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Comparative study on enforcement  
procedures of family rights

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Annex 7 National Report Cyprus

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# Enforcement of Family Law Judgments in the European Union:

## Report for the Republic of Cyprus

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### GENERAL

Upon independence from Britain in 1960, the Constitution of the Republic of Cyprus was constructed in such a way as to attempt to protect the interests of two ethnic Communities, the Greek Community and the Turkish Community, through a complicated system of checks and balances.<sup>1</sup> However in effect, the Constitution created a segregated society of two Communities. The Greek Community consists of those persons who are ethnically, culturally or linguistically Greek or are members of the Greek Orthodox Church, whereas the Turkish Community consists of those who are ethnically, culturally or linguistically Turkish, or are Moslems by faith. Three other religious groups<sup>2</sup> were recognized at the time of independence and chose, according to a time limit set in the original document, to become members of the Greek Community. The 1960 Constitution Article 111 provided that divorce and family matters were governed by the laws of the various recognized religious groups (through ecclesiastical courts).

### CONSTITUTIONAL LAW AND CONVENTIONS

“In the Republic of Cyprus a convention negotiated or signed under a decision of the Council of Ministers and ratified by a law made by the House of Representatives and published in the Official Gazette of the Republic acquires

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\*This report has been prepared with the invaluable assistance of Dr Sotiris N. Sampson, Law Offices of Christofides, Sampson and Company, Nicosia, Cyprus.

<sup>1</sup> For example, it provided for a Greek Cypriot President who was to be elected by the Greek Cypriot Community, and a Turkish Cypriot Vice-President, with veto powers, to be elected by the Turkish Cypriot Community. The ministries and other governmental posts were to be divided between the two communities at a ration of 7:3. At the time of independence, the Greek Community numbered approximately 82% of the population, the Turkish Community, 18%.

<sup>2</sup> As defined in Article 2(3), paragraph 4: “For the purposes of this paragraph a “religious group” means a group of persons ordinarily resident in Cyprus professing the same religion and either belonging to the same rite or being subject to the same jurisdiction thereof the number of whom, on the date of the coming into operation of this Constitution, exceeds one thousand out of which at least five hundred become on such date citizens of the Republic.” Presently the religious groups are the Maronite and Latin communities, both of which belong to the Catholic Church and the Armenian community, which belongs to the Armenian Church.

superior force to any municipal law. A ratifying law comes into operation on the date of its publication in the gazette unless otherwise provided. A convention, however, becomes effective under international law after ratification, according to the provisions of the convention or at any time thereafter specified therein.”<sup>3</sup>

“The convention has superior force over any municipal law not in the sense of repealing the inconsistent domestic law but in the sense of having superiority and precedence in its application.”<sup>4</sup>

“A convention in the legal order of Cyprus, as set out in the Constitution, is of a status superior to any other law either prior or subsequent. ‘Law’, when used in relation to the period after the coming into operation of the Constitution means a law of the Republic.<sup>5</sup> The Constitution under Article 179.1 is the supreme law of the Republic and is not, therefore, within the ambit of the definition of “law”. A convention is inferior to the Constitution and is subject to judicial review in the sense that the constitutional provisions prevail in case of any inconsistency between them and the provisions of the convention. Thus the hierarchy in our legal order is (a) the Constitution, (b) the conventions, and (c) the ordinary laws. A convention does not *stricto sensu* repeal the municipal law but has only superior force to it in the sense that it has precedence in its application. It retains its nature as part of the international law.”<sup>6</sup>

However, the very recent 5<sup>th</sup> Constitutional amendment, Law 127(I)2006, passed in the House of Representatives only weeks ago, and as of November 15 not yet published in the Official Gazette, provides that European law and conventions are superior to the Constitution. Therefore, any law or convention introduced into the law of the Republic of Cyprus through the European Community lawmaking mechanisms will now take effect without the procedure described above. The amendment was prompted by the need to comply with the Republic’s obligations as a Member State of the European Union. Although the main catalyst was the need to honour European arrest warrants, the implications are of course much broader and include family matters.

## STRUCTURE OF THE COURT SYSTEM

The court system in Cyprus is a two-tiered system, with District Courts of general jurisdiction and specialty courts for such areas as Landlord and

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<sup>3</sup> Stylianides, J in *Malachtou v Armefti*, Civ.app.6616, 20/01/87, (1987) 1 CLR 207 at p. 215.

<sup>4</sup> S.A. Liassides, *Family Law* [translation] (2006) Vol IIa, Nicosia, Cyprus. ISBN: 9963-9203-1-4.

<sup>5</sup> Article 186.1.

<sup>6</sup> Stylianides, J supra at p. 217.

Tenant, Bankruptcy, Military, and Family Courts at the first instance level, and a Supreme Court serving as court of appeal and constitutional court.<sup>7</sup>

A peculiarity of Cypriot family law is that it provides for separate family courts for constitutionally recognized minorities (religious groups).<sup>8</sup> As mentioned earlier, religious minority groups include Roman Catholics (referred to as Latins), Armenians and Maronites. Additionally, there are two civil Family Courts—one for the combined Districts of Nicosia, Larnaca, and Famagusta, and one for the combined Districts of Limassol and Paphos—hearing all cases of dissolution of marriage between Greek Orthodox Cypriots, and any other residents of the Republic, and cases involving parental care matters, contact and access to children. The competence, jurisdiction and powers of the Family Courts of the religious groups are identical to those of the civil Family Courts.

Appeals of family law decisions given in the civil Family Courts are handled by a panel of three judges of the Supreme Court, nominated for the purpose, by the Supreme Court for a two-year period, sitting as a second level Family Appeals Court. The resulting decision is not considered a decision of the Supreme Court. This panel is not bound by the findings of the lower court. It will make a review *de novo*—it may make new findings of fact; all evidence may be re-examined and the panel can re-examine witnesses. In *Papachrysostomou v Sideras*<sup>9</sup> it was held that any petition filed under the 1990 Rules of the Family Court is not an action, and therefore an appeal of any such decision has to be filed within 14 days and not within 42 days as provided under Civil Procedure Rule 35 for judgements. The subject of appeals is discussed in detail herein below.

In all there are four second-level appellate courts; three are designated one each to the religious groups and the fourth to appeals from the family courts of first instance as mentioned above.

## FAMILY LAW

Civil marriage became law in Cyprus in 1989 by Constitutional amendment.<sup>10</sup> The Family Courts Law of 1990<sup>11</sup> was then enacted to implement the

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<sup>7</sup> Established by Constitution art 153-164.

<sup>8</sup> These courts came into existence under L.87(1)/1994.

<sup>9</sup> (1992)1 CLR 379.

<sup>10</sup> L. 95/89 known as the Constitution Law of 1989 (amending Article 111).

<sup>11</sup> L. 23/90. The basic law has been amended on a number of occasions, in 1990, 1991, 1994, 1996, 1997, 1998 (twice), 1999 (twice), 2000 and the most recent amendment in 2006. More specifically, the following laws amended law L.23/90:

- L.247/1990
- L.231/1991
- L.88(I)/1994

Constitutional changes and establish the family courts. The Law provides that “the Family Courts have jurisdiction to exercise the powers granted to them by Article 111 of the Constitution and by any other law”.<sup>12</sup> This transferred jurisdiction from the ecclesiastical courts to the newly established family courts.

For the purpose of this study, under Section 11(2), the Family Courts have the power to hear cases involving:

- Family matters in court proceedings instituted under the provisions of bilateral or multilateral treaties to which Cyprus is a signatory;
- Matters of parental support, maintenance, acknowledgement of paternity, adoption, property relations between spouses, and any other conjugal or family dispute, provided the parties or one of the parties are resident in the Republic.<sup>13</sup>

Section 11(3) defines ‘residence’ to mean any continuous period of stay in excess of three months.

The 1960 Constitution, Article 87, divided competence in relation to determination of matters of personal status between the respective Communal Chambers. Unfortunately, like all areas of the law in Cyprus, family law was even more complicated by the bi-communal conflicts of the mid-60s and early 70s and the invasion and ensuing occupation of the northern part of the island by Turkey in 1974. Therefore, once the Turkish Community were no longer participating in government, including law-making, the House of Representatives, which was afterward comprised of only representatives of the Greek Community, would understandably not engage in legislating on such matters affecting the Turkish Community. Consequently, the Civil Marriage Law of 1990 defined ‘marriage’ to mean civil marriage between persons who belong to the Greek Community. However, the law was

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- L.33(I)/1996
  - L.61(I)/1997
  - L.26(I)/1998
  - L.92(I)/1998
  - L.46(I)/1999
  - L.96(I)/1999
  - L.58(I)/2000
  - L.63(I)/2006

<sup>12</sup> L. 26(I)/98, Section 11(1).

<sup>13</sup> In addition under 11(2), family courts have jurisdiction to adjudicate over:

- The dissolution of any religious marriage which was celebrated according to the canons and rites of the Greek Orthodox Church; (however, the grounds for divorce are those provided for in Art 225 of the Charter of the Orthodox Church. In addition, one of the requirements for the court to acquire jurisdiction under section 3 L.22/90 is that the parties have sent a letter to their Bishop notifying him of their intent to divorce, and on what grounds.)
- The dissolution of any religious marriage of any other faith, provided that such dissolution does not come within the jurisdiction of the Family Courts of the religious groups;
- The dissolution of any civil marriage.

amended in 2002<sup>14</sup>, providing for the temporary application of the Marriage Law Cap.279 to members of the Turkish Community “only to the extent and for reasons of urgency”.<sup>15</sup> This amendment resulted from the settlement in the case of *Selim v Cyprus*,<sup>16</sup> in the European Court of Human Rights. Therefore, the Family Courts also have jurisdiction over cases involving the children of any parties married under this law.

### Substantive law

In accordance with the ‘new’ Cypriot family law (Parents and Children Law)<sup>17</sup>, the term ‘custody’ and/or ‘custodial rights’ has been replaced by the term ‘parental care’ and/or ‘parental rights’.

Thus, ‘parental care’ is the term used in Cyprus for the responsibilities of parents for children and includes such duties as determination of name upbringing, residence, overseeing, training, and teaching.<sup>18</sup> It also includes the duty to manage the child’s property and to represent the child in any legal action or case involving its person or property.

Cypriot law presumes joint parental care of any child born of the marriage, which is the duty and right of each parent to exercise.<sup>19</sup> This duty begins with the birth of the child and is personal; that is, it cannot be transferred or alienated in any way. In case of death, disappearance, absence or incapability of one parent, parental care is exercised solely by the other parent, even if that parent is a minor him/herself.<sup>20</sup> However, if both parents

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<sup>14</sup> L. 46(I)/2002.

<sup>15</sup> *Ibid.*

<sup>16</sup> App. No. 47293/99 [2002]. Kemal Selim is a Turkish Cypriot who, although he continued to live in his village in the southern part of the island after the 1974 invasion, was not permitted to marry his Romanian fiancée under the Civil Marriage Law. He was forced to marry in Romania without the presence of friends and family. He complained under Arts 8, 12, 13 and 14 of the European Convention. The case resulted in a friendly settlement.

<sup>17</sup> The basic law L.216/90 has been amended to date on a number of occasions, in 1995 (twice), 1997 (twice), 1998, 2002 and the last amendment in 2004. More specifically, the following laws amended L.216/90:

- L.60(I)/1995
- L.95(I)/1995
- L.30(I)/1997
- L.60(I)/1997
- L.21(I)/1998
- L.190(I)/2002
- L.203(I)/2004

<sup>18</sup> Arts 3 and 4.

<sup>19</sup> Art 5(1).

<sup>20</sup> Art 5(2) and (3).

die or if one dies and the other is incapable of exercising parental care, it is exercised jointly by the closest antecedent.<sup>21</sup>

Parental care of a child born and remaining out of wedlock is exercised solely by the mother, but in case the father recognizes the child as his own (always with the consent of the mother), parental care is exercised jointly by both parents.<sup>22</sup>

All decisions made by the parents or rendered the court relating to the exercise of the duty or right of parental care have to be made for the best interest of the child.<sup>23</sup> The court must respect the right of equality between the parents and its decisions cannot be taken on account of gender, race, religious beliefs, nationality, ethnic or social origin or property.<sup>24</sup>

Depending on the maturity of the child, its opinion must be asked and taken into consideration by the court in deciding on matters relating to parental care rights, as long as the decision involves a consideration of the child's interests.<sup>25</sup> As ruled by the appeals court in *G. Andoniou v. S. Harpa*,<sup>26</sup> 'the interest of the child is determined to be physical, material, mental, both short-term and long-term, and its overall well-being'.

Article 7 of the Parents and Children Law addresses those cases where the parents disagree on the exercise of parental care. In those cases the parents can petition the competent Family Court to decide. Such cases may include, for example, the determination of the school to be attended by the child.

Of course, acts or decisions of everyday matters or those deemed urgent can be made by one of the parents alone, although parental care is exercised jointly.<sup>27</sup> Although schools should legally have both parents' permission to act, in practice this is not done, unless a specific order is served on the institution. Hospitals also should require the permission of both parents, although in an emergency situation, the permission of one or the other will suffice.

Rarely do courts remove the right of exercising parental care from a parent. Courts exercise the right to remove parental care with great consternation. Parental care is removed for example from a parent if: (1) the parent violates, abuses, or is not in a position to exercise his/her duties in relation to taking

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<sup>21</sup> Art 5(4).

<sup>22</sup> Art 16.

<sup>23</sup> Art 6(1).

<sup>24</sup> Art. 6(2)(b).

<sup>25</sup> Art 6(3).

<sup>26</sup> Family Courts Appeal 14, date of decision 22.2.2001.

<sup>27</sup> Art 8.

care of the child or managing its property<sup>28</sup>; (2) upon petition of the parent for 'serious reasons'<sup>29</sup>; or (3) when the parent has been convicted of a crime relating to the life, health or morality of the child.<sup>30</sup> In the case of art 18 above, parental care can be given solely to the other parent. The Court can also appoint a third party guardian to whom the parental care is given, assuming the third party consents. In an emergency the Director of the Department of Social Welfare Services may assume responsibility as guardian.<sup>31</sup>

Usually courts opt to assign specific aspects of parental care to the parent who will have physical care of the child. These aspects include the residence of the child and the everyday care and keep of the child. Art 9 specifies that the everyday care of the child includes basically upbringing and education.

For any contested case of parental care, the court can assign a representative of the Social Welfare Department to prepare a report on the circumstances and the home of each parent. Normally, 30 days is allowed for the preparation of the report. The welfare report is one of the pieces of evidence to be considered by the court. This investigation would also be done for those cases in which a foreign order has been brought before the court for recognition.

Art. 12 obliges the family courts to decide on parental care matters in the case of divorce between the parents. In making its determination the court is guided by the principles and considerations mentioned above.

### Personal Contact/Access

The parent with whom the child is not residing pursuant to a court order, retains, however, the right of personal contact and in those cases where there is a disagreement between the parents on the particular arrangements for contact, the court decides according to the best interests of the child.<sup>32</sup> Access of a parent to the child is not only an aspect of parental care, but also part of the right to family life under Art 15 of the Constitution of Cyprus and as ruled in *Stylianou v Stylianou*.<sup>33</sup> This right can only be restricted if it is not exercised in accordance with the best interest and well-being of the child. Law 190(I)/2002 amended the Parents and Children Law (L. 216/90) by giving the right to certain relatives to have contact with the child (new art 17A). Moreover, the same amendment ensured that no one has the right to deny or

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<sup>28</sup> Art 18.

<sup>29</sup> Art 19.

<sup>30</sup> Art 21.

<sup>31</sup> Children Law Cap. 352.

<sup>32</sup> Art 17 of L.216/90.

<sup>33</sup> (1993) 1 CLR 130.

prohibit in any way, relatives of any degree to have personal contact with the child.<sup>34</sup>

The Family Court has the right to make specific or structured access orders under art 17. For example, the Court will specify which days of the week and hours of the day the child will have contact with the non-residential parent, and which holidays he or she will spend with each parent. Orders to place a child on the stop-list to prevent his/her being removed from Cyprus without permission of the court may also be obtained, either *ex parte* until the parental care order is issued, or by summons. Usually petitions for obtaining such orders are requested within the main petition for contact and/or access rights.

It is interesting to note that the Family Court has no jurisdiction to issue an order to the Chief of Police to enforce any other order or decision of that court.<sup>35</sup>

Petitions for parental care orders are filed and heard separately from petitions for personal contact and access, and are given a separate case number by the Registrar of the Court.

#### Modification of orders

Any court order relating to the above-mentioned matters can be modified if there is a change in circumstances, and such modification is accomplished by petition to the Family Court by the party requesting the change. What constitutes a change of circumstances is within the court's discretion, considering all the facts of the case. In *E. Ellina and other v Minister of Justice*,<sup>36</sup> the court dismissed the appeal of the mother based on the failure of the lower court to consider a change of circumstances as the basis for refusal of return of the child to the UK under the European Convention. Application for recognition and enforcement can be denied under 10.1 when the court finds that the results of such a decision would be contrary to the legal principles which are relevant to the family law of the member state or if because of change in circumstances the results of the original decision are contrary to the welfare of the child.

#### Enforcement through contempt procedures

Enforcement of parental care orders domestically is ensured through the various mechanisms provided for in the law and the Civil Procedure Rules regarding contempt.

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<sup>34</sup> Art 17A (2).

<sup>35</sup> *Re K Antoniou and others*, app no. 90/99, 23/07/99, (1999) 1 CLR 1206; *Re K Antoniou and others*, app no., 97/99, 31/08/99, (1999) 1 CLR 1259.

<sup>36</sup> Civ.App.7560, 07/04/88. (1988) 1 CLR 239.

Article 162 of the Constitution provides that:

The Supreme Court shall have jurisdiction to punish for any contempt of itself, and any other court in the Republic, including a court established by a communal law under article 160, shall have power to commit any person disobeying a judgment or order of such court to prison until such person complies with such judgment or order in any event for a period not exceeding twelve months.

In passing the Family Courts Law of 1990<sup>37</sup> the Cyprus Parliament acted pursuant to the provisions of articles 87, 152 and 160 of the Constitution, given that the powers of the Communal Chamber dissolved by Law 12/65 were given to it.<sup>38</sup>

Article 16(1) of the Family Courts Law provides that the Family Courts exercise, *mutatis mutandis*, all the powers provided for in Part IV of the Cyprus Courts Law.<sup>39</sup> Part IV, as amended, includes article 42 which provides that every court shall have power to enforce obedience to any order issued by it, directing any act to be done or prohibiting the doing of any act, by fine, imprisonment, or sequestration and such powers shall be exercised subject to any Rules of Court.

Order 42A of the Civil Procedure Rules in turn provides that:

- “1. Where any order is issued by any Court directing any act to be done or prohibiting the doing of any act, there shall be endorsed by the Registrar on the copy of it, to be served on the person required to obey it, a memorandum in the words or to the effect following:

“If you, the within named A.B. neglect to obey this order by the time therein limited, you will be liable to be arrested and to have your property sequestered.

2. An office copy of the order shall be served on the person to whom the order is directed. The service shall, unless otherwise directed by the Court or Judge be personal.”

In *Stavros Georgiades v. Mary Georgiades*,<sup>40</sup> the Court in examining an application seeking the issuance of a contempt order in relation to a contact/access order, held that it would only proceed to hearing the application on the merits if the Court was satisfied that all the above-mentioned procedural requirements are met.

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<sup>37</sup> L.23/90.

<sup>38</sup> *Ion Dadakarides v. Suzan Dadakarides*, *Civil Appeal 8111*, 13.7.90.

<sup>39</sup> L.14/60.

<sup>40</sup> Parental Care Application 233/93, 20.1.95.

In general, courts will issue a contempt order if all of the following requirements are satisfied:

1. The order contains clear and unambiguous language.
2. The party charged with contempt had proper knowledge of the original order and of the requirements it set.
3. These requirements have been violated by the party charged with contempt.

In addressing the issue of clear and unambiguous language, the family court in Georgiades v. Mary Georgiades, cited the English case of Chiltern District Council v. Keane<sup>41</sup> stating that:

“Every notice of application to commit must be looked at against its own background. The test ... is: does it give the person alleged to be in contempt enough information to enable him to meet the charge?”

The Court in Georgiades decided that the language of the order was neither clear nor unambiguous because:

- (a) it did not mention the place where the contact with the child would take place,
- (b) it did not specifically provide for the time at which the order would come into effect,
- (c) it did not specify which Saturday was to be considered the first Saturday under the order, so the parties would know when the contact would occur on a Saturday and when on a Sunday.

If the respondent parent fails to comply with the order the aggrieved party can apply to the Family Court under Family Procedural Rule 3(1) 1990 by filing a petition pursuant to Type 1 specifying the relief sought and the facts which the petitioner relies upon to seek relief. Unlike other types of petition, the petition for enforcement of a parental care order must be made by summons accompanied by affidavit (Rule of Civil Procedure 42A3 (2)). Relevant to this matter is the case of Christodoulou v. Christodoulou.<sup>42</sup>

As mentioned in Papachrysostomou v Sideras<sup>43</sup> the purpose of a petition to secure a contempt order is to punish the uncooperative party; therefore proof beyond a reasonable doubt is needed. To justify a claim of contempt the petitioner must prove intention to disobey the order. Mere disobedience of the

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<sup>41</sup> (1985) 2 All E.R 118, 120.

<sup>42</sup> Appeal No. 17, decided by Family Court of Appeals on 14.4.93.

<sup>43</sup> (1992)1 CLR 379.

order is insufficient to justify contempt if intention is absent. The procedure followed in a contempt hearing is deemed by the court as quasi-criminal. Costa v Costa.<sup>44</sup>

Enforcement of orders on access rights is done in the same way as in the case of parental care orders, excluding, however, the need to support the petition by summons by an affidavit.

### Interlocutory orders

Interlocutory orders may be obtained in matters of access and contact, pending resolution of the case. The jurisdiction of the courts to hear and issue interlocutory orders for access rights is derived from art 16(1) and (2) of the Family Courts Law. However, as mentioned above, this kind of relief is deemed extraordinary and is given only under specific circumstances, such as that it is just and convenient to do so, and only if the other party will be given the right to object and be heard.<sup>45</sup>

The general legal basis for interlocutory relief is given by Section 32 of the Courts of Justice Law, 1960<sup>46</sup> by Sections 4 (interim order) and 5 (interim order restraining dealing with land), 7 (interim orders made on insufficient grounds) and 9 (orders without notice) of the Civil Procedure Law, Cap. 6, while also relevant are Orders 39 and 48 of the Civil Procedure Rules. Under Sec 32 interlocutory injunctions are only granted if the Court is satisfied

- (1) that there is a serious question to be tried at the hearing,
- (2) that there is a probability that the plaintiff is entitled to relief and
- (3) that unless an interlocutory injunction is granted it shall be difficult or impossible to do complete justice at a later stage.

In addition, other common law requirements include a consideration by the court of the conduct of the parties, the test of balance of convenience, and the similarity of the relief sought by the interlocutory injunction and that sought by the main claim. In *ex parte* actions, a showing that the case is one of emergency is also necessary. Finally, strict adherence to procedural requirements regarding interlocutory proceedings is vital, otherwise the application will fail.<sup>47</sup>

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<sup>44</sup> E.Δ.Ο.Δ. 153, 27/02/03.

<sup>45</sup> Re L Christofides, Petition No 148/93, 16/08/93, (1993) 1 CLR 613.

<sup>46</sup> L. 14/60.

<sup>47</sup> Machlouksarides v Ioannides, Civil Appeal 7684, decided 21/11/90.

## Practice

Mothers are usually preferred as primary caregivers, especially when a child is young; therefore residential care of young children will usually be awarded to their mother.

Article 18 of the Parents and Children Law<sup>48</sup> is used when it is necessary to consider the placing of parental care with relatives other than parents. Several cases are now pending with regard to the surviving children of families who died in the terrible “Helios” air crash of 14 August 2005. Grandparents are presently contesting parental care of children orphaned in the crash, a circumstance for which there is no precedent in Cypriot law. The Social Welfare Department is handling the cases and (from anecdotal evidence) are seemingly overwhelmed. Presently temporary arrangements have been made to award 50% joint custody; that is, access 3 ½ days per week to each set of grandparents.

Although orders to place children on the stop-list are relatively easily obtained and are common, contempt orders are rarely requested. In particularly acrimonious cases, the obtaining of a contempt order by one parent against the other in order to enforce contact rights would likely exacerbate the situation further.

## Service of Process—Baliffs

Until 1996, service of all pleadings and court documents was done through the court system itself. Litigants had no duty to ensure the proper service of their pleadings on the other side.

However, amendment (2) of 1996, of the Civil Procedure Rules<sup>49</sup> amended Rule 5 by the insertion of a new procedural rule. All service will take place via private process servers (bailiffs), who are holders of the necessary permit from the Supreme Court. Service of pleadings originating from the government itself or from its various departments, however, is still done through the court system.<sup>50</sup>

The mode of service is that which is provided for in the Rules of Civil Procedure and more specifically in Rule 5;<sup>51</sup> and proper service is made the duty of the litigant pursuing to affect service.<sup>52</sup>

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<sup>48</sup>L. 216/90.

<sup>49</sup> Rule 5(B); effective May 1, 1996.

<sup>50</sup> *Id* at s.1.

<sup>51</sup> *Id.* at s.2.

<sup>52</sup> *Id.* at s.5.

All persons wanting to be employed as private process servers under Rule 5(B) must apply to the District Court of the District in which the process server will have his/her headquarters.<sup>53</sup> (Permission to act as process servers is given to those applicants who:

- (a) are between the ages of 18 to 70 and in the case of male applicants, to those who have no military duty obligations;
- (b) are holders of a diploma from a secondary school;
- (c) have no convictions for crimes involving moral turpitude;
- (d) have a valid drivers license;
- (e) satisfy the Court of the ability to fully and duly exercise his/her duties as process server and maintain a place of business easily accessible to the public.<sup>54</sup>

The relevant permission to act as process servers is valid for the whole of the Republic of Cyprus and is personal; it cannot be transferred or assigned.<sup>55</sup> In those cases where service has been affected in a district other than the one in which the process server maintains his/her headquarters, the process can be served either by the process server him/herself or by another licensed process server whose headquarters are found in that district.

The Court can require that applicants for the position of process servers take special classes and/or courses and successfully pass any relevant examinations, before issuing the permit.<sup>56</sup>

Once the Court issues the permit, the process server must sign an affirmation, stating that he/she will duly perform his/her duties as process servers pursuant to the provisions of the Rules of Civil Procedure.<sup>57</sup>

In case a process server fails to affect proper service of a pleading for a second time, the litigant responsible will be notified so he/she can provide the process server with additional information which will enable him/her to affect service.<sup>58</sup>

Once service is achieved, the process server must file proof of service with the Registrar of the Court, and the litigant or his lawyer will be notified

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<sup>53</sup> *Id.* at Annex C, Part 1, (1).

<sup>54</sup> *Id.* at Annex C, Part 1, (5).

<sup>55</sup> *Id.* at Annex C, Part 1, (3).

<sup>56</sup> *Id.* at Annex C, Part 2, (6).

<sup>57</sup> *Id.* at Annex C, Part 2, (7).

<sup>58</sup> *Id.* at Annex C, Part 2, (8).

accordingly.<sup>59</sup> In those cases where service is not achieved, a report containing the reasons why attempts to serve the documents failed will be given to the litigant or his/her lawyer.<sup>60</sup>

Rule 5(B), Annex C, Part 3, (1) also provides for the fees for service:

- (a) One (1) Cyprus Pound (CyP) for every document served, plus
- (b) 0,50 cents for up to 10 kilometres from the court having jurisdiction over the case.
- (c) CyP 1,50 for up to 20 kilometres
- (d) CyP 2,50 for up to 30 kilometres
- (e) CyP 4,00 for up to 50 kilometres
- (f) CyP 6,50 for over 50 kilometres.

#### General: Execution (enforcement) of Orders

Civil Procedure Rules, Order 40(2), made applicable to family proceedings under the relevant Family Courts Rules of Procedure, provides that when an order is given with condition and the condition is not complied with, the party waives his/her beneficial rights under the order. Any other interested person may either take enforcement action as specified in the order, if any, or bring proceedings as the situation warrants.

40(8) provides that where six years have elapsed since the date of the order, or where any change has taken place by death or otherwise in the parties entitled or liable to execution, any other interested person may apply to the Court or to a Judge for leave to issue execution accordingly.

Family Courts however, have never dealt with such a matter to the present. In practise, the passage of time has no effect on the enforceability of a family law order, although a court may change its decision considering present facts. Family law orders are continuing, unless (a) the order is itself modified as mentioned above or, (b) if the order itself specifically sets a time frame.

#### Time limits for appeal

Rule 35(2) of the Rules of Civil Procedure, provides as follows:

... no appeal from any interlocutory order, or from an order, whether final or interlocutory, in any matter not being an action, shall be brought after the expiration of 14 days and no other appeal shall be brought after the

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<sup>59</sup> *Id.* at Annex C, Part 2, (9)(1).

<sup>60</sup> *Id.* at Annex C, Part 2, (6)(2).

expiration of six weeks, unless the Court or Judge at the time of making the order or at any time subsequently, or the Court of Appeal, shall enlarge the time. The said respective periods shall be calculated from the time that the judgment or order becomes binding on the intending appellant, or in the case of the refusal of an application, from the date of such refusal. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the Court of Appeal.

In *Papachrysostomou v Sideras*<sup>61</sup> the court had the opportunity to interpret Rule 35(2) above. In deciding the case, the court held that any petition filed under the 1990 Rules of the Family Court, and therefore under the Rules of Civil Procedure is not an action; an appeal of any such decision has to be filed within 14 days and not within 42 days as provided under Rule 35.

In *P A Fili v Majarian*<sup>62</sup> the court held that for an order to be enforced through contempt procedures, the order itself must specifically provide for the time frame within which compliance must be accomplished.

In *Re Vasiliou*<sup>63</sup>, it was held that under art 93, CAP 6, Civil Procedure Law, an interlocutory order remains in effect only for as long as it is necessary for its service on the affected party and to give him an opportunity to appear and be heard. An interlocutory order which is to remain in effect for a longer time than above is therefore void.

#### The effect of appeal on enforceability

The filing of an appeal does not, in itself, stay enforceability of the order. It does, however, give the right to the appellant to ask the appeals court to issue an order of stay. Orders of stay are not given as a matter of course. For example, if an order gives the right to one parent to take the child out of the jurisdiction and is appealed, an order of stay would be appropriate.

In *Savva v Ministry of Justice and Public Order*<sup>64</sup> it was held that a stay of execution of an order for the return of a child under the provisions of the Hague Convention rendered by a Family Court of first instance can only be stayed if the rights of either the child or the petitioner can be shown to be negatively influenced. The stay of execution can be approved by a court exercising its discretion under Rule 35(18) of the Civil Procedure Rules. A stay of execution for any other reason would undermine the purpose of the Convention.

An application to modify the original order based on change of circumstances does not stay the original order or the obligation of the respondent to abide by

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<sup>61</sup> (1992) 1 CLR 379.

<sup>62</sup> (2004) 1 CLR 394.

<sup>63</sup> App. No. 85/2000, 09/08/2000 (2000) 1 CLR 1361.

<sup>64</sup> E.Δ.Ο.Δ. 152, 15/02/02 (No. 1) [2002] 1 CLR 195.

it. Once a modifying order is issued, it too must be served on the respondent in the manner above. Enforcement procedures are the same.

### Child's views

If the child opposes enforcement, the court may order supervised access. The goal of maintaining the contact between parent and child is an important goal of the parental care procedure, and all attempts will be made to facilitate that goal.

The existing judicial system in Cyprus provides the child, where possible, with the opportunity to express his views and to be heard in matters that affect his welfare. The law recognizes that a child is an autonomous personality. The maturity of the child is not connected to age and is a matter for judicial consideration. If the court considers the child to be mature and refuses to hear him, its decision is subject to appeal. The court, taking into account the child's opinion, must examine whether he formed his opinion without the unilateral influence of his parent.

In a case where the child's opposition is based on art 13(b), its views may be heard if the judge requires it and decides that the child is mature enough to be heard. Children's views are heard in the judge's chamber without the presence of any other person.

### Enforcement in Cross-border Cases: Return Orders

No report was published for the Republic of Cyprus to the 2002 Hague questionnaire; however, the Republic has responded to the 2004 questionnaire on enforcement of return orders and access/contact orders, said response to be found at [http://www.hcch.net/upload/abd\\_return\\_cy.pdf](http://www.hcch.net/upload/abd_return_cy.pdf).

Cyprus acceded to the Convention on 4 November 1994 by implementing Law No. 11(III)/94. In accordance with Article 6, paragraph 1, Cyprus has designated as the Central Authority:

The Minister of Justice and Public Order  
125 Athalassas Avenue, Nicosia, Cyprus  
Tel: +357 22805911  
Fax: +357 22518356

Government web pages have undergone significant development during 2006, and information on return orders and contact and access orders, as well as copies of application forms, may be found at [http://www.mjpo.gov.cy/mjpo/mjpo.nsf/dmlchild\\_en/dmlchild\\_en](http://www.mjpo.gov.cy/mjpo/mjpo.nsf/dmlchild_en/dmlchild_en).

Additionally, reference may be made to responses in a filing by the Republic of September 2006 regarding the Practical Operation of the Hague Convention to be found at [http://www.hcch.net/upload/abd\\_2006\\_cy.pdf](http://www.hcch.net/upload/abd_2006_cy.pdf).

## Enforcement procedure: return orders under the Hague Convention 1980

Once the Central Authority of Cyprus (Minister of Justice and Public Order) is contacted by the Requesting State and the application forwarded, the Minister or his designee examines the application and if in order, alerts the Police to take measures to locate the child believed to be in the Republic of Cyprus.

Once located, the abducting parent is given an opportunity to voluntarily return the child to the Requesting State. There is no specific time frame set for all cases; it may vary with the circumstances of the case. If the abducting parent does not agree to return the child voluntarily, the Minister of Justice and Public Order begins judicial proceedings under the terms of the Convention for the return of the child, as in the case of Minister of Justice and Public Order v CM of Nicosia.<sup>65</sup>

If the possibility of harm to the child exists, the Social Welfare Department may be contacted to provide temporary protection for the child.

Under Law 26(I)/98 amending art 11,<sup>66</sup> the Family Courts have exclusive jurisdiction to hear cases relating to family matters and in relation to any judicial procedures that may arise pursuant to the provisions of any bilateral or multilateral treaty to which Cyprus is a party.

In the case of Mylonas v Minister of Justice and Public Order,<sup>67</sup> the Supreme Court determined that jurisdiction in cases involving the Convention was vested in the Family Courts only. In Savva v Minister of Justice and Public Order,<sup>68</sup> the Court confirmed that the welfare of the child is not paramount in cases requesting return, but rather the question of the immediate return of the child to the country of habitual residence. Additionally, the court clarified that a removal of a child with prior knowledge of the custodial parent was 'with consent', but a removal which is agreed to after the removal is 'with acquiescence'.

In 2002, the Supreme Court amended Civil Procedure Rule 7 of the Family Courts Rules (with regard to the recognition of foreign judgements) to include 7(A)(1), that any court procedure based on the Convention begins with the filing of an originating summons supported by affidavit. The summons must inform about the nature of relief sought and refer to the specific article or procedural rule on which it is based. It will follow the form of Type 46 of Civil Procedure Rule 48.2 and include the names of any persons to whom it will be served along with the affidavit. The affidavit includes a recital of the facts of the case. Additionally, Rule 7(A)(2) states that any objection to the petition

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<sup>65</sup> [1996] Nicosia District Court, Appl.No.405/96.

<sup>66</sup> Art 11(2)(d).

<sup>67</sup> Π.Ε. 9848, 28/04/99, (1999) 1 CLR 573.

<sup>68</sup> Ε.Δ.Ο.Δ. 152, 06/09/02 (αφ.2) (2002) 1 CLR 1228.

must be filed within seven days of service. The normal time limit of trial is six weeks.

If it is suspected that the child may be located in the occupied area in the north of the Republic, the measures to locate the child may include contact with the *de facto* authorities there, or such contact through the United Nations. Cooperation on such matters does exist and has in the past resulted in the location of the child in the area not presently controlled by the Republic.

If an application for return of a child is successful, the return of the child to the habitual residence, or to the left behind parent for the purpose of returning the child to its habitual residence, is normally ordered. If such an order has to be enforced, the aim of enforcing the return order is to remove the child from the abductor and hand it over to the applicant, if present, to return it to the habitual residence. If the parent is not available, the Central Authority is responsible for this task.

Once a return order is made by the Family Court, the Court issues an order which is signed by the Registrar of the Family Court containing a clause with the consequences of non-compliance. No further specific request for enforcement is necessary. The Central Authority will take steps to enforce the court's return order.

The Central Authority is responsible for organizing the repatriation of the child. This may be accomplished with the assistance of the police or social services, whose role is not mandatory unless specified in the return order. If it appears that enforcement may be difficult, the applicant may petition for a court order specifying those roles.

The Central Authority may allow a period of two to three days for the abductor to voluntarily comply with the return order, but due to the strong opposition seen in most cases, return is effected immediately after the order is issued.

### Costs

The costs of enforcement are borne by the abductor in most cases; if this is not possible, then they are paid by the Central Authority. Any reduction or exemption is possible only with the consent of the Central Authority. The abductor would also be charged with the costs of return, e.g. airfare.

Advance payment is not required, and legal aid would cover the costs of enforcement as well. The Registrar of the Court calculates the costs, including court costs, by a set of formulae.

### Statistical summary

An average of 20 return orders per year are made by the courts in Cyprus, and about half of those require enforcement due to a lack of voluntary compliance by the abductor. For the years 2001-2003, no legal challenges

were made to avoid enforcement. The average length of enforcement proceedings is two to three months.

#### Enforcement of family law judgments other than return orders

The Republic of Cyprus is a party to the following international agreements (in addition to the Hague Convention of 1980) which are relevant for enforcement of family judgments in cross-border cases:

- European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, ratified 13 June 1986, Law No. 36/1986.
- European Convention on the Exercise of Children's Rights, ratified 25 October 2005, Law No. 23(III)/2005. Under the declaration of Article 1, paragraph 4, the Convention will apply to custody, adoptions, and protection from maltreatment and cruel behaviour.
- Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (Hague XXXIII), ratified 20 February 1995 by Law No. 26(III)/1994.

Additionally, the following are bilateral agreements that cover cooperation, including the recognition and enforcement of judgments:

- Czech Republic, Rat. Law 68/82
- Hungary, Rat. Law 7/83
- Germany, Rat. Law 5/84
- Bulgaria, Rat. Law 18/84
- Greece, Rat. Law 55/84
- Syria, Rat. Law 160/86, 13/97
- Former Soviet Union (Russian Federation, Ukraine, Belarus, Georgia) Rat. Law 172/86
- Former Yugoslavia (Serbia, Slovenia) Rat. Law 179/86
- Egypt, Rat. Law 32(III)/96
- China, Rat. Law 19(III)/95
- Poland, Rat. Law 10(III)/97
- Ukraine, Rat. Law 8/2005

There is no specific legal instrument with regard to the application of Regulation (EC) 2201/2003, but the passage of Law No. 127(I)/2006, the most recent Constitutional amendment referred to above, will apply to all European legislation, giving it superiority over domestic law.

Most actions of this type on behalf of Cypriots to be enforced in other States would be petitions under The Hague or European Convention. As such the party would file an application with the Ministry of Justice and Public Order as the Central Authority who would then pursue the matter by contacting the Central Authority of the State in question.

In order for The Hague or the European Convention to apply, there must exist at the time of removal, either an exercise of parental care or access rights or a valid parental care or access order. Once the violation occurs, the aggrieved parent must apply to the Family Court requesting the issuance of an order declaring the removal of the child out of the jurisdiction, wrongful and/or illegal. Once such order is secured, the applicant must contact the Ministry of Justice and provide it with the original orders, if any, as well as with official translations of them in any one of the accepted European languages. These orders must be accompanied by a signed affirmation by the parent that he or she authorizes the Central Authority of the State to which the child was wrongfully removed, to take all legal steps necessary to ensure the prompt return of the child to the jurisdiction.

The same rules that have been stated for the appeal or modification of domestic orders would be applied to foreign judgments.

### Specific Issues

Under Regulation (EC) 2201/2003, it would appear that because registration is to be dispensed with, an order from another Member State of the European Union would be taken to the Registrar of the Family Court who would examine the order and accompanying certificate, and if proper in form and content, would stamp it for enforcement and forward it to the necessary authority as required for service upon the party named. No cases have yet come forward, so this has not yet been tested. If the order is from a non-EU state, it would need to be registered in the normal manner.

As previously stated, there is no 'expiration date' for family orders, but if time was at issue, the court would consider all the facts of the case. Time may or may not be an important factor.

In addition to the contempt order discussed above, a court can order the child's name and identification and/or passport number, and in some cases the abductor's, to be added to the stop-list to prevent him/her/them from leaving the territory of the Republic. The Police authorities are notified as well as Immigration and Passport Control and the Port Authority.

The cease-fire line between the Republic of Cyprus and the occupied areas has been opened at a few checkpoints since April 2004. Although identification is checked by police authorities at each crossing, unsatisfactory results have nonetheless occasionally occurred. Before 2004, the authorities of the Republic and the northern occupied area did not cooperate well on such matters; it would have been possible for an abductor to enter the occupied areas to escape the jurisdiction of the Court. Efforts to recover children involve contact and cooperation with UNFICYP, the United Nations peacekeeping force in Cyprus. However, a more cooperative attitude has been demonstrated since the border opening, and such difficulties have been minimized.

There is presently no legal basis for mediation or other types of alternative dispute resolution, with the exception of such a general duty of the Central Authority under Art 7. However, a bill is before the House of Representatives that would apply mediation to family law cases.

## EMPIRICAL STUDY

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(The following will be taking on an additional role as Children's  
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undergoing redevelopment.)  
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