

Challenges in Implementing the Hague Child Abduction Convention in Japan (summary)

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Six years have passed since the Child Abduction Convention came into effect in Japan. In this paper, I would like to give an overview of the implementation of the Child Abduction Convention in Japan and discuss some of the issues related to the implementation of the Convention, based on judicial precedents published in Japan concerning cases in which the return of a child was sought under the Convention. Since the entry into force of the Child Abduction Convention in Japan until the end of September 2021, there have been a total of 20 cases published as judicial precedents concerning cases in which the return of children under the Convention has been sought, and 17 of these cases, excluding three cases in which issues specific to Japan's implementing law, were disputed, are the subject of this paper.

In the Global Report on the Child Abduction Convention, it is pointed out that the most frequently contested issues are the defense of the possibility of grave risk of harm to the child and the determination of the child's habitual residence, and the same tendency was observed in the published Japanese precedents. It was also confirmed that the judgments in the published Japanese judicial precedents on these issues align with the trends seen in some contracting parties and the contents of the guidelines formulated by the Hague Conference on Private International Law.

In addition to the above, some other points require attention, such as hearing the child's voice and achieving an amicable solution. However, this paper points out that the most essential thing in child abduction treaty cases is not to decide whether TP or LBP should win but how to restore a stable life to the child who is the true abduction victim.