavka 1. mogu dostavljati samo putem središnjeg tijela, a to je Ministarstvo zdravstva i socijalne skrbi. Dostavljanje zahtjeva posredstvom središnjeg tijela doprinosi jasnoći odnosno praćenju postupanja čime se izbjegava moguće dupliranje kao i opterećivanje raznih tijela istim predmetima.

U svrhu zaštite imovinskih interesa djeteta predlaže se da Republika Hrvatska prilikom polaganja svoje isprave o ratifikaciji izjavi rezervu u skladu s člankom 60., a u svezi s člankom 55. stavkom 1. Konvencije, kako bi pridržala nadležnost svojih tijela za poduzimanje mjera usmjerenih na zaštitu imovine djeteta koja se nalazi na njezinom državnom području te pravo da ne priznaje nikakvu roditeljsku odgovornost niti mjeru ako je to u suprotnosti s nekom mjerom koju su poduzela njezina tijela u svezi s tom imovinom. Pri tome, ova bi se rezerva trebala ograničiti na nekretnine djeteta koje se nalaze na državnom području Republike Hrvatske (članak 55. stavak 2. Konvencije).

Ako Republika Hrvatska pridrži nadležnost svojih tijela za poduzimanje mjera usmjerenih na zaštitu nekretnina djeteta koje se nalaze na njezinom državnom području, u ostvarivanju te isključive nadležnosti, tijela Republike Hrvatske bi primjenjivala domaće pravo. Hrvatsko obiteljsko pravo predviđa učinkovite mjere za zaštitu imovinskih interesa djeteta, između ostalog, i stavljanje roditelja djeteta u položaj skrbnika glede upravljanja djetetovom imovinom te polaganju računa o upravljanju djetetovom imovinom u svako doba. U vezi sa zaštitom imovinskih interesa djeteta treba tumačiti i pojedine odredbe Obiteljskog zakona o potrebi posebnog ovlaštenja zakonskog zastupnika (roditelja, skrbnika) za poduzimanje poslova koji se tiču upravljanja djetetovom imovinom (npr. otuđenje i opterećenje nekretnina) te odredbe Zakona o parničnom postupku, prema kojoj je zakonskom zastupniku djeteta potrebno posebno ovlaštenje za poduzimanje određenih radnji u postupku (npr. za priznanje tužbenog zahtjeva, za odricanje od tužbenog zahtjeva), ako to predviđaju drugi propisi. Tako je npr. roditeljima za poduzimanje postupovnih radnji pred sudom ili drugim državnim tijelom kojima se raspolaže imovinom maloljetnog djeteta potrebno odobrenje centra za socijalnu skrb. U svezi s nekretninama djeteta može doći i do sporova, a Zakon o rješavanju sukoba zakona s propisima drugih zemalja u

određenim odnosima predviđa isključivu nadležnost suda Republike Hrvatske u sporovima o pravu vlasništva i o drugim stvarnim pravima na nekretninama u vlasništvu fizičkih i pravnih osoba, u sporovima zbog smetanja posjeda na nekretnini te u sporovima nastalih iz zakupnih ili najamnih odnosa u pogledu nekretnine, i dr., ako se nekretnina nalazi na teritoriju Republike Hrvatske. U mogućim sporovima u svezi s nekretninama dijete bi zastupao njegov zakonski zastupnik, pri čemu je zakonskom zastupniku, prema Zakonu o parničnom postupku, za poduzimanje određenih procesnih dispozicija kojima se raspolaže (nepokretnom) imovinom djeteta potrebno posebno ovlaštenje nadležnog tijela.

Moguće stavljanje rezerve u skladu s člankom 60., a u svezi s člankom 54. stavkom 2. Konvencije nije potrebno, jer se ocjenjuje da je Ministarstvo zdravstva i socijalne skrbi kao središnje tijelo osposobljeno osim na engleskom jeziku rješavati predmete i na francuskom jeziku, imajući u vidu druge međunarodne instrumente po kojima već postupa.

Konvencija u određenom dijelu uređuje ista pitanja te se sadržajno preklapa s pozitivnim izvorom sekundarnog europskog prava – Uredba Vijeća (EZ) br. 2201/2003 od 27. studenoga 2003. o nadležnosti te priznanju i ovrsi odluka u bračnim predmetima te u predmetima povezanim s roditeljskom odgovornošću, kojom se ukida Uredba (EZ) br. 1347/2000, a koja se uvriježeno naziva Uredbom Bruxelles II *bis* ili Bruxelles II a. (*Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, Official journal L 338, 23. 12. 2003.*).

U odnosu na Konvenciju usvojena je i posebna odredba (članak 61. Uredbe) prema kojoj će se Uredba Bruxelles II *bis* primjenjivati kad dijete ima redovno boravište na području države članice Europske unije (a) te kada se priznaje i provodi ovrha odluke koju je donio sud države članice na području druge države članice, čak i kad dijete na koje se odluka odnosi ima redovno boravište na području treće države koja je ugovorna stranka Konvencije o nadležnosti, mjerodavnom pravu, priznanju, ovrsi i suradnji u odnosu na roditeljsku odgovornost i o mjerama za zaštitu djece (b).

Vezano uz primjenu članaka 23., 26. i 52. Konvencije, države članice Europske unije dale su sljedeću izjavu: „Članci 23., 26. i 52. Konvencije dopuštaju strankama Konvencije određeni stupanj prilagodljivosti radi primjene jednostavnijeg i bržeg režima priznanja i izvršenja odluka. Pravila Zajednice predviđaju sustav priznanja i izvršenja koji je pogodan barem kao i pravila Konvencije. U skladu s time, odluka koju je donio sud države članice Europske unije, u odnosu na sadržaj na koji se Konvencija odnosi, priznat će se i ovršiti u ... (nap. slijedi ime države članice EU) primjenom odgovarajućih unutarnjih pravila prava Zajednice“.

Naime, članci 23., 26. i 52. Konvencije dopuštaju strankama Konvencije određeni stupanj prilagodljivosti radi primjene jednostavnijeg i bržeg režima priznanja i ovrhe odluka. Članak 23. Konvencije uređuje priznanje, odnosno razloge za odbijanje priznanja mjera koje poduzmu tijela države ugovornice. Njemu odgovarajuće odredbe su članak 21. i 22. Uredbe Bruxelles II *bis*. Članak 26. Konvencije uređuje način ovrhe mjera koje su poduzete i ovršne u jednoj državi, a zahtijevaju de facto izvršenje u drugoj državi. Njemu odgovarajuća odredba je članak 28. Uredbe Bruxelles II *bis*. Članak 52. Konvencije određuje odnos Konvencije prema drugim međunarodnim instrumentima.

U vezi s mogućom izjavom uz članke 23., 26. i 52. Konvencije predlaže se ovu izjavu dati već u postupku polaganja isprave o ratifikacije, imajući u vidu da će po stjecanju statusa punopravne države članice Europske unije, ova Uredba ili daljnja regulativa odnosno pravni instrumenti Europske unije u području roditeljske odgovornosti ionako obvezivati Republiku Hrvatsku.

Slijedom navedenog, u odnosu na navedene članke 23., 26. i 52. predlaže se dati izjavu da će Republika Hrvatska u trenutku kad postane članica Europske unije primjenjivati odgovarajuća unutarnja pravila prava Zajednice u svezi s priznanjem i i ovrhom sudske odluke koju je donio sud države članice Europske unije o stvarima koje su uređene Konvencijom.

IV. OCJENA SREDSTAVA POTREBNIH ZA PROVEDBU OVOGA ZAKONA

Za provedbu ovoga zakona potrebno je osigurati dodatna financijska sredstva iz Državnog proračuna Republike Hrvatske za rad središnjeg tijela odnosno dodatno zapošljavanje jednog novog djelatnika u Ministarstvu zdravstva i socijalne skrbi.

Prema procjeni, za provedbu ovog zakona predviđa se osigurati ukupno 175.000,00 kuna za prvu godinu primjene Zakona, s približnom strukturom troškova kako slijedi: 140.000,00 kuna za izdatke za zaposlene; 20.000,00 kuna za izdatke za službena putovanja u inozemstvo te 15.000,00 kuna za izdatke za nabavu uredske i informatičke opreme. U državnom proračunu za 2010. godinu potrebno je osigurati ukupno 173.480,00 kuna, a za 2011. godinu ukupno 185.600,00 kuna.

V. PRIJEDLOG ZA DONOŠENJE ZAKONA PO HITNOM POSTUPKU

Temelj za donošenje ovoga zakona po hitnom postupku nalazi se u članku 161. Poslovnika Hrvatskoga sabora. S obzirom da se radi o zakonu koji se usklađuje s propisima Europske unije predlaže se ovaj zakonski prijedlog raspraviti i prihvatiti po hitnom postupku, objedinjavajući prvo i drugo čitanje.

**KONAČNI PRIJEDLOG ZAKONA O POTVRĐIVANJU
KONVENCIJE O NADLEŽNOSTI, MJERODAVNOM PRAVU, PRIZNANJU,
OVRSI I SURADNJI U ODNOSU NA RODITELJSKU ODGOVORNOST
I O MJERAMA ZA ZAŠTITU DJECE**

Članak 1.

Potvrđuje se Konvencija o nadležnosti, mjerodavnom pravu, priznanju, ovrsi i suradnji u odnosu na roditeljsku odgovornost i o mjerama za zaštitu djece, sastavljena u Hagu, 19. listopada 1996. godine, u izvorniku na engleskom i francuskom jeziku, a koju je Republika Hrvatska potpisala 30. listopada 2008. godine.

Članak 2.

Tekst Konvencije iz članka 1. ovoga Zakona, u izvorniku na engleskom jeziku i u prijevodu na hrvatski jezik glasi:

**Konvencija o nadležnosti, mjerodavnom pravu, priznanju, ovrsi i suradnji u
odnosu na roditeljsku odgovornost i o mjerama za zaštitu djece**

Države potpisnice ove Konvencije,

imajući u vidu potrebu poboljšanja zaštite djece u međunarodnim okolnostima,

u želji da se izbjegnu sukobi između njihovih pravnih poredaka glede nadležnosti, mjerodavnog prava, priznanja i ovrhe mjera za zaštitu djece,

ukazujući na važnost međunarodne suradnje za zaštitu djece,

potvrđujući da najbolji interesi djeteta moraju biti od primarne važnosti,

uzimajući u obzir da je *Konvenciju od 5. listopada 1961. godine, u svezi ovlasti tijela i mjerodavnog prava za zaštitu malodobnih osoba*, potrebno revidirati,

u želji da o tome uspostave zajedničke odredbe, uzimajući u obzir *Konvenciju Ujedinjenih naroda o pravima djeteta* od 20. studenog 1989.,

suglasile su se sa sljedećim odredbama -

POGLAVLJE I. – PODRUČJE PRIMJENE KONVENCIJE

Članak 1.

1. Ciljevi ove Konvencije su -

a) odrediti državu čija su tijela nadležna poduzimati mjere usmjerene zaštiti osobe i imovine djeteta;

- b) odrediti koje će pravo ta tijela primjenjivati u izvršavanju svoje nadležnosti;
- c) odrediti pravo mjerodavno za roditeljsku odgovornost;
- d) osigurati priznanje i ovrhu tih mjera zaštite u svim državama ugovornicama;
- e) uspostaviti takvu suradnju među tijelima država ugovornica koja je nužna da se postigne svrha ove Konvencije.

2. U svrhe ove Konvencije izraz „roditeljska odgovornost“ obuhvaća roditeljsko pravo, ili svaki sličan odnos glede ovlasti kojom se utvrđuju prava, ovlasti i odgovornosti roditelja, skrbnika ili drugih zakonskih zastupnika povezanih s osobom ili imovinom djeteta.

Članak 2.

Ova se Konvencija primjenjuje na djecu od trenutka njihovog rođenja do navršениh 18 godina.

Članak 3.

Mjere spomenute u članku 1. mogu se posebice odnositi na:

- a) dodjelu, ostvarivanje, prestanak ili ograničenje roditeljske odgovornosti, kao i njezino prenošenje;
- b) prava skrbi, uključujući prava povezana s brigom o osobi djeteta i, posebice, pravo odlučivanja o boravištu djeteta, kao i prava pristupa, uključujući i pravo da se dijete kroz neko ograničeno vrijeme odvede u mjesto koje nije djetetovo redovito boravište;
- c) skrbništvo, tutorstvo i slične institucije;
- d) određivanje i utvrđivanje djelovanja svake osobe ili tijela koji se brinu o djetetovoj osobi ili imovini, koji dijete zastupaju ili mu pomažu;
- e) smještaj djeteta u udomiteljsku obitelj ili u ustanovu za skrb o djeci, ili pružanje skrbi putem *kafale* ili neke druge slične ustanove;
- f) nadzor od strane javnog tijela ovlaštenog za skrb o djetetu, nad svakom osobom kojoj je dijete povjereno;
- g) upravljanje, zaštita ili raspolaganje imovinom djeteta.

Članak 4.

Konvencija se ne primjenjuje na -

- a) utvrđivanje ili osporavanje odnosa roditelj-dijete;
- b) odluke o posvojenju, mjere koje prethode posvojenju, poništenje ili opoziv posvojenja;

- c) ime i prezimena djeteta;
- d) osamostaljenje;
- e) obveze uzdržavanja;
- f) trust ili nasljeđivanje;
- g) socijalno osiguranje;
- h) javne mjere opće prirode u području obrazovanja ili zdravlja;
- i) mjere poduzete kao rezultat kaznenih djela počinjenih od strane djece;
- j) odluke o pravu na azil i na useljenje.

POGLAVLJE II. – NADLEŽNOST

Članak 5.

1. Sudska ili upravna tijela države ugovornice redovitog boravišta djeteta nadležna su poduzimati mjere usmjerene na zaštitu djetetove osobe ili imovine.
2. Prema članku 7., u slučaju promjene redovitog boravišta djeteta u drugu državu ugovornicu, nadležna su tijela države novog redovitog boravišta djeteta.

Članak 6.

1. Za djecu izbjeglice i djecu koja su, zbog nemira do kojih je došlo u njihovoj zemlji, raseljena u inozemstvu, tijela države ugovornice na čijem se državnom području nalaze ta djece uslijed njihovog raseljavanja, imat će nadležnost predviđenu stavkom 1. članka 5.
2. Odredbe prethodnog stavka također se primjenjuju na djecu čije se redovito boravište ne može utvrditi.

Članak 7.

1. U slučaju protupravnog odvođenja ili zadržavanja djeteta, tijela države ugovornice u kojoj je dijete imalo redovito boravište neposredno prije nego što je odvedeno ili zadržano, zadržavaju svoju nadležnost sve dok dijete ne stekne redovito boravište u drugoj državi, i
 - a) određena osoba, ustanova ili drugo tijelo koje ima pravo skrbi ne prihvate ovo odvođenje ili zadržavanje; ili
 - b) dijete u toj drugoj državi boravi u razdoblju od najmanje godinu dana nakon što je osoba, ustanova ili drugo tijelo, koje ima pravo skrbi, saznala ili je trebala saznati gdje se dijete nalazi, da više ne traje postupak po zahtjevu koji je u tom razdoblju podnesen, i da se dijete uklopilo u svoje novo okruženje.

2. Odvođenje ili zadržavanje djeteta smatra se protupravnim ako -

a) su time povrijeđena prava skrbi dodijeljena osobi, ustanovi ili nekom drugom tijelu, bilo zajednički ili pojedinačno, prema pravu države u kojoj je dijete imalo redovito boravište neposredno prije odvođenja ili zadržavanja; te

b) su se u vrijeme odvođenja ili zadržavanja ta prava ostvarivala bilo zajednički ili pojedinačno, ili bi se ta prava ostvarivala da nije bilo odvođenja ili zadržavanja.

Prava skrbi spomenuta u podstavku a ovoga članka mogu proizaći, prije svega, primjenom prava ili temeljem sudske ili upravne odluke, ili temeljem sporazuma koji ima pravni učinak po pravu te države.

3. Sve dok tijela navedena u stavku 1. imaju nadležnost, tijela države ugovornice u koju je dijete odvedeno ili u kojoj je zadržano, mogu poduzimati samo one žurne mjere temeljem članka 11. koje su potrebne za zaštitu osobe ili imovine djeteta.

Članak 8.

1. Iznimno, tijelo države ugovornice koje je nadležno sukladno člancima 5. ili 6., ako smatra da bi u određenom slučaju tijelo druge države ugovornice bilo prikladnije za procjenu najboljeg interesa djeteta, može bilo

- zatražiti da to drugo tijelo izravno ili uz pomoć središnjeg tijela svoje države, preuzme nadležnost za poduzimanje onih mjera zaštite koje smatra potrebnim; ili

- obustaviti postupak u predmetnom slučaju i pozvati stranke da podnesu takav zahtjev nadležnom tijelu te druge države.

2. Države ugovornice čijim se tijelima upućuje zahtjev iz prethodnog stavka su:

a) država čiji je dijete državljanin,

b) država u kojoj se nalazi djetetova imovina,

c) država čijim je tijelima podnesen zahtjev za razvod braka ili zakonsko razdvajanje djetetovih roditelja, ili za poništaj njihova braka,

d) država s kojom dijete ima najužu vezu.

3. Odnosna tijela mogu pristupiti razmjeni stajališta.

4. Tijelo kojem je upućen zahtjev, kao što je predviđeno u stavku 1. može preuzeti nadležnost, umjesto tijela koje je nadležno sukladno člancima 5. ili 6., ako smatra da je to u najboljem interesu djeteta.

Članak 9.

1. Ako tijela države ugovornice navedene u članku 8. stavku 2. smatraju da su ona prikladnija da u određenom slučaju odrede djetetov najbolji interes, ona mogu bilo

- zatražiti od nadležnog tijela države ugovornice u kojoj dijete ima redovito boravište, izravno ili uz pomoć središnjih tijela te države, da u okviru svoje nadležnosti poduzmu mjere zaštite koje smatraju potrebnima, ili

- pozvati stranke da takav zahtjev podnesu tijelima države ugovornice u kojoj dijete ima redovito boravište.

2. Odnosna tijela mogu pristupiti razmjeni stajališta.

3. Tijelo koje je podnijelo zahtjev može imati nadležnost umjesto tijela države ugovornice u kojoj dijete ima redovito boravište jedino ako potonje tijelo prihvati taj zahtjev.

Članak 10.

1. Ne dovodeći u pitanje odredbe članka od 5. do 9., tijela države ugovornice koja su nadležna za odlučivanje o zahtjevu za razvod braka ili o zakonskom razdvajanju roditelja djeteta koje ima redovito boravište u nekoj drugoj državi ugovornici, ili za poništaj njihova braka, mogu, ako tako predviđa pravo njihove države, poduzeti mjere usmjerene na zaštitu osobe i imovine tog djeteta ako

a) u vrijeme započinjanja tog postupka jedan od djetetovih roditelja ima redovito boravište u toj državi i ako jedan od njih ima roditeljsku odgovornost glede tog djeteta, i

b) su nadležnost tih tijela za poduzimanje takvih mjera prihvatili roditelji, odnosno neka druga osoba koja ima roditeljsku odgovornost glede tog djeteta te ako je to u najboljem djetetovom interesu.

2. Nadležnost predviđena stavkom 1. za poduzimanje mjera za zaštitu djeteta prestaje čim odluka kojom se odobrava ili odbija zahtjev za razvod braka, zakonskim razdvajanjem ili poništajem braka postane konačna, ili se postupci okončaju iz nekog drugog razloga.

Članak 11.

1. U svim žurnim slučajevima, tijela bilo koje države ugovornice na čijem se državnom području nalazi dijete ili imovina koja pripada tom djetetu, nadležna su poduzimati sve neophodne mjere zaštite.

2. Mjere poduzete temeljem prethodnog stavka glede djeteta koje ima redovito boravište u nekoj državi ugovornici, prestaju važiti čim tijela nadležna temeljem članka 5. do 10. poduzmu mjere koje nalaže situacija.

3. Mjere poduzete temeljem stavka 1. u svezi s djetetom koje ima redovito boravište u nekoj državi koja nije ugovornica, prestaju važiti u svakoj državi ugovornici čim mjere koje nalaže situacija i koje su poduzela tijela neke druge države priznaju u državi ugovornici u pitanju.

Članak 12.

1. Sukladno članku 7., tijela države ugovornice na čijem se državnom području nalazi dijete ili imovina koja tom djetetu pripada nadležna su poduzimati privremene mjere za zaštitu osobe ili imovine djeteta kojima je učinak ograničen na područje odnosno

države, ako te mjere nisu u suprotnosti s mjerama koje su već poduzela tijela nadležna temeljem članka 5. do 10.

2. Mjere poduzete temeljem prethodnog stavka u odnosu na dijete koje ima redovito boravište u državi ugovornici prestaju važiti čim tijela nadležna temeljem članka 5. – 10. donesu odluku o mjerama zaštite koje može nalagati situacija.

3. Mjere poduzete temeljem stavka 1. u odnosu na dijete koje ima redovito boravište u državi koja nije ugovornica, prestaju važiti u državi ugovornici u kojoj su te mjere poduzete čim se mjere koje nalaže situacija i koje poduzmu tijela druge države, priznaju u državi ugovornici.

Članak 13.

1. Tijela države ugovornice koja su nadležna temeljem članka 5. do 10. za poduzimanje mjera za zaštitu djetetove osobe ili imovine, moraju se suzdržati od ostvarivanja svoje nadležnosti ako su u vrijeme započinjanja postupka odgovarajuće mjere zatražila tijela druge države ugovornice nadležna temeljem članka 5. do 10. u vrijeme podnošenja zahtjeva i ako je to još uvijek u stanju razmatranja.

2. Odredbe prethodnog stavka neće se primjenjivati ako se tijela kojima je podnesen zahtjev za poduzimanje mjera proglase nenadležnima.

Članak 14.

Mjere poduzete primjenom članka 5. do 10. ostaju na snazi u skladu s njihovim odredbama, čak i ako zbog promijenjenih okolnosti nestane osnova na temelju koje je nadležnost bila određena, sve dok nadležna tijela temeljem Konvencije ne izmijene, zamijene ili obustave te mjere.

POGLAVLJE III. – MJERODAVNO PRAVO

Članak 15.

1. U ostvarivanju svoje nadležnosti temeljem odredaba Poglavlja II., tijela država ugovornica primijenit će svoje pravo.

2. Međutim, ukoliko to nalaže zaštita djetetove osobe ili imovine, oni iznimno mogu primijeniti ili uzeti u obzir pravo neke druge države s kojom je odnosni slučaj u najužoj vezi.

3. Ako se djetetovo redovito boravište promijeni u neku drugu državu ugovornicu, pravo te druge države primjenjuje se od trenutka te promjene, na uvjete po zahtjevu poduzetih mjera u državi prethodnog redovitog boravišta djeteta.

Članak 16.

1. Stjecanje ili prestanak roditeljske odgovornosti primjenom zakona, bez posredovanja sudskih ili upravnih tijela, uređuje se pravom države redovitog boravišta djeteta.

2. Stjecanje ili prestanak roditeljske odgovornosti temeljem sporazuma ili jednostranim aktom bez posredovanja sudskih ili upravnih tijela, uređuje se pravom države u kojoj je dijete imalo redovito boravište u vrijeme kad je takav sporazum ili jednostrani akt proizveo učinak.

3. Roditeljska odgovornost koja postoji temeljem prava države u kojoj dijete ima redovito boravište ostaje i nakon promjene tog redovitog boravišta u neku drugu državu.

4. Ako se promijeni djetetovo redovito boravište, dodjela roditeljske odgovornosti, primjenom zakonskog prava, osobi koja do tada nema takvu odgovornost, uređuje se pravom države novog redovitog boravišta.

Članak 17.

Ostvarivanje roditeljske odgovornosti uređuje se pravom države u kojoj dijete ima redovito boravište. Ako se djetetovo redovito boravište promijeni, onda se ono uređuje pravom države novog redovitog boravišta.

Članak 18.

Roditeljska odgovornost navedena u članku 16. može prestati, ili se uvjeti njenog ostvarivanja mogu izmijeniti mjerama poduzetim temeljem ove Konvencije.

Članak 19.

1. Valjanost pravnog posla zaključenog između treće strane i one osobe koja je imala ovlasti postupiti kao djetetov zakonski zastupnik temeljem zakona države u kojoj je pravni posao zaključen ne može se osporavati, a treća strana ne može se smatrati odgovornom samo na temelju toga što ta osoba nije imala ovlast djelovati kao djetetov zakonski zastupnik prema pravu iz odredaba ovoga poglavlja, osim ako je treća strana znala ili je trebala znati da je za roditeljsku odgovornost mjerodavno drugo pravo.

2. Prethodni se stavak primjenjuje samo ako su pravni posao sklopile osobe koje se nalaze na državnom području iste države.

Članak 20.

Odredbe ovog poglavlja primjenjuju se čak i ako je pravo na koje one upućuju pravo države koja nije ugovornica.

Članak 21.

1. U ovom poglavlju izraz „pravo“ označava pravo koje je na snazi u nekoj državi, osim njezinih pravnih pravila o izboru mjerodavnog prava.

2. Međutim, ako je mjerodavno pravo primjenjivo temeljem članka 16., pravo neke države koja nije ugovornica, i ako pravna pravila o izboru mjerodavnog prava te države upućuju na pravo neke druge države koja nije ugovornica, a koja bi zahtijevala primjenu vlastitog prava, primjenjuje se pravo potonje države. Ako ta druga država koja nije ugovornica ne bi primjenjivala svoje vlastito pravo mjerodavno je pravo na koje upućuje članak 16.

Članak 22.

Primjena prava na koje upućuju odredbe ovoga poglavlja može se odbiti samo ako bi takva primjena bila očigledno u suprotnosti sa javnim poretkom, uzimajući u obzir najbolje interese djeteta.

POGLAVLJE IV. – PRIZNANJE I OVRHA

Članak 23.

1. Mjere koje poduzmu tijela države ugovornice priznat će se primjenom prava u svim drugim državama ugovornicama.
2. Međutim, ovo se priznanje može odbiti -
 - a) ako je mjeru poduzelo tijelo čija se nadležnost nije temeljila na jednoj od osnova predviđenih u poglavlju II.;
 - b) ako je mjera poduzeta, osim u slučaju žurnosti, u okviru sudskog ili upravnog postupka, bez da je djetetu pružena mogućnost da bude saslušano, čime je došlo do povrede temeljnih načela postupka države kojoj je zahtjev podnesen;
 - c) na zahtjev svake osobe koja tvrdi da se tom mjerom povređuje njezinu roditeljsku odgovornost, ako se ta mjera poduzme, osim u slučaju žurnosti, a da pritom ta osoba nije dobila mogućnost da bude saslušana;
 - d) ako je takvo priznanje očigledno u suprotnosti s javnim poretkom države kojoj je zahtjev podnesen, uzimajući u obzir najbolje interese djeteta;
 - e) ako ta mjera nije u skladu s kasnije donesenom mjerom koja se poduzme u državi neugovornici u kojoj dijete ima redovito boravište, u slučaju kad ova potonja mjera ispunjava uvjete za priznavanje u državi kojoj je zahtjev podnesen;
 - f) ako postupak nije proveden u skladu s člankom 33.

Članak 24.

Ne dovodeći u pitanje odredbe članka 23. stavka 1., svaka zainteresirana osoba može od nadležnih tijela države ugovornice zatražiti da ona odluče o priznanju ili nepriznanju mjere poduzete u drugoj državi ugovornici. Postupak se uređuje pravom države kojoj je zahtjev podnesen.

Članak 25.

Tijelo države kojoj je zahtjev podnesen obvezno je uzeti u obzir utvrđene činjenice na kojima tijelo države u kojoj je mjera poduzeta temelji svoju nadležnost.

Članak 26.

1. Ako mjere poduzete u jednoj državi ugovornici i ovršne u njoj zahtijevaju ovrhu u drugoj državi ugovornici, one će, na zahtjev jedne od zainteresiranih strana, biti proglašene

ovršnima ili registrirane u svrhu ovrhe u toj drugoj državi, prema postupku predviđenom zakonima te druge države.

2. Svaka država ugovornica primjenjivat će na proglašenje ovršnosti ili registraciju jednostavan i brz postupak.

3. Proglašenje ovršnosti ili registracija može biti odbijena iz nekog od razloga navedenih u članku 23. stavku 2.

Članak 27.

Ne dovodeći u pitanje preispitivanje onoga što je potrebno po zahtjevu glede prethodnih članaka, meritum izrečene mjere neće se preispitivati.

Članak 28.

Mjere poduzete u jednoj državi ugovornici i proglašene ovršnima, ili registrirane u svrhu ovrhe, u drugoj državi ugovornici provest će se u potonjoj državi kao da su ih donijela tijela te države. Ovrha se provodi u skladu s pravom države kojoj je zahtjev postavljen, u opsegu predviđenom tim pravom, uzimajući u obzir nabolje interese djeteta.

POGLAVLJE V. – SURADNJA

Članak 29.

1. Država ugovornica odredit će središnje tijelo radi izvršavanja obveza koje su Konvencijom određene za ta tijela.

2. Savezne države, države koje imaju više od jednog pravnog poretka ili države koje imaju autonomne teritorijalne jedinice, moći će odrediti više od jednog središnjeg tijela i odrediti teritorijalni ili osobni opseg njihovih nadležnosti. U slučajevima kada država odredi više od jednog središnjeg tijela, ona će odrediti središnje tijelo kome se može obraćati radi prosljeđivanja odgovarajućim središnjim tijelima u okviru države.

Članak 30.

1. Središnja tijela će međusobno surađivati i promicati suradnju među nadležnim tijelima u svojim državama, kako bi se postigla svrha ove Konvencije.

2. Ona će, u svezi s primjenom Konvencije, poduzeti odgovarajuće korake kako bi se osigurale obavijesti o propisima njihove države i dostupnim uslugama, u svezi sa zaštitom djece.

Članak 31.

Središnje tijelo države ugovornice, bilo izravno ili putem tijela s javnim ovlastima ili drugih tijela, poduzet će sve odgovarajuće korake kako bi -

a) olakšalo komunikacije i ponudilo pomoć predviđenu u člancima 8. i 9. i u ovom poglavlju;

b) olakšalo, posredovanjem, mirenjem ili sličnim načinima, dogovorena rješenja za zaštitu djetetove osobe ili imovine u slučajevima na koje se odnosi ova Konvencija;

c) osiguralo, na zahtjev nadležnog tijela neke druge države ugovornice, pomoć u otkrivanju mjesta za koja se pretpostavlja da bi dijete moglo biti, i ako je potrebno, zaštitu dok je na državnom području države kojoj je zahtjev podnesen.

Članak 32.

Po zahtjevu uz koji je priloženo obrazloženje središnjeg tijela ili drugog nadležnog tijela države ugovornice s kojom dijete ima najužu vezu, središnje tijelo države ugovornice u kojoj dijete ima redovito boravište i u kojoj se ono nalazi može, neposredno ili putem tijela s javnim ovlastima ili nekih drugih tijela,

a) osigurati izvješće o okolnostima u kojima se nalazi dijete;

b) zatražiti od nadležnog tijela svoje države da razmotri potrebu poduzimanja mjera za zaštitu osobe i imovine djeteta.

Članak 33.

1. Ako neko tijelo nadležno temeljem članka 5. do 10. razmatra smještaj djeteta u obitelj udomitelja ili u ustanovu, ili se predviđa pružanje skrbi putem *kafale*, ili slične ustanove, i ako bi takav smještaj ili pružanje skrbi bio u drugoj državi ugovornici, to će se tijelo ponajprije konzultirati sa središnjim tijelom ili drugim nadležnim tijelom potonje države. U tu svrhu to će tijelo predati izvješće o djetetu zajedno s razlozima predloženog smještaja ili pružanja skrbi.

2. Odluka o smještaju ili određivanju skrbi može se donijeti u državi kojoj se zahtjev podnosi samo ako se središnje tijelo ili drugo nadležno tijelo te države suglasilo sa smještajem ili određivanjem skrbi, vodeći računa o najboljim interesima djeteta.

Članak 34.

1. Ako je mjera zaštite u razmatranju, nadležna tijela temeljem ove Konvencije, ako okolnosti u kojima se nalazi dijete to nalažu, mogu zatražiti od bilo kojeg tijela druge države ugovornice koja posjeduje podatak relevantan za zaštitu djeteta, dostavu takvog podatka.

2. Država ugovornica može izjaviti da će se zahtjevi iz stavka 1. dostavljati njezinim tijelima samo putem njezinog središnjeg tijela.

Članak 35.

1. Nadležna tijela države ugovornice mogu zahtijevati od tijela druge države ugovornice pomoć u provedbi zaštitnih mjera poduzetih temeljem ove Konvencije, posebice u osiguranju učinkovite primjene prava na pristup kao i održavanje drugih neposrednih kontakata koji su pravno utemeljeni.

2. Tijela države ugovornice u kojoj dijete nema redovito boravište mogu, na zahtjev roditelja koji ima boravište u toj državi i koji želi steći ili ostvarivati pristup djetetu, prikupiti podatke ili dokaze i ispitati podobnosti takvog roditelja za ostvarivanje pristupa te

uvjeta pod kojima se pristup može ostvarivati. Tijelo koje je nadležno, temeljem članka 5. do 10., za odlučivanje o zahtjevu za pristup djetetu, primit će i razmotriti takav podatak, dokaz i nalaz prije nego donese odluku.

3. Tijelo koje je, temeljem članka 5. do 10., nadležno odlučiti o pristupu može odgoditi postupak u očekivanju ishoda zahtjeva postavljenog temeljem stavka 2. ovoga članka, posebice kad razmatra zahtjev da se ograniči ili ukine pravo na pristup koje je zajamčeno u državi u kojoj je dijete ranije imalo redovito boravište.

4. Ništa što je navedeno u ovom članku neće spriječiti neko tijelo nadležno temeljem članka 5. do 10. da poduzme privremene mjere u očekivanju ishoda zahtjeva postavljenog temeljem stavka 2. ovoga članka.

Članak 36.

U svim slučajevima kad je dijete izloženo ozbiljnoj opasnosti, nadležna tijela države ugovornice u kojoj su mjere za zaštitu djeteta poduzete ili su u postupku razmatranja, ako su obaviještena da se djetetovo boravište promijenilo, ili da se dijete nalazi u nekoj drugoj državi, obavijestit će tijela te druge države o toj opasnosti i o mjerama koje su poduzete ili koje su u postupku razmatranja.

Članak 37.

Nadležno tijelo neće zahtijevati niti će prenositi nikakve podatke iz ovog poglavlja ako bi to po njegovu mišljenju moglo ugroziti djetetovu osobu ili imovinu, ili bi moglo značiti ozbiljnu prijetnju slobodi ili životu člana djetetove obitelji.

Članak 38.

1. Ne dovodeći u pitanje mogućnost određivanja naknade za usluge na ime razumnog troška, središnja tijela i druga tijela s javnim ovlastima država ugovornica snosit će svoje vlastite troškove u primjeni odredaba ovoga poglavlja.

2. Svaka država ugovornica može sklapati sporazume s jednom ili više drugih država ugovornica u svezi s raspodjelom troškova.

Članak 39.

Svaka država ugovornica može sklapati sporazume s jednom ili više država ugovornica s ciljem poboljšanja primjena odredaba ovoga poglavlja u njihovim međusobnim odnosima. Države koje su sklopile takve sporazume dostavit će primjerak istih depozitaru Konvencije.

POGLAVLJE VI. – OPĆE ODREDBE

Članak 40.

1. Tijela države ugovornice u kojoj dijete ima redovito boravište, ili države ugovornice u kojoj su poduzete mjere zaštite, mogu osobi koja ima roditeljsku odgovornost ili osobi kojoj je povjerena zaštita djetetove osobe ili imovine, na njihov zahtjev, dostaviti potvrdu u kojoj se navodi svojstvo u kojem je ta osoba ovlaštena djelovati i ovlasti koje su joj dodijeljene.

2. U nedostatku dokaza o protivnom smatra se da su svojstvo i ovlasti navedene u takvoj potvrdi povjerene toj osobi.
3. Svaka država ugovornica određuje tijela koja su nadležna izdavati takve potvrde.

Članak 41.

Osobni podaci prikupljeni ili proslijeđeni temeljem ove Konvencije koriste se samo za ciljeve za koje su prikupljeni ili proslijeđeni.

Članak 42.

Tijela kojima se podaci šalju, osigurat će njihovu tajnost u skladu s propisima njihove države.

Članak 43.

Sve isprave poslane ili dostavljene temeljem ove Konvencije oslobođene su legalizacije ili bilo koje slične formalnosti.

Članak 44.

Svaka država ugovornica može odrediti tijela kojima se upućuju zahtjevi iz članka 8., 9. i 33.

Članak 45.

1. Imenovanja spomenuta u člancima 29. i 44. priopćuju se Stalnom uredu Haške konferencije o međunarodnom privatnom pravu.
2. Izjava iz članka 34. stavka 2., daje se depozitaru Konvencije.

Članak 46.

Država ugovornica u kojoj se primjenjuju različiti pravni poretki ili različita zakonska uređenja na zaštitu djeteta i njegove imovine nije obvezna primijeniti odredbe Konvencije na sukobe koji nastanu isključivo između tih različitih pravnih poredaka ili zakonskih uređenja.

Članak 47.

U odnosu na državu u kojoj se, za bilo koje pitanje kojim se bavi ova Konvencija, primjenjuju dva ili više pravnih poredaka ili pravnih pravila u različitim teritorijalnim jedinicama -

1. svako pozivanje na redovito boravište u toj državi smatrat će se da se odnosi na redovito boravište u nekoj teritorijalnoj jedinici;
2. svako pozivanje na prisutnost djeteta u toj državi smatrat će se da se odnosi na prisutnost u odnosnoj teritorijalnoj jedinici;

3. svako pozivanje na mjesto gdje se nalazi djetetova imovina u toj državi smatrat će se da se odnosi na mjesto djetetove imovine u odnosnoj teritorijalnoj jedinici;
4. svako pozivanje na državu čiji je dijete državljanin, smatrat će se da se odnosi na teritorijalnu jedinicu određenu zakonima te države, ili u nedostatku odgovarajućih propisa, na teritorijalnu jedinicu s kojom je dijete najuže povezano;
5. svako pozivanje na državu čijim je tijelima upućen zahtjev za razvod ili zakonsko razdvajanje djetetovih roditelja, ili za poništaj braka, smatrat će se da se odnosi na teritorijalnu jedinicu čijim je tijelima takav zahtjev upućen;
6. svako pozivanje na državu s kojom je dijete najuže povezano smatrat će se da se odnosi na teritorijalnu jedinicu s kojom dijete ima takvu povezanost;
7. svako pozivanje na državu u koju je dijete odvedeno ili u kojoj je zadržano smatrat će se da se odnosi na odgovarajuću teritorijalnu jedinicu u koju je dijete odvedeno ili u kojoj je zadržano;
8. svako pozivanje na tijela te države, osim središnjih tijela, smatrat će se da se odnosi na tijela ovlaštena postupati u odgovarajućoj teritorijalnoj jedinici;
9. svako pozivanje na pravo ili postupak ili nadležna tijela države u kojoj je poduzeta neka mjera smatrat će se da se odnosi na zakon ili postupak ili tijelo teritorijalne jedinice u kojoj je ta mjera poduzeta;
10. svako pozivanje na pravo ili postupak ili tijela države kojoj je zahtjev podnesen smatrat će se da se odnosi na pravo ili postupak ili tijelo one teritorijalne jedinice u kojoj se traži priznanje ili ovrha.

Članak 48.

U svrhu određivanja mjerodavnog prava na temelju poglavlja III., u odnosu na državu koja se sastoji od dvije ili više teritorijalnih jedinica od kojih svaka ima svoj vlastiti pravni poredak ili pravna pravila u pogledu pitanja obuhvaćenih ovom Konvencijom, primjenjuju se sljedeća pravila –

- a) ako su u toj državi na snazi pravila kojima se utvrđuje pravo koje je pravo od tih teritorijalnih jedinica mjerodavno, tada se primjenjuje to pravo;
- b) u nedostatku takvih pravila, primjenjuje se pravo odgovarajuće teritorijalne jedinice, kako je određeno člankom 47.

Članak 49.

U cilju utvrđivanja mjerodavnog prava temeljem poglavlja III. glede države koja ima dva ili više pravnih poredata ili pravnih pravila o pravu mjerodavnom za različite kategorije osoba u svezi s pitanjima koja obuhvaća ova Konvencija, primjenjuju se sljedeća pravila -

- a) ako su u toj državi na snazi pravila kojima se utvrđuje koje se od tih prava primjenjuje, primjenjuje se to pravo;

b) u nedostatku takvih pravila, primjenjuje se pravni poredak ili pravna pravila onog prava s kojim je dijete u najužoj vezi.

Članak 50.

Ova Konvencija ne utječe na primjenu *Konvencije o građanskopravnim aspektima međunarodne otmice djece od 25. listopada 1980.*, u odnosima stranka obiju Konvencija. Međutim, ništa ne prijeći pozivanje na odredbe ove Konvencije u namjeri da se ishodi povratak djeteta koje je protupravno odvedeno ili zadržano, i u namjeri da se urede prava na pristup.

Članak 51.

U odnosima između država ugovornica ova Konvencija zamjenjuje *Konvenciju o ovlastima nadležnih tijela i primjenjivom pravu u svezi sa zaštitom malodobnih osoba od 5. listopada 1961.*, i *Konvenciju koja se odnosi na skrbništvo nad malodobnim osobama*, potpisanu u Hagu 12. lipnja 1902., bez obzira na priznavanje mjera poduzetih temeljem gore spomenute Konvencije od 5. listopada 1961.

Članak 52.

1. Ova Konvencija ne utječe ni na koji međunarodni instrument kojeg su države ugovornice stranke, i koji sadrži odredbe o pitanjima koja uređuje ova Konvencija, osim ukoliko stranke tog međunarodnog instrumenta ne izjave suprotno.
2. Ova Konvencija ne utječe na mogućnost da jedna ili više država ugovornica sklapaju sporazume koji sadrže, glede djece koja imaju redovito boravište u jednoj od država koje su stranke tih sporazuma, odredbe o pitanjima koja uređuje ova Konvencija.
3. Sporazumi koje sklopi jedna ili više država ugovornica o pitanjima obuhvaćenim ovom Konvencijom ne utječu, u odnosima tih država s drugim državama ugovornicama, na primjenu odredaba ove Konvencije.
4. Prethodni stavci također se primjenjuju na jedinstveno pravo koje se temelji na posebnim vezama regionalne ili druge prirode između odnosnih država.

Članak 53.

1. Konvencija se primjenjuje na mjere samo ukoliko se one poduzimaju nekoj državi nakon što je Konvencija za tu državu stupila na snagu.
2. Konvencija se primjenjuje na priznanje i ovrhu mjera poduzetih nakon njezinog stupanja na snagu između države u kojoj su mjere poduzete i države kojoj je podnesen zahtjev.

Članak 54.

1. Sve obavijesti poslane središnjem tijelu ili nekom drugom tijelu države ugovornice trebaju biti na izvornom jeziku, a uz njih se prilaže prijevod na službeni jezik ili jedan od službenih jezika te druge države, ili, ukoliko to nije moguće, prijevod na francuski ili engleski jezik.

2. Međutim, država ugovornica može, stavljajući rezervu u skladu sa člankom 60., prigovoriti uporabi francuskog ili engleskog jezika, ali ne uporabi oba.

Članak 55.

1. Država ugovornica može, u skladu s člankom 60.,
 - a) pridržati nadležnost svojih tijela za poduzimanje mjera usmjerenih na zaštitu imovine djeteta koja se nalazi na njezinom državnom području;
 - b) pridržati pravo da ne priznaje nikakvu roditeljsku odgovornost niti mjeru ukoliko je to u suprotnosti s nekom mjerom koju su poduzela njezina tijela u svezi s tom imovinom.
2. Rezerva se može ograničiti na određene kategorije imovine.

Članak 56.

Glavni tajnik Haške konferencije o međunarodnom privatnom pravu redovito će sazivati Posebnu komisiju radi razmatranja provedbe ove Konvencije u praksi.

POGLAVLJE VII.– ZAVRŠNE ODREDBE

Članak 57.

1. Konvencija je otvorena za potpisivanje državama koje su bile članice Haške konferencije o međunarodnom privatnom pravu u vrijeme njezinog osamnaestog zasjedanja.
2. Ona će se ratificirati, prihvatiti ili odobriti, a isprave o ratifikaciji, prihvatu ili odobrenju polažu se pri Ministarstvu vanjskih poslova Kraljevine Nizozemske, depozitaru Konvencije.

Članak 58.

1. Bilo koja druga država može pristupiti Konvenciji nakon što ona stupi na snagu u skladu s člankom 61., stavkom 1.
2. Isprava o pristupu polaže se kod depozitara.
3. Takvo pristupanje stupa na snagu samo u odnosima između države koja pristupa i onih država ugovornica koje nisu stavile prigovor na njezin pristup u roku od šest mjeseci nakon primitka obavijesti iz podstavka b članka 63. Takav prigovor također mogu staviti države u vrijeme kada one, nakon pristupanja, ratificiraju, prihvate ili odobre Konvenciju. O svakoj takvoj primjedbi izvješćuje se depozitar.

Članak 59.

1. Ako neka država ima jednu ili više teritorijalnih jedinica u kojima se primjenjuju različiti pravni poretci u svezi s pitanjima kojima se bavi ova Konvencija, ona može, u vrijeme potpisivanja, ratifikacije, prihvata, odobrenja ili pristupa, izjaviti da se Konvencija proširuje na sve njezine teritorijalne jedinice ili samo na jednu ili više njih, a svoju izjavu može izmijeniti podnošenjem druge izjave u bilo koje vrijeme.

2. O svakoj takvoj izjavi izvješćuje se depozitar, a u njoj se izričito navode teritorijalne jedinice na koje se Konvencija primjenjuje.

3. Ako neka država ne da nikakvu izjavu temeljem ovoga članka, Konvencija se primjenjuje na sve teritorijalne jedinice te države.

Članak 60.

1. Svaka država može, najkasnije prilikom ratifikacije, prihvata, odobrenja ili pristupa, ili prilikom davanja izjave u skladu sa člankom 59., staviti jednu ili obje rezerve predviđene člankom 54. stavka 2., i člankom 55. Nikakva druga rezerva nije dopuštena.

2. Svaka država može u svakom trenutku povući rezervu koju je stavila. O povlačenju se izvješćuje depozitar.

3. Učinak ove rezerve prestaje prvoga dana trećeg kalendarskog mjeseca nakon obavijesti spomenute u prethodnom stavku.

Članak 61.

1. Konvencija stupa na snagu prvoga dana mjeseca koji slijedi po isteku tri mjeseca nakon polaganja treće isprave o ratifikaciji, prihvatu ili odobrenju, spomenutima u članku 57.

2. Nakon toga Konvencija stupa na snagu -

a) za svaku državu koja ju naknadno ratificira, prihvati ili odobri, prvoga dana mjeseca koji slijedi po isteku tri mjeseca nakon polaganja njezine isprave o ratifikaciji, prihvatu, odobrenju ili pristupu;

b) za svaku državu koja pristupa, prvoga dana mjeseca koji slijedi po isteku tri mjeseca nakon isteka šestomjesečnog razdoblja predviđenog u članku 58. stavku 3.;

c) za teritorijalnu jedinicu na koju se Konvencija odnosi u skladu sa člankom 59., prvoga dana mjeseca koji slijedi po isteku tri mjeseca nakon obavijesti spomenute u tom članku.

Članak 62.

1. Država stranka Konvencije može je otkazati pisanom obaviješću upućenom depozitaru. Otkazivanje se može ograničiti na neke teritorijalne jedinice na koje se Konvencija primjenjuje.

2. Otkaz stupa na snagu prvoga dana mjeseca koji slijedi po isteku dvanaest mjeseci nakon što depozitar primi izjavu. Ako se u toj izjavi navodi dulji rok za stupanje na snagu otkaza, otkaz stupa na snagu po isteku toga duljeg roka.

Članak 63.

Depozitar će izvijestiti države članice Haške konferencije o međunarodnom privatnom pravu i države koje su pristupile u skladu sa člankom 58., o sljedećem -

- a) potpisima, ratifikacijama, prihvatom i odobrenjima navedenim u članku 57.;
- b) pristupima i prigovorima ulozenim na pristupe, navedenim u članku 58.;
- c) datumu stupanja na snagu Konvencije u skladu sa člankom 61.;
- d) izjavama navedenim u članku 34., stavku 2. i članku 59.;
- e) sporazumima navedenim u članku 39.;
- f) rezervama navedenim u članku 54. stavku 2. i članku 55., i o povlačenju navedenom u članku 60. stavku 2.;
- g) otkazima navedenim u članku 62.

U POTVRDU GORE NAVEDENOG, niže potpisani, za to propisno ovlašteni, potpisali su ovu Konvenciju.

SASTAVLJENO u Hagu, dana 19. listopada 1996., na engleskom i francuskom jeziku, pri čemu su oba teksta jednako vjerodostojna, u jednom primjerku koji se pohranjuje u arhivu Vlade Kraljevine Nizozemske, a čije se ovjerene preslike dostavljaju diplomatskim putem svakoj od država koja je na datum njezinog osamnaestog zasjedanja članica Haške konferencije o međunarodnom privatnom pravu.

**Convention on Jurisdiction, Applicable Law, Recognition, Enforcement
and Co-operation in respect of Parental Responsibility
and Measures for the Protection of Children**

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 co-operation 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 – SCOPE OF THE CONVENTION

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 co-operation 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 2

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

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 paragraph 1 of Article 5.

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 sub-paragraph *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 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 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, paragraph 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.

Article 19

1 The validity of a transaction entered into between a third party and another person who would be entitled to act as the child's legal representative under the law of the State where the transaction was concluded cannot be contested, and the third party cannot be held liable, on the sole ground that the other person was not entitled to act as the child's legal representative under the law designated by the provisions of this Chapter, unless the third party knew or should have known that the parental responsibility was governed by the latter law.

2 The preceding paragraph applies only if the transaction was entered into between persons present on the territory of the same State.

Article 20

The provisions of this Chapter apply even if the law designated by them is the law of a non-Contracting State.

Article 21

1 In this Chapter the term "law" means the law in force in a State other than its choice of law rules.

2 However, if the law applicable according to Article 16 is that of a non-Contracting State and if the choice of law rules of that State designate the law of another non-Contracting State which would apply its own law, the law of the latter State applies. If that other non-Contracting State would not apply its own law, the applicable law is that designated by Article 16.

Article 22

The application of the law designated by the provisions of this Chapter can be refused only if this application would be manifestly contrary to public policy, taking into account the best interests of the child.

CHAPTER IV – RECOGNITION AND ENFORCEMENT

Article 23

1 The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.

2 Recognition may however be refused –

a if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II;

b if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State;

c on the request of any person claiming that the measure infringes his or her parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard;

d if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child;

e if the measure is incompatible with a later measure taken in the non-Contracting State of the habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested State;

f if the procedure provided in Article 33 has not been complied with.

Article 24

Without prejudice to Article 23, paragraph 1, any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-

recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State.

Article 25

The authority of the requested State is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction.

Article 26

1 If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State.

2 Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure.

3 The declaration of enforceability or registration may be refused only for one of the reasons set out in Article 23, paragraph 2.

Article 27

Without prejudice to such review as is necessary in the application of the preceding Articles, there shall be no review of the merits of the measure taken.

Article 28

Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child.

CHAPTER V – CO-OPERATION

Article 29

1 A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention on such authorities.

2 Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 30

1 Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention.

2 They shall, in connection with the application of the Convention, take appropriate steps to provide information as to the laws of, and services available in, their States relating to the protection of children.

Article 31

The Central Authority of a Contracting State, either directly or through public authorities or other bodies, shall take all appropriate steps to –

a facilitate the communications and offer the assistance provided for in Articles 8 and 9 and in this Chapter;

b facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the Convention applies;

c provide, on the request of a competent authority of another Contracting State, assistance in discovering the whereabouts of a child where it appears that the child may be present and in need of protection within the territory of the requested State.

Article 32

On a request made with supporting reasons by the Central Authority or other competent authority of any Contracting State with which the child has a substantial connection, the Central Authority of the Contracting State in which the child is habitually resident and present may, directly or through public authorities or other bodies,

a provide a report on the situation of the child;

b request the competent authority of its State to consider the need to take measures for the protection of the person or property of the child.

Article 33

1 If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, or the provision of care by *kafala* or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter State. To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care.

2 The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests.

Article 34

1 Where a measure of protection is contemplated, the competent authorities under the Convention, if the situation of the child so requires, may request any authority of another Contracting State which has information relevant to the protection of the child to communicate such information.

2 A Contracting State may declare that requests under paragraph 1 shall be communicated to its authorities only through its Central Authority.

Article 35

1 The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention, especially in securing the effective exercise of rights of access as well as of the right to maintain direct contacts on a regular basis.

2 The authorities of a Contracting State in which the child does not habitually reside may, on the request of a parent residing in that State who is seeking to obtain or to maintain access to the child, gather information or evidence and may make a finding on the suitability of that parent to exercise access and on the conditions under which access is to be exercised. An authority exercising jurisdiction under Articles 5 to 10 to determine an application concerning access to the child, shall admit and consider such information, evidence and finding before reaching its decision.

3 An authority having jurisdiction under Articles 5 to 10 to decide on access may adjourn a proceeding pending the outcome of a request made under paragraph 2, in particular, when it is considering an application to restrict or terminate access rights granted in the State of the child's former habitual residence.

4 Nothing in this Article shall prevent an authority having jurisdiction under Articles 5 to 10 from taking provisional measures pending the outcome of the request made under paragraph 2.

Article 36

In any case where the child is exposed to a serious danger, the competent authorities of the Contracting State where measures for the protection of the child have been taken or are under consideration, if they are informed

that the child's residence has changed to, or that the child is present in another State, shall inform the authorities of that other State about the danger involved and the measures taken or under consideration.

Article 37

An authority shall not request or transmit any information under this Chapter if to do so would, in its opinion, be likely to place the child's person or property in danger, or constitute a serious threat to the liberty or life of a member of the child's family.

Article 38

1 Without prejudice to the possibility of imposing reasonable charges for the provision of services, Central Authorities and other public authorities of Contracting States shall bear their own costs in applying the provisions of this Chapter.

2 Any Contracting State may enter into agreements with one or more other Contracting States concerning the allocation of charges.

Article 39

Any Contracting State may enter into agreements with one or more other Contracting States with a view to improving the application of this Chapter in their mutual relations. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

CHAPTER VI – GENERAL PROVISIONS

Article 40

1 The authorities of the Contracting State of the child's habitual residence, or of the Contracting State where a measure of protection has been taken, may deliver to the person having parental responsibility or to the person entrusted with protection of the child's person or property, at his or her request, a certificate indicating the capacity in which that person is entitled to act and the powers conferred upon him or her.

2 The capacity and powers indicated in the certificate are presumed to be vested in that person, in the absence of proof to the contrary.

3 Each Contracting State shall designate the authorities competent to draw up the certificate.

Article 41

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which they were gathered or transmitted.

Article 42

The authorities to whom information is transmitted shall ensure its confidentiality, in accordance with the law of their State.

Article 43

All documents forwarded or delivered under this Convention shall be exempt from legalisation or any analogous formality.

Article 44

Each Contracting State may designate the authorities to which requests under Articles 8, 9 and 33 are to be addressed.

Article 45

1 The designations referred to in Articles 29 and 44 shall be communicated to the Permanent Bureau of the Hague Conference on Private International Law.

2 The declaration referred to in Article 34, paragraph 2, shall be made to the depositary of the Convention.

Article 46

A Contracting State in which different systems of law or sets of rules of law apply to the protection of the child and his or her property shall not be bound to apply the rules of the Convention to conflicts solely between such different systems or sets of rules of law.

Article 47

In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units –

1 any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit;

2 any reference to the presence of the child in that State shall be construed as referring to presence in a territorial unit;

3 any reference to the location of property of the child in that State shall be construed as referring to location of property of the child in a territorial unit;

4 any reference to the State of which the child is a national shall be construed as referring to the territorial unit designated by the law of that

State or, in the absence of relevant rules, to the territorial unit with which the child has the closest connection;

5 any reference to the State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage, shall be construed as referring to the territorial unit whose authorities are seised of such application;

6 any reference to the State with which the child has a substantial connection shall be construed as referring to the territorial unit with which the child has such connection;

7 any reference to the State to which the child has been removed or in which he or she has been retained shall be construed as referring to the relevant territorial unit to which the child has been removed or in which he or she has been retained;

8 any reference to bodies or authorities of that State, other than Central Authorities, shall be construed as referring to those authorised to act in the relevant territorial unit;

9 any reference to the law or procedure or authority of the State in which a measure has been taken shall be construed as referring to the law or procedure or authority of the territorial unit in which such measure was taken;

10 any reference to the law or procedure or authority of the requested State shall be construed as referring to the law or procedure or authority of the territorial unit in which recognition or enforcement is sought.

Article 48

For the purpose of identifying the applicable law under Chapter III, in relation to a State which comprises two or more territorial units each of which has its own system of law or set of rules of law in respect of matters covered by this Convention, the following rules apply –

a if there are rules in force in such a State identifying which territorial unit's law is applicable, the law of that unit applies;

b in the absence of such rules, the law of the relevant territorial unit as defined in Article 47 applies.

Article 49

For the purpose of identifying the applicable law under Chapter III, in relation to a State which has two or more systems of law or sets of rules of law applicable to different categories of persons in respect of matters covered by this Convention, the following rules apply –

a if there are rules in force in such a State identifying which among such laws applies, that law applies;

b in the absence of such rules, the law of the system or the set of rules of law with which the child has the closest connection applies.

Article 50

This Convention shall not affect the application of the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, as between Parties to both Conventions. Nothing, however, precludes provisions of this Convention from being invoked for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

Article 51

In relations between the Contracting States this Convention replaces the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, and the *Convention governing the guardianship of minors*, signed at The Hague 12 June 1902, without prejudice to the recognition of measures taken under the Convention of 5 October 1961 mentioned above.

Article 52

1 This Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

2 This Convention does not affect the possibility for one or more Contracting States to conclude agreements which contain, in respect of children habitually resident in any of the States Parties to such agreements, provisions on matters governed by this Convention.

3 Agreements to be concluded by one or more Contracting States on matters within the scope of this Convention do not affect, in the relationship of such States with other Contracting States, the application of the provisions of this Convention.

4 The preceding paragraphs also apply to uniform laws based on special ties of a regional or other nature between the States concerned.

Article 53

1 The Convention shall apply to measures only if they are taken in a State after the Convention has entered into force for that State.

2 The Convention shall apply to the recognition and enforcement of measures taken after its entry into force as between the State where the measures have been taken and the requested State.

Article 54

1 Any communication sent to the Central Authority or to another authority of a Contracting State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the other State or, where that is not feasible, a translation into French or English.

2 However, a Contracting State may, by making a reservation in accordance with Article 60, object to the use of either French or English, but not both.

Article 55

1 A Contracting State may, in accordance with Article 60,

a reserve the jurisdiction of its authorities to take measures directed to the protection of property of a child situated on its territory;

b reserve the right not to recognise any parental responsibility or measure in so far as it is incompatible with any measure taken by its authorities in relation to that property.

2 The reservation may be restricted to certain categories of property.

Article 56

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convoke a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII – FINAL CLAUSES

Article 57

1 The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Eighteenth Session.

2 It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 58

1 Any other State may accede to the Convention after it has entered into force in accordance with Article 61, paragraph 1.

2 The instrument of accession shall be deposited with the depositary.

3 Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph *b* of Article 63. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 59

1 If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2 Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3 If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 60

1 Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 59, make one or both of the reservations provided for in Articles 54, paragraph 2, and 55. No other reservation shall be permitted.

2 Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the depositary.

3 The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 61

1 The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 57.

2 Thereafter the Convention shall enter into force –

a for each State ratifying, accepting or approving it subsequently, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

b for each State acceding, on the first day of the month following the expiration of three months after the expiration of the period of six months provided in Article 58, paragraph 3;

c for a territorial unit to which the Convention has been extended in conformity with Article 59, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 62

1 A State Party to the Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units to which the Convention applies.

2 The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period.

Article 63

The depositary shall notify the States Members of the Hague Conference on Private International Law and the States which have acceded in accordance with Article 58 of the following –

a the signatures, ratifications, acceptances and approvals referred to in Article 57;

b the accessions and objections raised to accessions referred to in Article 58;

c the date on which the Convention enters into force in accordance with Article 61;

d the declarations referred to in Articles 34, paragraph 2, and 59;

e the agreements referred to in Article 39;

f the reservations referred to in Articles 54, paragraph 2, and 55 and the withdrawals referred to in Article 60, paragraph 2;

g the denunciations referred to in Article 62.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at The Hague, on the 19th day of October 1996, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Eighteenth Session.

Članak 3.

Republika Hrvatska priopćit će na Konvenciju iz članka 1. ovoga Zakona, prilikom polaganja isprave o ratifikaciji, sljedeće izjave:

Izjava vezana uz članak 29. stavak 1.

U skladu s člankom 29. stavkom 1. Konvencije, Republika Hrvatska određuje Ministarstvo zdravstva i socijalne skrbi sa sjedištem u Zagrebu, Ksaver 200a, kao središnje tijelo za izvršavanje obveza koje su određene Konvencijom za ta tijela.

Izjava vezana uz članak 34. stavak 2.

U skladu s člankom 34. stavkom 2. Konvencije, Republika Hrvatska izjavljuje da će se zahtjevi iz stavka 1. članka 34. Konvencije dostavljati njezinim tijelima samo putem njezinog središnjeg tijela.

Izjava vezana uz članak 44.

U skladu s člankom 44. Konvencije, Republika Hrvatska određuje Ministarstvo zdravstva i socijalne skrbi sa sjedištem u Zagrebu, Ksaver 200a, kao središnje tijelo kojem se upućuju zahtjevi temeljem članaka 8., 9. i 33. Konvencije.

Izjava vezana uz članke 23., 26. i 52.

Republika Hrvatska izjavljuje da će u trenutku kad postane članica Europske unije primjenjivati odgovarajuća unutarnja pravila prava Zajednice na priznanje i ovrhu odluke, u odnosu na sadržaj na koji se Konvencija odnosi, koju je donio sud države članice Europske unije.

Članak 4.

Republika Hrvatska priopćit će na Konvenciju iz članka 1. ovoga Zakona, prilikom polaganja isprave o ratifikaciji, sljedeću rezervu:

Rezerva
vezana uz članak 60., a u svezi s člankom 55.

U skladu s člankom 60. Konvencije, Republika Hrvatska pridržava nadležnost svojih tijela u poduzimanju mjera radi zaštite (nepokretne) imovine i s tim u svezi imovinskih prava djeteta, koja imovina se nalazi na njezinom državnom području te pridržava pravo ne priznati nijednu odluku o roditeljskoj skrbi ukoliko je suprotna mjeri koju je donijelo njezino nadležno tijelo u svezi s imovinom djeteta.

Članak 5.

Provedba ovoga Zakona u djelokrugu je središnjeg tijela državne uprave nadležnoga za poslove socijalne skrbi.

Članak 6.

Na dan stupanja na snagu ovoga Zakona, Konvencija iz članka 1. ovoga Zakona nije na snazi u odnosu na Republiku Hrvatsku te će se podaci o njezinom stupanju na snagu objaviti sukladno odredbi članka 30. stavka 3. Zakona o sklapanju i izvršavanju međunarodnih ugovora.

Članak 7.

Ovaj Zakon stupa na snagu osmoga dana od dana objave u "Narodnim novinama"

OBRAZLOŽENJE

Člankom 1. Konačnog prijedloga zakona utvrđuje se da Hrvatski sabor potvrđuje Konvenciju, u skladu s odredbom 139. stavak 1. Ustava Republike Hrvatske, čime se iskazuje i formalni pristanak Republike Hrvatske da bude vezana ovom Konvencijom, temeljem čega će ovaj pristanak biti izražen na međunarodnoj razini.

Člankom 2. sadržan je tekst Konvencije u izvorniku na engleskom jeziku i u prijevodu na hrvatski jezik.

Člankom 3. određene su izjave vezane uz članak 29. stavak 1., članak 34. stavak 2., članak 44. te članke 23., 26. i 52.

Člankom 4. određena je rezerva u skladu s člankom 60., a u svezi s člankom 55.

Člankom 5. utvrđuje se da je provedba Zakona u djelokrugu središnjeg tijela državne uprave nadležnog za poslove socijalne skrbi.

Člankom 6. utvrđuje se da na dan stupanja na snagu ovog Zakona Konvencija nije na snazi u odnosu na Republiku Hrvatsku, te da će se podatak o njenom stupanju na snagu objaviti naknadno, u skladu s odredbom članka 30. stavak 3. Zakona o sklapanju i izvršavanju međunarodnih ugovora

Člankom 7. uređuje se stupanje na snagu Zakona.

Prilog - preslika teksta Konvencije o nadležnosti, mjerodavnom pravu, priznanju, ovrsi i suradnji u odnosu na roditeljsku odgovornost i o mjerama za zaštitu djece, u izvorniku na engleskom jeziku;

**Convention on Jurisdiction, Applicable Law, Recognition, Enforcement
and Co-operation in respect of Parental Responsibility and
Measures for the Protection of Children**

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 co-operation 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 – SCOPE OF THE CONVENTION

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 co-operation 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 2

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

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 paragraph 1 of Article 5.

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 sub-paragraph *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 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 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, paragraph 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 authorized 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.

Article 19

1 The validity of a transaction entered into between a third party and another person who would be entitled to act as the child's legal representative under the law of the State where the transaction was concluded cannot be contested, and the third party cannot be held liable, on the sole ground that the other person was not entitled to act as the child's legal representative under the law designated by the provisions of this Chapter, unless the third party knew or should have known that the parental responsibility was governed by the latter law.

2 The preceding paragraph applies only if the transaction was entered into between persons present on the territory of the same State.

Article 20

The provisions of this Chapter apply even if the law designated by them is the law of a non-Contracting State.

Article 21

1 In this Chapter the term "law" means the law in force in a State other than its choice of law rules.

2 However, if the law applicable according to Article 16 is that of a non-Contracting State and if the choice of law rules of that State designate the law of another non-Contracting State which would apply its own law, the law of the latter State applies. If that other non-Contracting State would not apply its own law, the applicable law is that designated by Article 16.

Article 22

The application of the law designated by the provisions of this Chapter can be refused only if this application would be manifestly contrary to public policy, taking into account the best interests of the child.

CHAPTER IV – RECOGNITION AND ENFORCEMENT

Article 23

1 The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.

2 Recognition may however be refused –

a if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II;

b if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State;

c on the request of any person claiming that the measure infringes his or her parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard;

d if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child;

e if the measure is incompatible with a later measure taken in the non-Contracting State of the habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested State;

f if the procedure provided in Article 33 has not been complied with.

Article 24

Without prejudice to Article 23, paragraph 1, any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State.

Article 25

The authority of the requested State is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction.

Article 26

1 If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State.

2 Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure.

3 The declaration of enforceability or registration may be refused only for one of the reasons set out in Article 23, paragraph 2.

Article 27

Without prejudice to such review as is necessary in the application of the preceding Articles, there shall be no review of the merits of the measure taken.

Article 28

Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child.

CHAPTER V – CO-OPERATION

Article 29

1 A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention on such authorities.

2 Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 30

1 Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention.

2 They shall, in connection with the application of the Convention, take appropriate steps to provide information as to the laws of, and services available in, their States relating to the protection of children.

Article 31

The Central Authority of a Contracting State, either directly or through public authorities or other bodies, shall take all appropriate steps to –

a facilitate the communications and offer the assistance provided for in Articles 8 and 9 and in this Chapter;

b facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the Convention applies;

c provide, on the request of a competent authority of another Contracting State, assistance in discovering the whereabouts of a child where it appears that the child may be present and in need of protection within the territory of the requested State.

Article 32

On a request made with supporting reasons by the Central Authority or other competent authority of any Contracting State with which the child has a substantial connection, the Central Authority of the Contracting State

in which the child is habitually resident and present may, directly or through public authorities or other bodies,

- a* provide a report on the situation of the child;
- b* request the competent authority of its State to consider the need to take measures for the protection of the person or property of the child.

Article 33

1 If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, or the provision of care by *kafala* or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter State. To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care.

2 The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests.

Article 34

1 Where a measure of protection is contemplated, the competent authorities under the Convention, if the situation of the child so requires, may request any authority of another Contracting State which has information relevant to the protection of the child to communicate such information.

2 A Contracting State may declare that requests under paragraph 1 shall be communicated to its authorities only through its Central Authority.

Article 35

1 The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention, especially in securing the effective exercise of rights of access as well as of the right to maintain direct contacts on a regular basis.

2 The authorities of a Contracting State in which the child does not habitually reside may, on the request of a parent residing in that State who is seeking to obtain or to maintain access to the child, gather information or evidence and may make a finding on the suitability of that parent to

exercise access and on the conditions under which access is to be exercised. An authority exercising jurisdiction under Articles 5 to 10 to determine an application concerning access to the child, shall admit and consider such information, evidence and finding before reaching its decision.

3 An authority having jurisdiction under Articles 5 to 10 to decide on access may adjourn a proceeding pending the outcome of a request made under paragraph 2, in particular, when it is considering an application to restrict or terminate access rights granted in the State of the child's former habitual residence.

4 Nothing in this Article shall prevent an authority having jurisdiction under Articles 5 to 10 from taking provisional measures pending the outcome of the request made under paragraph 2.

Article 36

In any case where the child is exposed to a serious danger, the competent authorities of the Contracting State where measures for the protection of the child have been taken or are under consideration, if they are informed that the child's residence has changed to, or that the child is present in another State, shall inform the authorities of that other State about the danger involved and the measures taken or under consideration.

Article 37

An authority shall not request or transmit any information under this Chapter if to do so would, in its opinion, be likely to place the child's person or property in danger, or constitute a serious threat to the liberty or life of a member of the child's family.

Article 38

1 Without prejudice to the possibility of imposing reasonable charges for the provision of services, Central Authorities and other public authorities of Contracting States shall bear their own costs in applying the provisions of this Chapter.

2 Any Contracting State may enter into agreements with one or more other Contracting States concerning the allocation of charges.

Article 39

Any Contracting State may enter into agreements with one or more other Contracting States with a view to improving the application of this Chapter

in their mutual relations. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

CHAPTER VI – GENERAL PROVISIONS

Article 40

1 The authorities of the Contracting State of the child's habitual residence, or of the Contracting State where a measure of protection has been taken, may deliver to the person having parental responsibility or to the person entrusted with protection of the child's person or property, at his or her request, a certificate indicating the capacity in which that person is entitled to act and the powers conferred upon him or her.

2 The capacity and powers indicated in the certificate are presumed to be vested in that person, in the absence of proof to the contrary.

3 Each Contracting State shall designate the authorities competent to draw up the certificate.

Article 41

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which they were gathered or transmitted.

Article 42

The authorities to whom information is transmitted shall ensure its confidentiality, in accordance with the law of their State.

Article 43

All documents forwarded or delivered under this Convention shall be exempt from legalisation or any analogous formality.

Article 44

Each Contracting State may designate the authorities to which requests under Articles 8, 9 and 33 are to be addressed.

Article 45

1 The designations referred to in Articles 29 and 44 shall be communicated to the Permanent Bureau of the Hague Conference on Private International Law.

2 The declaration referred to in Article 34, paragraph 2, shall be made to the depositary of the Convention.

Article 46

A Contracting State in which different systems of law or sets of rules of law apply to the protection of the child and his or her property shall not be bound to apply the rules of the Convention to conflicts solely between such different systems or sets of rules of law.

Article 47

In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units –

1 any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit;

2 any reference to the presence of the child in that State shall be construed as referring to presence in a territorial unit;

3 any reference to the location of property of the child in that State shall be construed as referring to location of property of the child in a territorial unit;

4 any reference to the State of which the child is a national shall be construed as referring to the territorial unit designated by the law of that State or, in the absence of relevant rules, to the territorial unit with which the child has the closest connection;

5 any reference to the State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage, shall be construed as referring to the territorial unit whose authorities are seised of such application;

6 any reference to the State with which the child has a substantial connection shall be construed as referring to the territorial unit with which the child has such connection;

7 any reference to the State to which the child has been removed or in which he or she has been retained shall be construed as referring to the relevant territorial unit to which the child has been removed or in which he or she has been retained;

8 any reference to bodies or authorities of that State, other than Central Authorities, shall be construed as referring to those authorised to act in the relevant territorial unit;

9 any reference to the law or procedure or authority of the State in which a measure has been taken shall be construed as referring to the law or procedure or authority of the territorial unit in which such measure was taken;

10 any reference to the law or procedure or authority of the requested State shall be construed as referring to the law or procedure or authority of the territorial unit in which recognition or enforcement is sought.

Article 48

For the purpose of identifying the applicable law under Chapter III, in relation to a State which comprises two or more territorial units each of which has its own system of law or set of rules of law in respect of matters covered by this Convention, the following rules apply –

a if there are rules in force in such a State identifying which territorial unit's law is applicable, the law of that unit applies;

b in the absence of such rules, the law of the relevant territorial unit as defined in Article 47 applies.

Article 49

For the purpose of identifying the applicable law under Chapter III, in relation to a State which has two or more systems of law or sets of rules of law applicable to different categories of persons in respect of matters covered by this Convention, the following rules apply –

a if there are rules in force in such a State identifying which among such laws applies, that law applies;

b in the absence of such rules, the law of the system or the set of rules of law with which the child has the closest connection applies.

Article 50

This Convention shall not affect the application of the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, as between Parties to both Conventions. Nothing, however, precludes provisions of this Convention from being invoked for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

Article 51

In relations between the Contracting States this Convention replaces the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, and the *Convention governing the guardianship of minors*, signed at The Hague 12 June 1902, without prejudice to the recognition of measures taken under the Convention of 5 October 1961 mentioned above.

Article 52

1 This Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

2 This Convention does not affect the possibility for one or more Contracting States to conclude agreements which contain, in respect of children habitually resident in any of the States Parties to such agreements, provisions on matters governed by this Convention.

3 Agreements to be concluded by one or more Contracting States on matters within the scope of this Convention do not affect, in the relationship of such States with other Contracting States, the application of the provisions of this Convention.

4 The preceding paragraphs also apply to uniform laws based on special ties of a regional or other nature between the States concerned.

Article 53

1 The Convention shall apply to measures only if they are taken in a State after the Convention has entered into force for that State.

2 The Convention shall apply to the recognition and enforcement of measures taken after its entry into force as between the State where the measures have been taken and the requested State.

Article 54

1 Any communication sent to the Central Authority or to another authority of a Contracting State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the other State or, where that is not feasible, a translation into French or English.

2 However, a Contracting State may, by making a reservation in accordance with Article 60, object to the use of either French or English, but not both.

Article 55

1 A Contracting State may, in accordance with Article 60,

a reserve the jurisdiction of its authorities to take measures directed to the protection of property of a child situated on its territory;

b reserve the right not to recognize any parental responsibility or measure in so far as it is incompatible with any measure taken by its authorities in relation to that property.

2 The reservation may be restricted to certain categories of property.

Article 56

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convoke a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII – FINAL CLAUSES

Article 57

1 The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Eighteenth Session.

2 It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 58

1 Any other State may accede to the Convention after it has entered into force in accordance with Article 61, paragraph 1.

2 The instrument of accession shall be deposited with the depositary.

3 Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the

notification referred to in sub-paragraph *b* of Article 63. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 59

1 If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2 Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3 If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 60

1 Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 59, make one or both of the reservations provided for in Articles 54, paragraph 2, and 55. No other reservation shall be permitted.

2 Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the depositary.

3 The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 61

1 The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 57.

2 Thereafter the Convention shall enter into force –

a for each State ratifying, accepting or approving it subsequently, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

b for each State acceding, on the first day of the month following the expiration of three months after the expiration of the period of six months provided in Article 58, paragraph 3;

c for a territorial unit to which the Convention has been extended in conformity with Article 59, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 62

1 A State Party to the Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units to which the Convention applies.

2 The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period.

Article 63

The depositary shall notify the States Members of the Hague Conference on Private International Law and the States which have acceded in accordance with Article 58 of the following –

a the signatures, ratifications, acceptances and approvals referred to in Article 57;

b the accessions and objections raised to accessions referred to in Article 58;

c the date on which the Convention enters into force in accordance with Article 61;

d the declarations referred to in Articles 34, paragraph 2, and 59;

e the agreements referred to in Article 39;

f the reservations referred to in Articles 54, paragraph 2, and 55 and the withdrawals referred to in Article 60, paragraph 2;

g the denunciations referred to in Article 62.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at The Hague, on the 19th day of October 1996, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Eighteenth Session.

Copie certifiée conforme à l'original

Pom

Le Directeur des Traités
du Ministère des Affaires Etrangères
du Royaume des Pays-Bas

Certified true copy of the original

Por

The Director of Treaties
of the Ministry of Foreign Affairs
of the Kingdom of the Netherlands

Mr. Meelis

