

(仮訳)

駐日ブルガリア共和国大使  
ボリスラフ・コストフ閣下

2018年4月27日

拝啓

2018年3月6日付け駐日EU加盟各国大使御連名の書信に関する法務大臣としての考え方を記します。

まず、一般に、子の利益の観点からは、父母の離婚後も、両親が、面会交流等を通じて、適切な形で子の養育に関わることが必要であると考えています。そのため、子の心身への影響に配慮しつつ、面会交流や子の引渡しが適切に実現されることは、子の利益に資するものであると考えています。

頂いた書簡に記載のあった面会交流や子の引渡しについては、我が国においても強制執行の制度が整備されています。

我が国において、面会交流や子の引渡しについては、間接強制（義務の履行まで一定の金員の支払を命じる制度）による強制執行が可能であるほか、子の引渡しについては、執行官による強制執行も認められています。また、別途、人身保護法による子の引渡しの請求をすることも可能です。

一方、諸外国における強制執行制度は様々で、また、その実現にも様々な困難があるものと聞いています。EU加盟国の中には、親の身柄拘束を伴う強制執行の方法は謙抑的に運用されており、子の引渡しの直接強制は、法律上も運用の上でも最後の手段であるとされているところがあると聞いています。

我が国においても、国境を越えた人の交流が増加する中で、面会交流や子の引渡しの実現が問題となる事案が増加していくことが見込まれるところであり、一般的にはそれに対応可能な法制度は整備されているものの、実際には結果として実現困難な事案にも直面しています。

そのような意味では、国境が陸で接しているEU加盟国におかれては、我が国よりもはるかに困難かつ多くの問題に直面され、様々な実務上の工夫や知見が

蓄積されているのではないかと推察しています。

そのため、貴国を始めとする各国の制度や運用は、我が国の制度や運用に貴重な示唆を与えてくれるものと考えており、今後も、機会を捉えて情報交換を行いつつ、相互の理解を深めていくことを希望します。

敬具

(署名)  
法務大臣  
上川陽子



*Ministry of Justice  
Japan*

H.E. Mr. Borislav Kostov  
Ambassador of the Republic of Bulgaria to Japan

April 27, 2018

Excellency,

Further to the letter dated March 6, 2018, signed by the Ambassadors of the EU Member States to Japan, I would like to state my view on the status of parental visitation and the return of children under the Japanese legal system.

From the perspective of the best interests of the child, it is important that, even after divorce, both father and mother are appropriately involved in their child's upbringing through visitation and other forms of contact. Therefore, it is in the best interests of the child to participate in parental visitation and to be returned to the custodial parent properly and in accordance with applicable law, taking due care to minimize or eliminate any negative effect on the child's upbringing and development.

With regard to the framework of compulsory execution of parents' visitation rights and the return of children, which was mentioned in your letter, the Japanese legal system has laws in place that establish a vigorous enforcement mechanism.

Compulsory enforcement of the visitation rights and return of a child can be realized through "indirect compulsory execution", that is, a court order to an obligor to pay money until he/she fulfills the duty. Compulsory return of a child by a court execution officer is also available. In addition, it is possible for an obligee to petition under the Act on Protection of Personal Liberty.

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Enforcement mechanisms vary from country to country, and many countries are faced with a variety of difficulties in implementation. Some say that in one of the EU Member States, the enforcement by imprisoning a parent is only used sparingly, and direct compulsory execution of the return of children is also the last resort not only under the law but also in practice.

In Japan, it is anticipated that with the acceleration of the cross-border movement of people, the number of cases that encounter difficulty in parental visitation and the return of children will increase. Japan has an appropriate legal framework that enables visitation rights and the return of children, but in practice there are some cases that turn out to be difficult to achieve, as a result of examining the effects of compulsory execution on the child's upbringing and development in individual cases.

In the EU Member States, where borders are shared on land, I am sure that there has been an accumulation of good practices and knowledge from the experience of solving cases where highly complicated issues needed to be addressed than in Japan.

In this respect, the legal frameworks and practices in foreign countries including your respected country will provide us many invaluable insights into our framework and system. I sincerely hope that we continue to exchange our views and deepen our mutual understanding.

Please accept, Excellency, the assurances of my highest consideration.

Yoko KAMIKAWA  
Minister of Justice  
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