

Naghti l-kunsens tiegħi.

(L.S.)

GUIDO DE MARCO
President

27 ta' Lulju, 1999

ATT Nru. XIII ta' l-1999

ATT biex jagħti s-setgħa lil Malta tirratifika żewġ Konvenzjonijiet internazzjonali li għandhom x'jaqsmu rispettivament ma' l-aspetti ċivili ta' sekwestru internazzjonali ta' minuri u mar-rikonoxximent u l-infurzar ta' deċiżjonijiet dwar kustodja.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f' dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'liġi dan li ġej:—

1. (1) Dan l-Att jista' jissejjah l-Att ta' l-1999 dwar is-Sekwestru u l-Kustodja ta' Minuri. Titolu fil-qosor u bidu fis-sehħ.

(2) Dan l-Att għandu jibda jseħħ f'dak il-jum li l-Ministru responsabbli għall-Affarijiet Barranin jista' jistabbilixxi b'avviż fil-Gazzetta u dati differenti jistgħu jiġu hekk stabbiliti għal dispożizzjonijiet differenti u għal għanijiet differenti ta' l-Att.

2. (1) F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tehtiegħ xort'ohra — Tifsir.

“Malta” għandha l-istess tifsira mogħtija lilha bil-Kostituzzjoni;

“Ministru” tfisser il-Ministru responsabbli għall-ġustizzja;

“minuri” tfisser persuna li ma tkunx ghalqet is-sittax-il sena;
“sekwestru” tfisser is-serq jew htif ta’ persuna.

(2) Fl-Ewwel u fit-Tieni Skedi li jinsabu ma’ dan l-Att, jekk ikun hemm xi konflitt bejn it-test Ingliz u t-test Malti, ghandu jipprevali t-test Ingliz.

TAQSIMA I

Sekwestru Internazzjonali ta’ Minuri

Il-Konvenzjoni
ta’ l-Ajja.

3. (1) F’din it-Taqsima ta’ dan l-Att “il-Konvenzjoni” tfisser il-Konvenzjoni dwar l-Aspetti Ċivili fis-Sekwestru Internazzjonali ta’ Minuri, li kienet giet iffirmata f’L-Ajja fil-25 ta’ Ottubru, 1980 u li l-Artikli rilevanti tagħha huma miġjuba fl-Ewwel Skeda li tinsab ma’ dan l-Att.

(2) Bla hsara ghad-dispożizzjonijiet ta’ din it-Taqsima ta’ dan l-Att, id-dispożizzjonijiet tal-Konvenzjoni miġjuba fl-Ewwel Skeda li tinsab ma’ dan l-Att ghandu jkollhom is-sahha ta’ ligi f’Malta.

Stati Kontraenti.

4. (1) Għall-finijiet tal-Konvenzjoni kif ghandha s-sahha ta’ ligi f’Malta taht din it-Taqsima ta’ dan l-Att, l-Istati Kontraenti minbarra Malta ghandhom ikunu dawk li fiz-żmien li jkun jiġu speċifikati mill-Ministru responsabbli għall-Affarijiet Barranin b’Ordni fil-Gazzetta taht dan l-artikolu.

(2) L-imsemmi Ordni ghandu jispeċifika d-data tal-bidu fis-sehh tal-Konvenzjoni bejn Malta u l-Istat speċifikat fih; u, hliet fejn l-Ordni jipprovdni xort’ohra, il-Konvenzjoni ghandha tapplika bejn Malta u dak l-Istat biss għal każijiet ta’ trasferiment jew żamma ta’ minuri li jokkorru f’dik id-data jew wara dik id-data.

(3) Fejn il-Konvenzjoni tapplika, jew tapplika biss, għal territorju partikolari jew territorji partikolari speċifikati f’dikjarazzjoni magħmula minn Stat Kontraenti taht l-Artiklu 39 jew 40 tal-Konvenzjoni, ir-riferenzi għal dak l-Istat fis-subartikoli (1) u (2) ta’ dan l-artikolu ghandhom jiftiehm bħala riferenzi għal dak it-territorju jew dawk it-territorji.

Awtorità Ċentrali.

5. Il-funzjonijiet ta’ Awtorità Ċentrali taht il-Konvenzjoni ghandhom jiġu esegwiti mid-Direttur responsabbli għall-*welfare* u kull applikazzjoni magħmula taht il-Konvenzjoni minn jew fl-isem ta’ persuna barra minn Malta tista’ tiġi indirizzata lill-Uffiċċju tad-Direttur responsabbli għall-*welfare*.

Ġurisdizzjoni.

6. (1) Il-Prim’Awla tal-Qorti Ċivili jew kull Qorti ohra li l-Ministru jista’ b’ordni jsemmi ghandu jkollha ġurisdizzjoni biex titratta applikazzjonijiet taht il-Konvenzjoni.

(2) Meta jiġri li xi hadd li jkollu interess jew id-Direttur tal-*Welfare* jallega li minuri jkun tneħħa b'mod illeċitu fil-kuntest tat-tifsira ta' l-Artiklu 3 tal-Konvenzjoni, huwa jista', minghajr ebda preġudizzju għal kull azzjoni oħra dwar l-istess kwistjoni li tista' legittament tittiehed, jagħmel applikazzjoni taht is-subartikolu (1) ta' dan l-artikolu sabiex jingħata rimedju.

(3) Kull min ikun parti fil-proċedimenti jkollu dritt ta' appell quddiem il-Qorti ta' l-Appell.

7. Meta tkun saret applikazzjoni taht il-Konvenzjoni lill-Prim'Awla tal-Qorti Ċivili jew lil kull Qorti oħra li l-Ministru jista' b'ordni jsemmi, il-qorti tista', f'kull żmien qabel ma tiġi deċiżja l-applikazzjoni, tagħti dawk id-direttivi *interim* li jidhriha li jkunu xierqa biex jiġi żgurat il-benesseri tal-minuri konċernat jew għall-prevenzjoni ta' bdil fiċ-ċirkostanzi rilevanti għad-deċiżjoni ta' l-applikazzjoni. Setgħat *interim*.

8. Meta d-Direttur responsabbli għall-*welfare* jiġi mitlub biex jipprovi tagħrif dwar minuri taht l-Artiklu 7(d) tal-Konvenzjoni huwa jista': Rapporti.

(a) jitlob lil kull persuna biex tagħmillu rapport bil-miktub dwar kull haġa li tidhirli li tkun rilevanti;

(b) jitlob lil kull qorti li lilha jkun sar rapport bil-miktub dwar il-minuri biex tibgħatlu kopja tar-rapport,

u dik it-talba għandha tiġi milqugħa kif imiss.

9. (1) Għall-finijiet ta' l-Artiklu 14 tal-Konvenzjoni, deċiżjoni jew determinazzjoni ta' awtorità għuzżjarja jew amministrattiva barra minn Malta tista' tiġi ppruvata b'kopja awtentikata kif imiss tad-deċiżjoni jew determinazzjoni; u kull dokument li jkun jidher li jkun kopja bħal dik għandu jitqies li jkun kopja vera kemm-il darba ma jintweriex il-kuntrarju. Prova
b'dokumenti
u provi oħra.

(2) Għall-finijiet tas-subartikolu (1) ta' dan l-artikolu, kopja tkun awtentikata kif imiss jekk ikollha s-sigill, jew tkun iffirmata minn imħallef jew ufficjal ta' l-awtorità in kwistjoni.

(3) Għall-finijiet ta' l-Artiklu 14 u 30 tal-Konvenzjoni, kull dokument kif hemm imsemmi fl-Artiklu 8 tal-Konvenzjoni, jew kopja ċertifikata ta' kull dokument bħal dak, għandu jkun prova biżżejjed ta' kull haġa ġewwa fih iddikjarata.

10. Il-Prim'Awla tal-Qorti Ċivili jew kull Qorti oħra msemmija b'ordni tal-Ministru tista', fuq applikazzjoni magħmula għall-finijiet Dikjarazzjonijiet
mill-Prim'Awla
tal-Qorti Ċivili jew
minn kull Qorti
oħra msemmija.

ta' l-Artiklu 15 tal-Konvenzjoni minn xi persuna li l-Qorti tara li jkollha interess fil-kwistjoni, tiddikjara li t-trasferiment ta' xi minuri minn Malta, jew iż-żamma tiegħu barra minn Malta, kien jew kienet illeċita fis-sens ta' l-Artiklu 3 tal-Konvenzjoni.

Sospensjoni tas-setgħat tal-qorti f'kazijiet ta' trasferiment illeċitu.

11. Ir-riferenza fl-Artiklu 16 tal-Konvenzjoni għad-deċiżjoni fuq il-merti ta' jeddijiet ta' kustodja għandha tiftiehem bhala riferenza għal:

Kap. 16.

(a) l-għemil, tibdil jew thassir ta' ordni ta' kustodja taht l-artikoli 47, 56, 60, 61 jew 149 tal-Kodiċi Ċivili;

(b) ir-registrazzjoni jew l-infurzar ta' deċiżjoni taht it-Taqsima II ta' dan l-Att.

Regoli tal-Qrati.
Kap. 12.

12. Il-Bord tar-Regoli mwaqqaf taht l-artikolu 29 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili jista' jipprovdi għall-ghoti ta' effett lil din it-Taqsima ta' dan l-Att skond kif ikun jidhirli li jkun mehtieg jew spedjenti.

Riservi.

13. (1) Billi Malta ser tagħmel riserva (riprodotta fit-Tielet Skeda li tinsab ma' dan l-Att) kif hemm imsemmija fit-tielet paragrafu ta' l-Artiklu 26 tal-Konvenzjoni, l-ispejjeż imsemmija f'dak il-paragrafu ma għandhomx jithallsu minn xi Ministru jew xi awtorità f'Malta.

(2) Malta qeghda wkoll tagħmel riserva b'dan illi komunikazzjonijiet li jintbagħtu lill-Awtorità Ċentrali għandhom ikunu msehbin bi traduzzjoni fl-ilsien Inġliż.

TAQSIMA II

Rikonoxximent u Infurzar ta' Deċiżjonijiet ta' Kustodja

Il-Konvenzjoni Ewropea.

14. (1) F'din it-Taqsima ta' dan l-Att "il-Konvenzjoni" tfisser il-Konvenzjoni Ewropea dwar ir-Rikonoxximent u l-Infurzar ta' Deċiżjonijiet li għandhom x'jaqsmu mal-Kustodja ta' Minuri u dwar ir-Restituzzjoni tal-Kustodja ta' Minuri li kienet giet iffirmata fil-Lussemburgu fl-20 ta' Mejju, 1980 u li l-Artikli rilevanti tagħha huma miġjuba fit-Tieni Skeda li tinsab ma' dan l-Att.

(2) Bla hsara għad-dispożizzjonijiet ta' din it-Taqsima ta' dan l-Att, id-dispożizzjonijiet ta' dik il-Konvenzjoni miġjuba fit-Tieni Skeda li tinsab ma' dan l-Att (li jinkludu l-Artikli 9 u 10 kif għandhom effett b'konsegwenza ta' riserva magħmula minn Malta taht l-Artiklu 17, liema riserva hija riprodotta fir-Raba' Skeda li tinsab ma' dan l-Att) għandu jkollhom is-sahha ta' liġi f'Malta.

15. (1) Għall-finijiet tal-Konvenzjoni kif għandha s-sahha ta' Stati Kontraenti. ligi f'Malta taht din it-Taqsima ta' dan l-Att, l-Istati Kontraenti minbarra Malta għandhom ikunu daww li fiż-żmien li jkun jigu speċifikati mill-Ministru responsabbli għall-Affarijiet Barranin b'Ordni fil-Gazzetta taht dan l-artikolu.

(2) Dak l-Ordni għandu jispeċifika d-data tal-bidu fis-sehh tal-Konvenzjoni bejn Malta u l-Istat speċifikat fl-Ordni.

(3) Fejn il-Konvenzjoni tapplika, jew tapplika biss, għal territorju partikolari jew territorji partikolari speċifikati minn Stat Kontraenti taht l-Artiklu 24 jew 25 tal-Konvenzjoni, ir-riferenzi għal dak l-Istat fis-subartikoli (1) u (2) ta' dan l-artikolu għandhom jiftiehemu bhala riferenzi għal dak it-territorju jew daww it-territorji.

16. (1) Il-funzjonijiet ta' Awtorità Ċentrali taht il-Konvenzjoni għandhom jigu esegwiti mid-Direttur responsabbli għall-*welfare*. Awtorità Ċentrali.

(2) Kull applikazzjoni magħmula taht il-Konvenzjoni minn jew fl-isem ta' persuna barra minn Malta tista' tigi indirizzata lid-Direttur responsabbli għall-*welfare*.

17. (1) L-Artikli 7 u 12 tal-Konvenzjoni għandu jkollhom effett skond dan l-artikolu. Rikonoxximent ta' deċiżjonijiet.

(2) Deċiżjoni li għaliha japplika l-wiehed jew l-iehor minn daww l-Artiklu li tkun saret fi Stat Kontraenti minbarra Malta għandha tkun rikonoxxuta f'Malta bhallikieku saret minn qorti f'Malta iżda —

(a) il-Qorti ta' l-Appell tista', fuq rikors ta' xi persuna li l-qorti tara li jkollha interess fil-kwistjoni, tiddikjara għal xi raġuni speċifikata fl-Artiklu 9 jew 10 tal-Konvenzjoni illi d-deċiżjoni ma għandhiex tkun rikonoxxuta f'Malta; u

(b) id-deċiżjoni ma għandhiex tkun esegwibbli f'Malta kemm-il darba ma tkunx registrata fil-qorti idonea skond l-artikolu 18 ta' dan l-Att.

(3) Ir-riferenzi fl-Artiklu 9(1)(c) tal-Konvenzjoni għat-trasferiment tal-minuri huma għat-trasferiment tiegħu bla dritt fis-sens tal-Konvenzjoni.

18. (1) Persuna li lilha jinghataw xi drittijiet b'deċiżjoni li għandha x'taqsam mal-kustodja magħmula minn awtorità fi Stat Kontraenti minbarra Malta tista' tagħmel rikors għar-registrazzjoni tad-deċiżjoni fir-registru tal-Qorti ta' l-Appell. Registrazzjoni ta' deċiżjonijiet.

(2) L-Awtorità Ċentrali f'Malta ghandha tassisti lil dik il-persuna fl-ghemil ta' l-imsemmi rikors jekk issir talba ghal dik l-ghajjuna minn dik il-persuna jew f'isimha mill-Awtorità Ċentrali ta' l-Istat Kontraenti in kwistjoni.

(3) Rikors taht is-subartikolu (1) jew talba taht is-subartikolu (2) ghandhom jigu trattati bhala talba ghall-esekuzzjoni ghall-finijiet ta' l-Artikli 10 u 13 tal-Konvenzjoni.

(4) Il-Qorti ta' l-Appell ghandha tirrifjuta li tirregistra decizjoni jekk —

(a) il-qorti tkun tal-fehma li ghal xi raguni speċifikata fl-Artiklu 9 jew 10 tal-Konvenzjoni d-decizjoni ma ghandhiex tkun rikonoxxuta f'Malta;

(b) il-qorti tkun tal-fehma li d-decizjoni ma tkunx esegwibbli fl-Istat Kontraenti fejn tkun saret u ma tkunx decizjoni li ghaliha japplika l-Artiklu 12 tal-Konvenzjoni; jew

(c) ikun hemm pendenti applikazzjoni dwar il-minuri taht it-Taqsima I ta' dan l-Att.

(5) F'dan l-artikolu “decizjoni li ghandha x'taqsam mal-kustodja” ghandha l-istess tifsir bhalma ghandha fil-Konvenzjoni.

Tibdil u thassir ta' decizjonijiet registrati.

19. (1) Meta decizjoni li tkun giet registrata taht l-artikolu 18 ta' dan l-Att tigi mibdula jew imhassra minn awtorità fl-Istat Kontraenti li fih tkun saret, il-persuna li f'isimha jkun sar ir-rikors ghar-registrazzjoni tad-decizjoni ghandha tinnotifika lill-Qorti ta' l-Appell bit-tibdil jew thassir.

(2) Meta l-Qorti ta' l-Appell tigi notifikata skond is-subartikolu (1) ta' dan l-artikolu bit-thassir ta' decizjoni, hija ghandha —

(a) thassar ir-registrazzjoni, u

(b) tinnotifika b'dak it-thassir lil dawk il-persuni li jistghu ikunu preskritti b'dawk ir-regoli tal-qrati li jistghu isiru mill-Bord tar-Regoli mwaqqaf taht l-artikolu 29 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

Kap. 12.

(3) Meta qorti tigi notifikata taht is-subartikolu (1) bit-tibdil ta' decizjoni, hija ghandha —

(a) tinnotifika b'dak it-tibdil lil dawk il-persuni li jistghu ikunu preskritti b'regoli tal-qrati li jistghu isiru; u

(b) taht kull kondizzjoni li tista' tigi preskritta b'dawk ir-regoli, tibdel ir-registrazzjoni.

(4) Il-Qorti ta' l-Appell tista' wkoll, fuq ir-rikors ta' xi persuna li l-qorti tara li jkollha interess fil-kwistjoni, thassar jew tibdel ir-registrazzjoni jekk tkun sodisfatta li d-deciżjoni tkun giet imhassra jew, skond il-każ, mibdula minn awtorità fl-Istat Kontraenti li fih tkun saret.

20. Meta deciżjoni dwar il-kustodja tkun giet registrata taht l-artikolu 18, il-Qorti ta' l-Appell ghandu jkollha l-istess setghat għall-esekuzzjoni tad-deciżjoni daqslikieku kienet giet magħmula minnha; u proċeduri għal jew dwar l-esekuzzjoni jistghu jittiehdu skond hekk.

Esekuzzjoni ta' deciżjonijiet.

21. Meta jkun sar rikors lill-Qorti ta' l-Appell għar-registrazzjoni ta' deciżjoni taht l-artikolu 18 jew għall-esekuzzjoni ta' dik id-deciżjoni il-qorti tista', f'kull żmien qabel ma jiġi deciż ir-rikors, tagħti dawk id-direttivi *interim* li jidhrilha li jkunu xierqa biex jiġi żgurat il-benesseri tal-minuri konċernat jew għall-prevenzjoni ta' tibdil fiċ-ċirkostanzi rilevanti għad-deciżjoni tar-rikors jew, fil-każ ta' rikors għar-registrazzjoni, għad-deciżjoni ta' kull rikors sussegwenti għall-esekuzzjoni tad-deciżjoni.

Setghat *interim*.

22. (1) Meta xi qorti li fiha jkun hemm pendenti dwar minuri proċeduri bħal dawk msemmija fis-subartikolu (2) ta' dan l-artikolu ssib illi —

Sospensjoni tas-setghat tal-qorti.

(a) ikun sar rikors għar-registrazzjoni ta' deciżjoni dwar il-minuri taht l-artikolu 18 (li ma tkunx deciżjoni li għaliha japplika s-subartikolu (3) ta' dan l-artikolu) jew li dik id-deciżjoni tkun irregistrata; u

(b) id-deciżjoni tkun saret fi proċeduri mibdija qabel il-proċeduri li jkun hemm pendenti,

is-setghat tal-qorti dwar il-minuri f'dawk il-proċeduri għandhom ikunu ristretti kif imsemmi fis-subartikolu (2) ta' dan l-artikolu kemm-il darba, fil-każ ta' rikors għar-registrazzjoni, ir-rikors ma jiġix rifjutat.

(2) Fejn japplika s-subartikolu (1) ta' dan l-artikolu l-qorti ma għandhiex fil-każ ta' proċeduri ta' kustodja tagħmel, tibdel jew thassar xi ordni ta' kustodja.

(3) Id-deciżjoni msemmija fis-subartikolu (1) ta' dan l-artikolu hija deciżjoni li hi biss deciżjoni li jkollha x'taqsam mal-kustodja fis-sens ta' l-artikolu 18 ta' dan l-Att bis-saħħa li tkun deciżjoni dwar il-jeddijiet ta' aċċess.

(4) Il-paragrafu (b) ta' l-Artiklu 10 (2) tal-Konvenzjoni ghandu jftiehem bhala li jirreferi ghal proċeduri ta' kustodja fis-sens ta' dan l-Att.

Rapporti.

23. Meta d-Direttur responsabbli għall-*welfare* jiġi mitlub biex jagħmel stharrig dwar minuri taht l-Artiklu 15(1)(b) tal-Konvenzjoni huwa jista' —

(a) jitlob lil kull persuna biex tagħmillu rapport bil-miktub dwar kull haġa li jkollha x'taqsam mal-minuri konċernat li tidhirli li tkun rilevanti;

(b) jitlob lil kull qorti li lilha jkun sar rapport bil-miktub dwar il-minuri biex tibghatlu kopja tar-rapport, u kull talba bhal dik ghandha tiġi milqugha kif imiss.

Prova
b'dokumenti
u provi oħra.

24. (1) F'kull proċeduri taht din it-Taqsima ta' dan l-Att deċiżjoni ta' awtorità barra minn Malta tista' tiġi ppruvata b'kopja awtentikata tad-deċiżjoni; u kull dokument li jkun jidher li jkun kopja bhal dik ghandu jitqies li jkun kopja vera kemm-il darba ma jintweriex il-kuntrarju.

(2) Għall-finijiet tas-subartikolu (1) ta' dan l-artikolu, kopja tkun awtentikata kif imiss jekk ikollha s-sigill, jew tkun iffirmata minn imhalef jew ufficjal, ta' l-awtorità in kwistjoni.

(3) F'kull proċeduri taht din it-Taqsima ta' dan l-Att kull dokument kif imsemmi fl-Artiklu 13 tal-Konvenzjoni, jew kopja ċċertifikata ta' kull dokument bhal dak, ghandu jkun prova biżżejjed ta' kull haġa ddikjarata fih.

Deċiżjonijiet
tal-qorti Maltin.

25. (1) Meta persuna li lilha jinghataw xi jeddijiet b'deċiżjoni li ghandha x'taqsam mal-kustodja magħmula minn qorti f'Malta tagħmel applikazzjoni lid-Direttur responsabbli għall-*welfare* taht l-Artiklu 4 tal-Konvenzjoni bil-ghan li tiżgura r-rikonnoxximent jew l-esekuzzjoni tagħha fi Stat Kontraenti iehor, l-imsemmi Direttur jista' jitlob lill-qorti li tkun ghamlet id-deċiżjoni biex tagħtih kull dokument jew xi dokument imsemmi fl-Artiklu 13(1)(b), (c) u (d) tal-Konvenzjoni.

(2) Meta f'xi proċeduri ta' kustodja qorti f'Malta tagħmel deċiżjoni dwar minuri li jkun ġie trasferit minn Malta, il-qorti tista' wkoll, fuq applikazzjoni magħmula minn xi persuna għall-finijiet ta' l-Artiklu 12 tal-Konvenzjoni, tiddikjara li t-trasferiment kien kontra l-liġi jekk tkun sodisfatta li r-rikorrent ikollu interess fil-kwistjoni u li l-minuri ttiehed minn Malta jew intbagħat jew inżamm barra minn Malta mingħajr il-kunsens tal-persuna (jew, jekk iżjed minn waħda, tal-persuni kollha) li jkollha l-jedd li tiddeċiedi l-post ta' residenza tal-minuri f'Malta.

(3) F'dan l-artikolu "deċiżjoni li ghandha x'taqsam mal-kustodja" ghandha l-istess tifsir bhalma ghandha fil-Konvenzjoni.

26. (1) Il-Bord tar-Regoli mwaqqaf taht l-artikolu 29 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili jista' jipprovdi għall-ghoti ta' effett lil din it-Taqsima ta' dan l-Att skond kif dik l-awtorità jidhrilha li jkun meħtieġ jew spedjenti. Regoli tal-qradi.

(2) Mingħajr preġudizzju għall-generalità tas-subartikolu (1) ta' dan l-artikolu, ir-regoli tal-qradi jistgħu jipprovdu —

(a) dwar il-proċedura fuq rikorsi lil qorti taht xi dispożizzjoni ta' din it-Taqsima ta' dan l-Att u dwar id-dokumenti u l-informazzjoni li għandhom jingħataw u l-avviżi li għandhom jingħataw f'konnessjoni ma' kull rikors bhal dak;

(b) għall-ghoti ta' direttivi li jkunu jeħtieġu l-kxif ta' informazzjoni dwar xi minuri li jkun sugġett għal proċedimenti taht din it-Taqsima ta' dan l-Att u biex jiġi salvagwardat il-benesseri tiegħu.

TAQSIMA III

Supplimentari

27. (1) Meta —

(a) isir ordni għar-ritorn ta' minuri taht it-Taqsima I ta' dan l-Att; jew

(b) deċiżjoni dwar minuri (li ma tkunx deċiżjoni li għaliha japplika s-subartikolu (2) ta' dan l-artikolu) tiġi registrata taht l-artikolu 18 ta' dan l-Att,

Temm ta' ordnijiet
eżistenti ta'
kustodja, eċċ.

kull ordni ta' kustodja inkonsistenti ma' dak l-ordni jew deċiżjoni dwaru għandu jtemm milli jkollu effett.

(2) Id-deċiżjoni msemmija fil-paragrafu (b) tas-subartikolu (1) ta' dan l-artikolu hija deċiżjoni li hi biss deċiżjoni li jkollha x'taqsam mal-kustodja fis-sens ta' l-artikolu 18 ta' dan l-Att bis-saħħa li tkun deċiżjoni dwar il-jeddijiet ta' aċċess.

28. L-ispejjeż li jsiru mid-Direttur tal-*Welfare* għall-finijiet ta' dan l-Att għandhom jithallsu minn flus provduti mill-Kamra tad-Deputati għal dak il-ghan. Spejjeż.

29. Bis-saħħa ta' dan l-Att, il-Gvern ta' Malta huwa awtorizzat li jirratifika l-Konvenzjoni dwar l-Aspetti Ċivili fis-Sekwestru Internazzjonali ta' Minuri, li kienet ġiet iffirmata f'L-Ajja fil-25 ta' Ottubru, 1980 u l-Konvenzjoni Ewropea dwar ir-Rikonoxximent u l-Infurzar ta' Deċiżjonijiet li għandhom x'jaqsmu mal-Kustodja ta' Minuri, iffirmata f'Lussemburgu fl-20 ta' Mejju, 1980. Ratifika ta'
Trattati.

SKEDI

L-EWWEL SKEDA

(Artikolu 3(1))

**KONVENZJONI DWAR L-ASPETTI ĊIVILI FIS-SEKWESTRU
INTERNAZZJONALI TA' MINURI**

KAPITLU I – GHAN TAL-KONVENZJONI

Artiklu 3

It-tnehhija jew iż-żamma ta' minuri ghandu jitqies bhala illeċitu meta:

(a) dan ikun bi ksur tad-drittijiet ta' kustodja, vestiti f'persuna, istituzzjoni jew enti ohra, kemm singolarment, kif ukoll konguntement, taht il-ligi ta' l-Istat fejn il-minuri kien soltu joqghod minnufih qabel it-tnehhija jew iż-żamma;

(b) fil-waqt tat-tnehhija jew taż-żamma dawk id-drittijiet kienu attwalment eżercitati, jew konguntement sew singolarment, jew kienu jkunu hekk eżercitati kieku ma kienx ghat-tnehhija jew ghaż-żamma.

Id-drittijiet ta' kustodja imsemmija fis-subparagrafu (a) hawn aktar qabel jistgħu joriginaw b'mod partikolari mill-operat tal-ligi jew bis-sahha ta' deċizzjoni ġudizzjarja jew amministrattiva, jew bis-sahha ta' ftehim li jkollu effett legali skond il-ligi ta' dak l-Istat.

Artiklu 4

Il-Konvenzjoni tapplika dwar kull minuri li kien soltu joqghod fi Stat Kontraenti minnufih qabel il-ksur tad-drittijiet ta' kustodja jew ta' aċċess. Il-Konvenzjoni ma tibqax tapplika meta l-minuri jaghlaq is-sittax il-sena.

Artiklu 5

Għall-ghanijiet ta' din il-Konvenzjoni:

(a) “drittijiet ta' kustodja” jinkludu d-drittijiet li ghandhom x'jaqsmu mal-kura tal-persuna tal-minuri u, b'mod partikolari, id-dritt li jiġi determinat il-post tar-residenza tal-minuri;

(b) “drittijiet ta' aċċess” jinkludu d-dritt li minuri jittiehed għal żmien limitat f'post differenti minn fejn soltu joqghod.

KAPITLU II – AWTORITAJIET ĊENTRALI*Artiklu 7*

L-Awtoritajiet Ċentrali għandhom jikkoperaw ma' xulxin u jippromwovu l-koperazzjoni bejn l-awtoritajiet kompetenti fl-Istati rispettivi tagħhom biex jiżguraw ir-ritorn malajr tal-minuri u biex jintlahqu l-għanijiet l-oħra ta' din il-Konvenzjoni.

B'mod partikolari, sew direttament sew permezz ta' xi intermedjarju, huma għandhom jieħdu il-miżuri kollha idoneji biex:

- (a) jiskopru fejn ikun jinstab il-minuri li kien tneħha jew ġie miżmum b'mod illeċitu;
- (b) jipprevjenu milli ssir iktar hsara lill-minuri jew li jiġu ulterjorment preġudikati partijiet interessati billi jieħdu jew jaraw li jittieħdu miżuri proviżorji;
- (c) jiksbru r-ritorn volontarju tal-minuri jew iwasslu għal soluzzjoni amikevoli tal-kwistjonijiet;
- (d) jiskambjaw, fejn desiderabbli, informazzjoni dwar l-isfond soċjali li minnu jkun ġej il-minuri;
- (e) jipprovdu informazzjoni ta' xorta ġenerali dwar il-liġi ta' l-Istat tagħhom f'dak li għandu x'jaqsam ma' l-applikazzjoni tal-Konvenzjoni;
- (f) jibdeu jew jgħinu fil-ftuh ta' proċeduri ġudizzjarji jew amministrattivi bil-għan li jinkiseb ir-ritorn tal-minuri u, fil-każijiet idoneji jagħmlu l-arrangamenti biex jiġi organizzat jew assigurat l-eżerċizzju effettiv tad-drittijiet ta' aċċess;
- (g) fejn iċ-ċirkostanzi jkunu hekk jeħtieġu, li jipprovdu jew jiffaċilitaw l-għoti ta' għajjnuna u pariri legali, inkluża l-partecipazzjoni ta' avukati u konsulenti;
- (h) jipprovdu dawk l-arrangamenti amministrattivi li jistgħu jkunu meħtieġa flokhom biex jiżguraw ir-ritorn tal-minuri qawwi u shih;
- (i) iżommu lil xulxin mgħarrfa dwar it-thaddim ta' din il-Konvenzjoni u, san fejn ikun possibbli, jeliminaw kull xkiel għall-applikazzjoni tagħha.

KAPITLU III – RITORN TA' MINURI

Artiklu 8

Kull persuna, istituzzjoni jew enti oħra li tallega li l-minuri tneħħa jew inżamm bi ksur ta' drittijiet ta' kustodja, jista' japplika sew lill-Awtorità Ċentrali tal-post fejn soltu joqgħod il-minuri sew lill-Awtorità Ċentrali ta' kull Stat Kontraenti iehor għall-assistenza biex jinkiseb ir-ritorn tal-minuri.

L-applikazzjoni għandu jkun fiha —

(a) informazzjoni dwar l-identità ta' l-applikant, tal-minuri u tal-persuna li allegatament neħħiet jew żammet il-minuri;

(b) meta jkun disponibbli, id-data tat-twelid tal-minuri;

(ċ) ir-raġunijiet li fuqhom l-applikant ikun qed jibbaża t-talba tar-ritorn tal-minuri;

(d) kull informazzjoni disponibbli dwar il-post fejn ikun jinsab il-minuri u l-identità tal-persuna li magħha x'aktarx ikun qiegħed il-minuri.

L-applikazzjoni jista' jkollha magħha jew tiġi supplimentata —

(e) b'kopja awtentika ta' kull deċiżjoni jew ftehim rilevanti;

(f) b'ċertifikat jew affidavit mahruġ mill-Awtorità Ċentrali, jew minn xi awtorità kompetenti oħra ta' l-Istat fejn il-minuri jkun soltu jgħix, jew minn persuna kwalifikata, dwar il-liġi rilevanti f'dak l-Istat;

(g) b'kull dokument iehor rilevanti.

Artiklu 9

Jekk l-Awtorità Ċentrali li tirċievi applikazzjoni msemmija fl-Artiklu 8 għandha għaliex taħseb li l-minuri jinsab fi Stat Kontraenti iehor, hija għandha tibgħat direttament u minghajr dewmien l-applikazzjoni lill-Awtorità Ċentrali ta' dak l-Istat Kontraenti u tgħarraf lill-Awtorità Ċentrali rikjedenti, jew lill-applikant, skond il-każ.

Artiklu 10

L-Awtorità Ċentrali ta' l-Istat fejn ikun jinsab il-minuri għandha tiehu jew iġġieghel li jittiehdu l-miżuri kollha meħtieġa biex jinkiseb ir-ritorn volontarju tal-minuri.

Artiklu 11

L-awtoritajiet ġudizzjarji jew amministrattivi ta' Stati Kontraenti għandhom imexxu bil-heffa l-proċeduri għar-ritorn ta' minuri.

Jekk l-awtorità ġudizzjarja jew amministrattiva li tkun, ma tkunx waslet għal deċiżjoni fi żmien sitt ġimgħat mid-data tal-bidu tal-proċedimenti, l-applikant jew l-Awtorità Ċentrali ta' l-Istat rikjest, sew b'inizjattiva tagħha sew jekk mitluba mill-Awtorità Ċentrali ta' l-Istat rikjedenti, jkollha d-dritt li titlob stqarrija bir-raġunijiet għad-dewmien. Jekk l-Awtorità Ċentrali ta' l-Istat rikjest tirċievi risposta, dik l-Awtorità għandha tghaddi r-risposta lill-Awtorità Ċentrali ta' l-Istat rikjedenti, jew lill-applikant, skond il-każ.

Artiklu 12

Meta minuri jkun tneħħa jew inżamm b'mod illeċitu skond l-Artiklu 3 u, fid-data tal-bidu tal-proċedimenti quddiem l-awtorità ġudizzjarja jew amministrattiva ta' l-Istat Kontraenti fejn ikun jinsab il-minuri, ikun għadda perjodu ta' inqas minn sena mid-data tat-tneħħija jew żamma illeċita, l-awtorità li tkun għandha tordna r-ritorn tal-minuri biex dan isir minnufih.

L-awtorità ġudizzjarja jew amministrattiva, ukoll meta il-proċedimenti jkunu inbdew wara li jkun għalaq il-perjodu ta' sena msemmi fil-paragrafu ta' qabel, għandha tordna wkoll ir-ritorn tal-minuri kemm-il darba ma jiġix pruvat li l-minuri jkun issa adatta ruħu fl-ambjent ġdid tiegħu.

Meta l-awtorità ġudizzjarja jew amministrattiva ta' l-Istat rikjest ikollha għaliex tissuspetta li l-minuri jkun ittiehed fi Stat iehor, din tista' twaqqaf il-proċedimenti jew tiċhad l-applikazzjoni għar-ritorn tal-minuri.

Artiklu 13

Minkejja d-dispożizzjonijiet ta' l-Artiklu ta' qabel, l-awtorità ġudizzjarja jew amministrattiva ta' l-Istat rikjest m'hiex marbuta li tordna r-ritorn tal-minuri jekk il-persuna, istituzzjoni jew enti ohra li topponi r-ritorn iġġib prova li —

(a) il-persuna, istituzzjoni jew enti ohra li jkunu vestiti bil-kura tal-persuna tal-minuri ma kinux attwalment qeghdin jeżerċitaw id-drittijiet tal-kustodja fiż-żmien meta jkun tneħħa jew inżamm il-minuri jew li taw il-kunsens tagħhom jew sussegwentement siktur fit-tneħħija jew żamma tal-minuri; jew

(b) jkun hemm riskju kbir li r-ritorn tal-minuri se jesponih għal dannu fiżiku jew psikologiku jew inkella jqiegħed lill-minuri f'sitwazzjoni intollerabbli.

L-awtorità ġudizzjarja jew amministrattiva tista' wkoll tiċhad li tordna r-ritorn tal-minuri jekk issib li l-minuri joġġezzjona għar-ritron tiegħu u jkun lahaq età u livell ta' maturità li jkun tajjeb li wiehed jagħti każ tal-fehmiet tiegħu.

Meta jitqiesu ċ-ċirkostanzi msemmija f'dan l-Artiklu, l-awtoritajiet ġudizzjarji u amministrattivi għandhom iqisu l-informazzjoni li jkollha x'taqsam ma' l-isfond soċjali tal-minuri kif provduta mill-Awtorità Ċentrali jew minn xi awtorità kompetenti oħra tal-post fejn ikun soltu joqghod il-minuri.

Artiklu 14

Sabiex jiġi aċċertat jekk kienx hemm tnehhija jew żamma illeċita li taqa' taht it-tifsira ta' l-Artiklu 3, l-awtoritajiet ġudizzjarji jew amministrattivi ta' l-Istat rikjest jistgħu jagħtu każ direttament tal-liġi u tad-deċiżjonijiet ġudizzjarji jew amministrattivi li jkunu jew ma jkunux rikonoxxuti formalment fl-Istat fejn il-minuri jkun soltu joqghod, mingħajr ma jirrikorru għall-proċeduri speċifiċi għall-prova ta' dik il-liġi jew għall-għarfien ta' deċiżjonijiet ta' pajjiżi barranin li kienu xort'oħra jkunu applikabbli.

Artiklu 15

L-awtoritajiet ġudizzjarji jew amministrattivi ta' Stat Kontraenti jistgħu, qabel ma jagħmlu ordni għar-ritorn ta' minuri, jeħtieġu lill-applikant li jikseb mingħand l-awtoritajiet ta' l-Istat fejn ikun soltu joqghod il-minuri sentenza jew deċiżjoni oħra fis-sens illi t-tnehhija jew iż-żamma kienet wahda illeċita għat-tenur ta' l-Artiklu 3 tal-Konvenzjoni, meta dik is-sentenza jew deċiżjoni tkun tista' tinkiseb f'dak l-Istat. L-Awtoritajiet Ċentrali ta' l-Istati Kontraenti għandhom sa fejn dan ikun prattikabbli jassistu lill-applikanti fil-ksib ta' dik is-sentenza jew deċiżjoni.

Artiklu 16

Wara li jkunu rċevew l-avviż ta' tnehhija jew żamma illeċita ta' minuri għat-tenur ta' l-Artiklu 3, l-awtoritajiet ġudizzjarji jew amministrattivi ta' l-Istat Kontraenti fejn ikun ittiehed jew inżamm il-minuri m'għandhomx jiddeċiedu fuq il-mertu tad-drittijiet tal-kustodja qabel ma jiġi deċiż illi l-minuri m'għandux jiġi ritornat taht din il-Konvenzjoni jew kemm-il darba ma ssirx applikazzjoni taht din il-Konvenzjoni fi żmien raġonevoli minn meta jkunu irċevew l-avviż.

Artiklu 17

Il-fatt uniku li tkun inġhatat deċiżjoni dwar il-kustodja jew li dik id-deċiżjoni tista' tiġi rikonoxxuta fl-Istat rikjest m'għandux ikun motiv biex jiġi rifjutat ir-ritorn ta' minuri taht din il-Konvenzjoni, iżda l-awtoritajiet ġudizzjarji jew amministrattivi ta' l-Istat rikjest jistgħu iqisu xi jkunu r-raġunijiet għal dik id-deċiżjoni meta jiġu biex japplikaw din il-Konvenzjoni.

Artiklu 18

Id-dispożizzjonijiet ta' dan il-Kapitlu ma jillimitawx is-setgħa ta' xi awtorità gudizzjarja jew amministrattiva li tordna r-ritorn tal-minuri f'kull żmien li jkun.

Artiklu 19

Deċizzjoni li tittiehed taht din il-Konvenzjoni dwar ir-ritorn ta' minuri m'għandhiex titqies bħala li tkun qed tiddeċiedi wkoll il-mertu ta' xi kwistjoni dwar il-kustodja.

KAPITLU IV – DRITTIJET TA' AĊĊESS*Artiklu 21*

Tista' ssir applikazzjoni lill-Awtoritajiet Ċentrali ta' l-Istati Kontraenti biex isiru arrangamenti għall-organizzazzjoni jew biex jiġi żgurat l-eżerċizzju effettiv ta' drittijiet ta' aċċess bl-istess mod bħalma ssir applikazzjoni għar-ritorn ta' minuri.

L-Awtoritajiet Ċentrali huma marbuta b'kull obbligu ta' koperazzjoni kif imsemmi fl-Artiklu 7 biex iġibu 'l quddiem it-tgawdija paċifika tad-drittijiet ta' aċċess u l-adempiment ta' kull kondizzjoni li għalihom jista' jkun sugġett l-eżerċizzju ta' dawk id-drittijiet. L-Awtoritajiet Ċentrali għandhom jaraw kif, sa fejn ikun possibbli, inehhu l-ostakoli kollha għall-eżerċizzju ta' dawk id-drittijiet. L-Awtoritajiet Ċentrali jistgħu jibdwu, jew jghinu sew direttament sew permezz ta' intermedjarji f'li jinbdew, proċedimenti bil-ghan li jiġu organizzati jew protetti dawn id-drittijiet u biex jiġi żgurat kull rispett għall-kondizzjonijiet li għalihom ikun sugġett l-eżerċizzju ta' dawn id-drittijiet.

KAPITLU V – DISPOŻIZZJONIJIET ĠENERALI*Artiklu 22*

Ebda garanzija, rahan jew depożitu, jkunu kif ikunu msejha, m'għandhom jenhtiegu biex jagħmlu tajjeb għall-hlas ta' nfiq u spejjeż fil-proċeduri gudizzjarji jew amministrattivi li jidhlu fil-ghan ta' din il-Konvenzjoni.

Artiklu 24

Kull applikazzjoni, komunikazzjoni jew dokument ieħor li jintbagħat lill-Awtorità Ċentrali ta' l-Istat rikjest għandu jkun fl-ilsien originali, u jkun imsieheb bi traduzzjoni fl-ilsien uffiċjali jew f'wieħed mill-ilsna uffiċjali ta' l-Istat rikjest jew, fejn dan mhux possibbli, bi traduzzjoni fl-ilsien Franciż jew Inġliż.

Artiklu 26

Kull Awtorità Ċentrali ghandha tbatlha l-ispejjeż tagħha filli tapplika din il-Konvenzjoni.

L-Awtoritajiet Ċentrali u servizzi pubbliċi oħra ta' Stati Kontraenti m'għandhomx jitolbu ebda hlas għal applikazzjonijiet preżentati taħt din il-Konvenzjoni. B'mod partikolari m'għandhomx jitolbu ebda hlas mingħand l-applikant għal infieq u spejjeż tal-proċedimenti jew, fejn dan japplika, dawk konnessi mad-drittijiet ta' avukati jew konsulenti. Izda huma jistgħu jitolbu l-hlas ta' l-ispejjeż li jsiru jew li jkunu se jsiru sabiex jitwettaq ir-ritorn tal-minuri.

Izda, Stat Kontraenti jista, billi jagħmel riserva skond l-Artiklu 42, jiddikjara li mhux ser ikun marbut li jassumi spejjeż imsemmija fil-paragrafu ta' qabel li joħroġu mill-partecipazzjoni ta' avukati jew konsulenti jew minn proċedimenti fil-qorti, hliet sal-limitu li dawk l-ispejjeż ikunu koperti bis-sistema tiegħu ta' għajjuna u pariri legali.

Meta jiġi ordnat ir-ritorn tal-minuri jew tinhareg ordni li jkollha x'taqsam mad-drittijiet ta' aċċess taħt din il-Konvenzjoni, l-awtoritajiet ġudizzjarji jew amministrattivi jistgħu, meta jkun hekk sew li jsir, jordnaw lill-persuna li tkun nehhiet jew żammet il-minuri, jew li tkun ċaħdet l-eżerċizzju tad-drittijiet ta' aċċess, li tħallas l-ispejjeż meħtieġa magħmula minn jew f'isem l-applikant, inklużi l-ispejjeż tal-vjaġġ, kull spjiza jew hlas li jsir biex jinstab il-minuri, l-ispejjeż għar-rappreżentanza legali ta' l-applikant, u dawk għar-ritorn tal-minuri.

Artiklu 27

Meta jkun jidher ċar li l-obbligi li joħroġu minn din il-Konvenzjoni ma jkunux qegħdin jitwettqu jew li l-applikazzjoni hi xort'oħra bla bażi, l-Awtorità Ċentrali ma tkunx marbuta li taċċetta l-applikazzjoni. F'dak il-każ, l-Awtorità Ċentrali għandha minnufih tgħarraf lill-applikant jew lill-Awtorità Ċentrali li permezz tagħha tkun saret l-applikazzjoni, skond il-każ, bir-raġunijiet tagħha.

Artiklu 28

Awtorità Ċentrali tista' teħtieġ li l-applikazzjoni tkun imsieħba b'awtorizzazzjoni bil-miktub li tagħtiha s-setgħa li taġixxi f'isem l-applikant, jew li tahtar rappreżentant biex hekk jaġixxi.

Artiklu 29

Din il-Konvenzjoni ma żżomm lil ebda persuna, istituzzjoni jew enti li tallega li kien hemm xi ksur tad-drittijiet tal-kustodja jew ta' aċċess skond it-tifsira ta' l-Artiklu 3 jew 21 milli japplikaw direttament lill-awtoritajiet ġudizzjarji jew amministrattivi ta' Stat Kontraenti, sew skond sew mhux skond id-dispożizzjonijiet ta' din il-Konvenzjoni.

Artiklu 30

Kull applikazzjoni li ssir lill-Awtoritajiet Ċentrali jew direttament lill-awtoritajiet gudizzjarji jew amministrattivi ta' Stat Kontraenti skond id-dispożizzjonijiet ta' din il-Konvenzjoni, flimkien mad-dokumenti u kull taghrif iehor mehmuż magħha jew provdut minn Awtorità Ċentrali, jkun ammissibbli fil-qrati jew quddiem l-awtoritajiet amministrattivi ta' l-Istati Kontraenti.

Artiklu 31

Meta fi Stat li, għar-rigward tal-kustodja ta' minuri, jkollu żewġ sistemi ta' liġi jew aktar applikabbli f'oqsma territorjali differenti —

(a) kull referenza għall-post fejn wiehed soltu joqghod f'dak l-Istat għandha tinftihem li tirreferi għall-post fejn wiehed soltu joqghod f'taqsimha territorjali ta' dak l-Istat;

(b) kull referenza għal-liġi ta' l-Istat tal-post fejn wiehed soltu joqghod għandha tinftihem li tirreferi għal-liġi tat-taqsimha territorjali f'dak l-Istat fejn il-minuri ikun soltu joqghod.

Artiklu 32

Meta fi Stat li, għar-rigward tal-kustodja tal-minuri, jkollu żewġ sistemi ta' liġi jew aktar applikabbli għal kategoriji differenti ta' persuni, kull referenza li ssir għal-liġi ta' dak l-Istat għandha tinftihem bħala li tkun qegħda tirreferi għas-sistema legali speċifikata mil-liġi ta' dak l-Istat.

IT-TIENI SKEDA

(Artikolu 14(2))

**KONVENZJONI EWROPEA DWAR IR-RIKONOXXIMENT U
L-INFURZAR TA' DEĊIŻJONIJET LI GħANDHOM X'JAQSMU
MAL-KUSTODJA TA' MINURI**

Artiklu 1

Għall-ghanijiet ta' din il-Konvenzjoni:

(a) “minuri” tfisser persuna ta' kull nazzjonalità li tkun, sakemm tkun taht is-sittax il-sena u ma jkollhiex id-dritt li tiddeċiedi dwar il-post tar-residenza tagħha taht liġi li tirregola fejn wiehed soltu joqghod, il-liġi dwar in-nazzjonalità tagħha jew il-liġi domestika ta' l-Istat indirizzat;

(b) “awtorità” tfisser awtorità ġudizzjarja jew amministrattiva;

(c) “deċiżjoni li għandha x’taqsam mal-kustodja” tfisser deċiżjoni ta’ awtorità sakemm din ikollha x’taqsam mal-kura tal-persuna tal-minuri, inklużi id-dritt ta’ deċiżjoni dwar il-post ta’ residenza, jew dwar id-dritt ta’ aċċess għalih;

(d) “tnehhija bla dritt” tfisser it-tnehhija ta’ minuri bi qsim ta’ fruntiera internazzjonali bi ksur ta’ deċiżjoni li għandha x’taqsam mal-kustodja tiegħu mogħtija fi Stat Kontraenti li tista’ tiġi infurzata f’dak l-Istat; u “tnehhija bla dritt” tinkludi wkoll:

(i) in-nuqqas ta’ ritorn ta’ minuri bi qsim ta’ fruntiera internazzjonali meta jgħaddi l-perjodu ta’ eżerċizzju tad-dritt ta’ aċċess għal dan il-minuri jew meta jgħaddi kull żmien iehor ta’ qagħda f’territorju li ma jkunx dak fejn tkun qed tiġi eżerċitata l-kustodja;

(ii) tnehhija li sussegwentement tiġi dikjarata kontra l-liġi skond it-tifsira ta’ l-Artiklu 12.

Artiklu 4

(1) Kull persuna li tkun kisbet fi Stat Kontraenti deċiżjoni li għandha x’taqsam mal-kustodja ta’ minuri u li tixtieq li dik id-deċiżjoni tiġi rikonoxxuta jew infurzata fi Stat Kontraenti iehor tista’ tindirizza applikazzjoni għal dan l-ghan lill-awtorità ċentrali f’kull Stat Kontraenti li jkun.

(2) L-applikazzjoni għandha tkun imsieħba bid-dokumenti msemmija fl-Artiklu 13.

(3) L-awtorità ċentrali li tircievi l-applikazzjoni, jekk din ma tkunx l-awtorità ċentrali fl-Istat indirizzat, għandha tibgħat id-dokumenti direttament u mingħajr dewmien lil dik l-awtorità ċentrali.

(4) L-awtorità ċentrali li tircievi l-applikazzjoni għandha żżomm lill-applikant mgharraf mingħajr ebda dewmien dwar f’hiex tkun waslet l-applikazzjoni tiegħu.

Artiklu 5

(1) L-awtorità ċentrali fl-Istat indirizzat għandha tmexxi jew tara li jitmexxa mingħajr dewmien dak kollu li taħseb li jkun sew li jsir, jekk ikun meħtieġ billi jinbdew proċedimenti quddiem l-awtoritajiet kompetenti tagħha, sabiex:

(a) jinstab fejn ikun qiegħed il-minuri;

(b) jiġi evitat, b’mod partikolari b’kull miżura proviżorja meħtieġa, kull preġudizzju għall-interess tal-minuri jew ta’ l-applikant;

- (c) jiġi żgurat ir-rikonoxximent jew l-infurzar tad-deċiżjoni;
- (d) tiġi żgurata l-konsenja tal-minuri lill-applikant meta jkun ġie ordnat l-infurzar;
- (e) tiġi mgharrfa l-awtorità rikjedenti bil-miżuri li jittiehdu u r-riżultati tagħhom.

(2) Fejn l-awtorità ċentrali fl-Istat indirizzat ikollha għaliex tifhem li l-minuri jkun jinsab fit-territorju ta' Stat Kontraenti iehor hija għandha tibghat id-dokumenti direttament u mingħajr dewmien lill-awtorità ċentrali ta' dak l-Istat.

(3) B'eċċezzjoni ta' l-ispejjeż ta' ripatrijazzjoni, kull Stat Kontraenti jintrabat li ma jitlob ebda pagament minghand applikant dwar miżuri mehuda taht il-paragrafu (1) ta' dan l-Artiklu mill-awtorità ċentrali ta' dak l-Istat f'isem l-applikant, inklużi l-ispejjeż tal-proċedimenti u, fejn japplika, l-ispejjeż magħmula għall-assistenza ta' avukat.

(4) Jekk ir-rikonoxximent jew l-infurzar jiġu miċhuda, u jekk l-awtorità ċentrali ta' l-Istat indirizzat tqis li għandha thares talba li ssir mill-applikant biex iġib f'dak l-Istat proċeduri li jkollhom x'jaqsmu mal-mertu tal-każ, dik l-awtorità għandha tagħmel mill-aħjar biex tiġi żgurata r-rappreżentanza ta' l-applikant fil-proċedimenti taht kondizzjonijiet li ma jkunu xejn anqas favorevoli minn dawk disponibbli għal persuna li tkun residenti u ċittadin ta' dak l-Istat u għal dan l-ghan tista', b'mod partikolari, tibda proċedimenti quddiem l-awtoritajiet kompetenti tagħha.

Artiklu 7

Deciżjoni li għandha x'taqsam mal-kustodja li tinghata f'xi Stat Kontraenti għandha tiġi rikonoxxuta u, jekk din tkun tista' tiġi infurzata fl-Istat ta' oriġini tagħha, din għandha tiġi infurzata f'kull Stat Kontraenti iehor.

Artiklu 9

(1) *[Ir-rikonoxximent u l-infurzar jistgħu ma jintlaqgħux]* jekk:

(a) fil-każ ta' deciżjoni li tinghata fil-kontumacia ta' konvenut jew tar-rappreżentant legali tiegħu, il-konvenut ma kienx ġie notifikat regolarment bid-dokument li bih inbdew il-proċedimenti jew dokument ekwivalenti fi żmien adegwat biex ikun jista' jagħmel id-difiża tiegħu; iżda dak in-nuqqas ta' notifika m'għandux jikkostitwixxi r-raġuni biex jiġu miċhuda r-rikonoxximent jew l-infurzar meta n-notifika ma tkunx saret għax il-konvenut ikun heba l-post fejn kien joqgħod mill-persuna li bdiet il-proċedimenti fl-Istat ta' oriġini;

(b) fil-każ ta' deċiżjoni mogħtija fil-kontumaċja tal-konvenut jew tar-rappreżentant legali tiegħu, il-kompetenza ta' l-awtorità li tat id-deċiżjoni ma kinitx bażata:

i. fuq il-post fejn soltu joqgħod il-konvenut; jew

ii. fuq l-aħħar post komuni fejn kienu joqgħodu l-ġenituri tal-minuri, jekk mill-anqas wiehed mill-ġenituri jkun għadu soltu joqgħod hemmhekk; jew

iii. fuq il-post fejn soltu joqgħod il-minuri;

(c) id-deċiżjoni tkun inkompatibbli ma' deċiżjoni li għandha x'taqsam mal-kustodja li setgħat tiġi infurzata fl-Istat indirizzat qabel it-tneħħija tal-minuri, kemm-il darba l-minuri kien soltu joqgħod fit-territorju ta' l-Istat rikjedenti għal sena qabel it-tneħħija tiegħu.

(3) Taht ebda ċirkostanza m'għandha deċiżjoni barranija tiġi eżaminata fil-meritu.

Artiklu 10

(1) [*Ir-rikonossiment u l-infurzar jistgħu ma jintlaqgħux ukoll*] għal xi waħda mir-raġunijiet li ġejjin:

(a) jekk jinstab li l-effetti tad-deċiżjoni huma b'mod ċar inkompatibbli mal-prinċipji fundamentali tal-liġi li għandha x'taqsam mal-familja u mal-minuri fl-Istat indirizzat;

(b) jekk jinstab li minhabba f'tibdil fiċ-ċirkostanzi li jinkludu ż-żmien li jgħaddi iżda li ma jinkludux it-tibdil biss fil-post fejn joqgħod il-minuri wara tneħħija illeċita, l-effetti tad-deċiżjoni oriġinali b'mod ċar ma jibqgħux aktar fl-interess tal-minuri;

(c) jekk fiż-żmien meta l-proċedimenti nbdew fl-Istat ta' oriġini:

i. il-minuri kien ċittadin ta' l-Istat indirizzat jew kien soltu joqgħod hemmhekk u ma kien hemm ebda konnessjoni bħal dik ma' l-Istat ta' oriġini;

ii. il-minuri kien ċittadin sew ta' l-Istat ta' oriġini sew ta' l-Istat indirizzat u kien soltu joqgħod fl-Istat indirizzat;

(d) jekk id-deċiżjoni tkun inkompatibbli ma' deċiżjoni mogħtija fl-Istat indirizzat jew tista' tiġi infurzata f'dak l-Istat wara li tkun inġat fi Stat iehor, bħala segwitu għal proċedimenti mibdija qabel ma tkun ġiet preżentata l-applikazzjoni għar-rikonossiment jew infurzar, u jekk ir-rifjut ikun fl-interess tal-minuri.

(2) Il-proċedimenti għar-rikonossiment jew infurzar jistgħu jiġu sospizi għal xi motiv minn dawn:

- (a) jekk tkun inbdiet proċedura ordinarja ta' reviżjoni tad-deċiżjoni oriġinali;
- (b) jekk il-proċedimenti li għandhom x'jaqsmu mal-kustodja tal-minuri, li jkunu nb dew qabel ma l-proċedimenti fl-Istat ta' oriġini jkunu ġew istitwiti, ikunu pendent i fl-Istat indirizzati;
- (c) jekk deċiżjoni oħra li għandha x'taqsam mal-kustodja tal-minuri tiffirma l-meritu ta' proċedimenti għall-infurzar jew ta' xi proċedimenti oħra li għandhom x'jaqsmu mar-rikonossiment tad-deċiżjoni.

Artiklu 11

(1) Deċiżjonijiet fuq id-drittijiet ta' aċċess u provvedimenti ta' deċiżjonijiet li għandhom x'jaqsmu mal-kustodja u li huma relatati mad-drittijiet ta' aċċess għandhom jiġu rikonossuti u infurzati skond l-istess kondizzjonijiet bħal kull deċiżjoni oħra li għandha x'taqsam mal-kustodja.

(2) Izda, l-awtorità kompetenti ta' l-Istat indirizzati tista' tistabilixxi l-kondizzjonijiet għat-tweqqieg u l-eżerċizzju tad-dritt ta' aċċess partikolarment, jekk tqis l-obbligazzjonijiet li jkunu intrabtu bihom il-partijiet fuq din il-kwistjoni.

(3) Meta ma tkun ittiehdet ebda deċiżjoni fuq id-dritt ta' aċċess jew meta ma jkunux intlaqgħu r-rikonossiment jew l-infurzar ta' deċiżjoni li għandha x'taqsam mal-kustodja, l-awtorità ċentrali ta' l-Istat indirizzati tista' tapplika lill-awtoritajiet kompetenti tagħha għal deċiżjoni fuq id-dritt ta' aċċess jekk il-persuna li tallega dritt ta' aċċess hekk titlob.

Artiklu 12

Meta, fil-waqt tat-tnehhija ta' minuri bi qsim ta' fruntiera internazzjonali, ma jkun hemm ebda deċiżjoni li tista' tiġi infurzata mogħtija fi Stat Kontraenti li għandha x'taqsam mal-kustodja tiegħu, id-dispożizzjonijiet ta' din il-Konvenzjoni għandhom ikunu japplikaw għal kull deċiżjoni li tiġi wara, li għandha x'taqsam mal-kustodja ta' dak il-minuri u li tiddikjara t-tnehhija bhala wahda illeċita, li tingħata fi Stat Kontraenti fuq talba ta' kull persuna li jkollha interess.

Artiklu 13

(1) Applikazzjoni għar-rikonossiment jew infurzar fi Stat Kontraenti iehor ta' deċiżjoni li għandha x'taqsam mal-kustodja għandu jentehmez magħha:

- (a) dokument li jkun jawtorizza lill-awtorità ċentrali ta' l-Istat indirizzati biex jaġixxi f'isem l-applikant jew biex jinhatar rappreżentant iehor għal dak l-għan;

- (b) kopja ta' deċiżjoni li tissodisfa l-kondizzjonijiet mehtieġa ta' awtentiċità;
- (ċ) fil-każ ta' deċiżjoni mogħtija fil-kontumaċja tal-konvenut jew tar-rappreżentant legali tiegħu, dokument li jistabbilixxi li l-konvenut kien ġie regolarment notifikat bid-dokument li bih inbdew il-proċedimenti jew dokument ekwivalenti;
- (d) jekk ikun japplika, kull dokument li jistabbilixxi li, skond il-liġi ta' l-Istat ta' oriġini, id-deċiżjoni tkun tista' tiġi infurzata;
- (e) jekk ikun possibbli, dikjarazzjoni li tkun tindika l-post jew postijiet fejn il-minuri x'aktarx joqghod fl-Istat indirizzat;
- (f) proposti dwar kif il-kustodja tal-minuri għandha tiġi restitwita.

Artiklu 15

(1) Qabel ma' tittiehed deċiżjoni skond il-paragrafu (1)(b) ta' l-Artiklu 10, l-awtorità interessata fl-Istat indirizzat:

- (a) għandha taċċerta ruhha dwar il-fehmiet tal-minuri kemm-il darba dan ma jkunx imprattikabbli minhabba fl-età u l-fehma tal-minuri; u
- (b) tista' titlob li jsiru l-investigazzjonijiet mehtieġa.

(2) L-ispejjeż ta' investigazzjonijiet f'kull Stat Kontraenti għandhom ikunu sopportati mill-awtoritajiet ta' l-Istat fejn dawn isiru.

Applikazzjonijiet għal investigazzjonijiet u r-rizultanzi tagħhom jistgħu jintbagħtu lill-awtorità interessata permezz ta' l-awtoritajiet ċentrali.

IT-TIELET SKEDA

(Artikolu 13)

Riservi

(1) Il-Gvern ta' Malta jiddikjara li mhux se jkun marbut li jagħmel xi spejjeż li jirrizultaw mill-partecipazzjoni ta' avukati jew konsulenti jew minn proċedimenti fil-Qrati, hlief meta dawk l-ispejjeż jistgħu jkunu koperti bl-ghajnuna legali.

(2) Skond l-Artiklu 24 tal-Konvenzjoni, Malta tirriserva d-dritt li taċċetta traduzzjonijiet tad-dokumenti originali biss bl-ilsien Inġliż.

IR-RABA' SKEDA

(Artikolu 14(2))

Riserva

Skond l-Artiklu 17, paragrafu 1 tal-Konvenzjoni, il-Gvern ta' Malta jirriserva d-dritt li ma jilqax ir-rikonoxximent u l-eżekuzzjoni ta' deċiżjonijiet li ghandhom x'jaqsmu mal-kustodja, fil-każijiet li jaqgħu taħt l-Artikli 8 u 9 jew xi wiehed minn dawn l-Artikli, għal xi waħda mir-ragunijiet li dwarhom hemm provdut fl-Artiklu 10, paragrafu 1(a), (b), (ċ) u (d).

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru 138 tal-21 ta' Lulju, 1999.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

GUIDO DE MARCO
President

27th July, 1999

ACT No. XIII of 1999

AN ACT to enable Malta to ratify two international Conventions relating respectively to the civil aspects of international child abduction and to the recognition and enforcement of custody decisions.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows: —

Short title and commencement.

1. (1) This Act may be cited as the Child Abduction and Custody Act, 1999.

(2) This Act shall come into force on such day as the Minister responsible for Foreign Affairs may by notice in the Gazette establish and different dates may be so established for different provisions and different purposes thereof.

Interpretation.

2. (1) In this Act, unless the context otherwise requires —

“abduction” means the taking by force or the kidnapping of a person;

“child” means a person under the age of sixteen years;

“Malta” has the same meaning assigned to it by the Constitution;

“Minister” means the Minister responsible for justice.

(2) In the First and Second Schedules to this Act, if there is any conflict between the English and the Maltese texts, the English text shall prevail.

PART I

International Child Abduction

3. (1) In this Part of this Act “the Convention” means the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on the 25th October, 1980 and the relevant Articles of which Convention are set out in the First Schedule to this Act.

The Hague
Convention.

(2) Subject to the provisions of this Part of this Act, the provisions of the Convention set out in the First Schedule to this Act shall have the force of law in Malta.

4. (1) For the purposes of the Convention as having the force of law in Malta under this Part of this Act, the Contracting States other than Malta shall be those for the time being specified by the Minister responsible for Foreign Affairs by an Order in the Gazette under this section.

Contracting
States.

(2) Such Order shall specify the date of the coming into force of the Convention as between Malta and any State specified in it; and, except where the Order otherwise provides, the Convention shall apply as between Malta and that State only in relation to wrongful removals or retentions occurring on or after that date.

(3) Where the Convention applies, or applies only, to a particular territory or particular territories specified in a declaration made by a Contracting State under Article 39 or 40 of the Convention references to that State in subsections (1) and (2) above shall be construed as references to that territory or those territories.

5. The functions under the Convention of a Central Authority shall be discharged by the Director responsible for welfare and any application made under the Convention by or on behalf of a person outside Malta may be addressed to the Office of the Director responsible for welfare.

Central
Authority.

6. (1) The First Hall of the Civil Court or any other Court which the Minister may by order designate shall have jurisdiction to entertain applications under the Convention.

Jurisdiction.

(2) Whenever any person interested or the Director of Welfare alleges that a child has been wrongfully removed within the meaning of Article 3 of the Convention, he may, without prejudice to any other action with respect to the same matter that is lawfully available, make an application under subsection (1) of this section for redress.

(3) Any party to the proceedings shall have a right of appeal to the Court of Appeal.

Interim powers.

7. Where an application has been made under the Convention to the First Hall of the Civil Court or to any other Court which the Minister may by order designate, the court may, at any time before the application is determined, give such interim directions as it thinks fit for the purpose of securing the welfare of the child concerned or of preventing changes in the circumstances relevant to the determination of the application.

Reports.

8. Where the Director responsible for welfare is requested to provide information relating to a child under Article 7(d) of the Convention he may:

(a) request any person to make a report to him in writing with respect to any matter which appears to him to be relevant;

(b) request any court to which a written report relating to the child has been made to send him a copy of the report,

and such a request shall be duly complied with.

Proof of documents and evidence.

9. (1) For the purposes of Article 14 of the Convention a decision or determination of a judicial or administrative authority outside Malta may be proved by a duly authenticated copy of the decision or determination; and any document purporting to be such a copy shall be deemed to be a true copy unless the contrary is shown.

(2) For the purposes of subsection (1) of this section, a copy is duly authenticated if it bears the seal, or is signed by a judge or officer of the authority in question.

(3) For the purposes of Articles 14 and 30 of the Convention any such document as is mentioned in Article 8 of the Convention, or a certified copy of any such document, shall be sufficient evidence of anything stated in it.

Declarations by the First Hall of the Civil Court or any other designated Court.

10. The First Hall of the Civil Court or any other Court designated by order by the Minister may, on an application made for the purposes of Article 15 of the Convention by any person appearing to the Court to have an interest in the matter, make a declaration that the removal of any child from, or his retention outside, Malta was wrongful within the meaning of Article 3 of the Convention.

Suspension of court's powers in cases of wrongful removal.

11. The reference in Article 16 of the Convention to deciding on the merits of rights of custody shall be construed as a reference to:—

(a) making, varying or revoking a custody order under sections 47, 56, 60, 61 or 149 of the Civil Code;

Cap. 16.

(b) registering or enforcing a decision under Part II of this Act.

12. The Rule-Making Board established under section 29 of the Code of Organization and Civil Procedure may make such provision for giving effect to this Part of this Act as appears to it to be necessary or expedient.

Rules of Court.
Cap. 12.

13. (1) As Malta is making such a reservation (reproduced in the Third Schedule to this Act) as is mentioned in the third paragraph of Article 26 of the Convention, the costs mentioned in that paragraph shall not be borne by any Minister or any authority in Malta.

Reservations.

(2) Malta is also making a reservation to the effect that communications sent to the Central Authority shall be accompanied by a translation in English.

PART II

Recognition and Enforcement of Custody Decisions

14. (1) In this Part of this Act "the Convention" means the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children which was signed in Luxembourg on 20th May, 1980, and the relevant Articles of which Convention are set out in the Second Schedule to this Act.

The European
Convention.

(2) Subject to the provisions of this Part of this Act, the provisions of that Convention set out in the Second Schedule to this Act (which include Articles 9 and 10 as they have effect in consequence of a reservation made by Malta under Article 17, which reservation is reproduced in the Fourth Schedule to this Act) shall have the force of law in Malta.

15. (1) For the purposes of the Convention as having the force of law in Malta under this Part of this Act, the Contracting States other than Malta shall be those for the time being specified by the Minister responsible for Foreign Affairs by an Order in the Gazette under this section.

Contracting
States.

(2) Such Order shall specify the date of the coming into force of the Convention as between Malta and any State specified in the Order.

(3) Where the Convention applies, or applies only, to a particular territory or particular territories specified by a Contracting State under Article 24 or 25 of the Convention references to that State in subsections (1) and (2) above shall be construed as references to that territory or those territories.

Central
Authority.

16. (1) The functions under the Convention of a Central Authority shall be discharged by the Director responsible for welfare.

(2) Any application made under the Convention by or on behalf of a person outside Malta may be addressed to the Director responsible for welfare.

Recognition of
decisions.

17. (1) Articles 7 and 12 of the Convention shall have effect in accordance with this section.

(2) A decision to which either of those Articles applies which was made in a Contracting State other than Malta shall be recognised in Malta as if made by a court in Malta but —

(a) the Court of Appeal may, on the application of any person appearing to it to have an interest in the matter, declare on any of the grounds specified in Article 9 or 10 of the Convention that the decision is not to be recognised in Malta; and

(b) the decision shall not be enforceable in Malta unless registered in the appropriate court under section 18 of this Act.

(3) The references in Article 9(1)(c) of the Convention to the removal of the child are to his improper removal within the meaning of the Convention.

Registration of
decisions.

18. (1) A person on whom any rights are conferred by a decision relating to custody made by an authority in a Contracting State other than Malta may make an application for the registration of the decision in the registry of the Court of Appeal.

(2) The Central Authority in Malta shall assist such a person in making such an application if a request for such assistance is made by him or on his behalf by the Central Authority of the Contracting State in question.

(3) An application under subsection (1) or a request under subsection (2) shall be treated as a request for enforcement for the purposes of Articles 10 and 13 of the Convention.

(4) The Court of Appeal shall refuse to register a decision if —

(a) the court is of the opinion that on any of the grounds specified in Article 9 or 10 of the Convention the decision should not be recognised in Malta;

(b) the court is of the opinion that the decision is not enforceable in the Contracting State where it was made and is not a decision to which Article 12 of the Convention applies; or

(c) an application in respect of the child under Part I of this Act is pending.

(5) In this section “decision relating to custody” has the same meaning as in the Convention.

19. (1) Where a decision which has been registered under section 18 above is varied or revoked by an authority in the Contracting State in which it was made, the person on whose behalf the application for registration of the decision was made shall notify the Court of Appeal of the variation or revocation. Variation and revocation of registered decisions.

(2) Where the Court of Appeal is notified under subsection (1) above of the revocation of a decision, it shall —

(a) cancel the registration, and

(b) notify such persons as may be prescribed by such rules of court as may be made by the Rule-Making Board set up under section 29 of the Code of Organization and Civil Procedure, of the cancellation. Cap. 12.

(3) Where a court is notified under subsection (1) of the variation of a decision, it shall —

(a) notify such persons as may be prescribed by rules of court as may be made of the variation; and

(b) subject to any conditions which may be prescribed by such rules, vary the registration.

(4) The Court of Appeal may also, on the application of any person appearing to the court to have an interest in the matter, cancel or vary the registration if it is satisfied that the decision has been revoked or, as the case may be, varied by an authority in the Contracting State in which it was made.

20. Where a decision relating to custody has been registered under section 18, the Court of Appeal shall have the same powers for the purpose of enforcing the decision as if it had been made by it; and proceedings for or with respect to enforcement may be taken accordingly. Enforcement of decisions.

Interim powers.

21. Where an application has been made to the Court of Appeal for the registration of a decision under section 18 or for the enforcement of such a decision, the court may, at any time before the application is determined, give such interim directions as it thinks fit for the purpose of securing the welfare of the child concerned or of preventing changes in the circumstances relevant to the determination of the application or, in the case of an application for registration, to the determination of any subsequent application for the enforcement of the decision.

Suspension of court's powers.

22. (1) Where it appears to any court in which such proceedings as are mentioned in subsection (2) of this section are pending in respect of a child that —

(a) an application has been made for the registration of a decision in respect of the child under section 18 (other than a decision to which subsection (3) of this section applies) or that such a decision is registered; and

(b) the decision was made in proceedings commenced before the proceedings which are pending,

the powers of the court with respect to the child in those proceedings shall be restricted as mentioned in subsection (2) of this section unless, in the case of an application for registration, the application is refused.

(2) Where subsection (1) of this section applies the court shall not in the case of custody proceedings, make, vary or revoke any custody order.

(3) The decision referred to in subsection (1) above is a decision which is only a decision relating to custody within the meaning of section 18 of this Act by virtue of being a decision relating to rights of access.

(4) Paragraph (b) of Article 10(2) of the Convention shall be construed as referring to custody proceedings within the meaning of this Act.

Reports.

23. Where the Director responsible for welfare is requested to make enquiries about a child under Article 15(1)(b) of the Convention he may —

(a) request any person to make a report to him in writing with respect to any matter relating to the child concerned which appears to him to be relevant;

(b) request any court to which a written report relating to the child has been made to send him a copy of the report,

and any such request shall be duly complied with.

24. (1) In any proceedings under this Part of this Act a decision of an authority outside Malta may be proved by a duly authenticated copy of the decision; and any document purporting to be such a copy shall be deemed to be a true copy unless the contrary is shown.

Proof of documents
and evidence.

(2) For the purposes of subsection (1) of this section, a copy is duly authenticated if it bears the seal, or is signed by judge or officer, of the authority in question.

(3) In any proceedings under this Part of this Act any such document as is mentioned in Article 13 of the Convention, or a certified copy of any such document, shall be sufficient evidence of anything stated in it.

25. (1) Where a person on whom any rights are conferred by a decision relating to custody made by a court in Malta makes an application to the Director responsible for welfare under Article 4 of the Convention with a view to securing its recognition or enforcement in another Contracting State, the said Director may require the court which made the decision to furnish him with all or any of the documents referred to in Article 13(1)(b), (c) and (d) of the Convention.

Decisions of
Maltese courts.

(2) Where in any custody proceedings a court in Malta makes a decision relating to a child who has been removed from Malta, the court may also, on an application made by any person for the purposes of Article 12 of the Convention, declare the removal to have been unlawful if it is satisfied that the applicant has an interest in the matter and that the child has been taken from or sent or kept out of Malta without the consent of the person (or, if more than one, all the persons) having the right to determine the child's place of residence in Malta.

(3) In this section "decision relating to custody" has the same meaning as in the Convention.

26. (1) The Rule-Making Board set up under section 29 of the Code of Organization and Civil Procedure may make such provision for giving effect to this Part of this Act as appears to that authority to be necessary or expedient.

Rules of
court.

(2) Without prejudice to the generality of subsection (1) of this section, rules of court may make provision —

(a) with respect to the procedure on applications to a court under any provision of this Part of this Act and with respect to the documents and information to be furnished and the notices to be given in connection with any such application;

(b) for the giving of directions requiring the disclosure of information about any child who is the subject of proceedings under this Part of this Act and for safeguarding its welfare.

PART III

Supplementary

Termination of existing custody orders, etc.

27. (1) Where —

(a) an order is made for the return of a child under Part I of this Act; or

(b) a decision with respect to a child (other than decisions to which subsection (2) of this section applies) is registered under section 18 of this Act,

any custody order inconsistent with such order or decision relating to him shall cease to have effect.

(2) The decision referred to in paragraph (b) of subsection (1) above is a decision which is only a decision relating to custody within the meaning of section 18 of this Act by virtue of being a decision relating to rights of access.

Expenses.

28. Expenses incurred by the Director of Welfare for the purposes of this Act shall be paid out of money provided by the House of Representatives for the purpose.

Ratification of Treaties.

29. By virtue of this Act, the Government of Malta is authorised to ratify the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on the 25th October, 1980 and the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children signed in Luxembourg on the 20th May, 1980.

SCHEDULES

FIRST SCHEDULE

(Section 3(1))

**CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL
CHILD ABDUCTION**

CHAPTER 1 - SCOPE OF THE CONVENTION

Article 3

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.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of sixteen years.

Article 5

For the purposes of this Convention —

(a) “rights of custody” shall include rights relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence;

(b) “rights of access” shall include the right to take a child for a limited period of time to a place other than the child’s habitual residence.

CHAPTER II – CENTRAL AUTHORITIES

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures —

(a) to discover the whereabouts of a child who has been wrongfully removed or retained;

(b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

(c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

(d) to exchange, where desirable, information relating to the social background of the child;

(e) to provide information of a general character as to the law of their State in connection with the application of the Convention;

(f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;

(g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

(h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

(i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III – RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain —

- (a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
- (b) where available, the date of birth of the child;
- (c) the grounds on which the applicant's claim for return of the child is based;
- (d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by —

- (e) an authenticated copy of any relevant decision or agreement;
- (f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
- (g) any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested state has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that —

(a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

CHAPTER IV – RIGHTS OF ACCESS

Article 21

An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V – GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested 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 requested State or, where that is not feasible, a translation into French or English.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorisation empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this

Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units —

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

(b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

SECOND SCHEDULE

(Section 14(2))

**EUROPEAN CONVENTION ON RECOGNITION AND ENFORCEMENT
OF DECISIONS CONCERNING CUSTODY OF CHILDREN**

Article 1

For the purposes of this Convention:

(a) “child” means a person of any nationality, so long as he is under 16 years of age and has not the right to decide on his own place of residence under the law of his habitual residence, the law of his nationality or the internal law of the State addressed;

(b) “authority” means a judicial or administrative authority;

(c) “decision relating to custody” means a decision of an authority in so far as it relates to the care of the person of the child, including the right to decide on the place of his residence, or to the right of access to him;

(d) "improper removal" means the removal of a child across an international frontier in breach of a decision relating to his custody which has been given in a Contracting State and which is enforceable in such a State; "improper removal" also includes:

(i) the failure to return a child across an international frontier at the end of a period of the exercise of the right of access to this child or at the end of any other temporary stay in a territory other than that where the custody is exercised;

(ii) a removal which is subsequently declared unlawful within the meaning of Article 12.

Article 4

(1) Any person who has obtained in a Contracting State a decision relating to the custody of a child and who wishes to have that decision recognised or enforced in another Contracting State may submit an application for this purpose to the central authority in any Contracting State.

(2) The application shall be accompanied by the documents mentioned in Article 13.

(3) The central authority receiving the application, if it is not the central authority in the State addressed, shall send the documents directly and without delay to that central authority.

(4) The central authority receiving the application shall keep the applicant informed without delay of the progress of his application.

Article 5

(1) The central authority in the State addressed shall take or cause to be taken without delay all steps which it considers to be appropriate, if necessary by instituting proceedings before its competent authorities, in order:

(a) to discover the whereabouts of the child;

(b) to avoid, in particular by any necessary provisional measures, prejudice to the interests of the child or of the applicant;

(c) to secure the recognition or enforcement of the decision;

(d) to secure the delivery of the child to the applicant where enforcement is granted;

(e) to inform the requesting authority of the measures taken and their results.

(2) Where the central authority in the State addressed has reason to believe that the child is in the territory of another Contracting State it shall send the documents directly and without delay to the central authority of that State.

(3) With the exception of the cost of repatriation, each Contracting State undertakes not to claim any payment from an applicant in respect of any measures taken under paragraph (1) of this Article by the central authority of that State on the applicant's behalf, including the costs of proceedings and, where applicable, the costs incurred by the assistance of a lawyer.

(4) If recognition or enforcement is refused, and if the central authority of the State addressed considers that it should comply with a request by the applicant to bring in that State proceedings concerning the substance of the case, that authority shall use its best endeavours to secure the representation of the applicant in the proceedings under conditions no less favourable than those available to a person who is resident in and a national of that State and for this purpose it may, in particular, institute proceedings before its competent authorities.

Article 7

A decision relating to custody given in a Contracting State shall be recognised and, where it is enforceable in the State of origin, made enforceable in every other Contracting State.

Article 9

(1) [*Recognition and enforcement may be refused*] if:

(a) in the case of a decision given in the absence of the defendant or his legal representative, the defendant was not duly served with the document which instituted the proceedings or an equivalent document in sufficient time to enable him to arrange his defence; but such a failure to effect service cannot constitute a ground for refusing recognition or enforcement where service was not effected because the defendant had concealed his whereabouts from the person who instituted the proceedings in the State of origin;

(b) in the case of a decision given in the absence of the defendant or his legal representative, the competence of the authority giving the decision was not founded:

- i. on the habitual residence of the defendant; or
 - ii. on the last common habitual residence of the child's parents, at least one parent being still habitually resident there, or
 - iii. on the habitual residence of the child;
- (c) the decision is incompatible with a decision relating to custody which became enforceable in the State addressed before the removal of the child, unless the child has had his habitual residence in the territory of the requesting State for one year before his removal.
- (3) In no circumstances may the foreign decision be reviewed as to its substance.

Article 10

- (1) [*Recognition and enforcement may also be refused*] on any of the following grounds:
- (a) if it is found that the effects of the decision are manifestly incompatible with the fundamental principles of the law relating to the family and children in the State addressed;
 - (b) if it is found that by reason of a change in the circumstances including the passage of time but not including a mere change in the residence of the child after an improper removal, the effects of the original decision are manifestly no longer in accordance with the welfare of the child;
 - (c) if at the time when the proceedings were instituted in the State of origin:
 - i. the child was a national of the State addressed or was habitually resident there and no such connection existed with the State of origin;
 - ii. the child was a national both of the State of origin and of the State addressed and was habitually resident in the State addressed;
 - (d) if the decision is incompatible with a decision given in the State addressed or enforceable in that State after being given in a third State, pursuant to proceedings begun before the submission of the request for recognition or enforcement, and if the refusal is in accordance with the welfare of the child.
- (2) Proceedings for recognition or enforcement may be adjourned on any of the following grounds:

- (a) if an ordinary form of review of the original decision has been commenced;
- (b) if proceedings relating to the custody of the child, commenced before the proceedings in the State of origin were instituted, are pending in the State addressed;
- (c) if another decision concerning the custody of the child is the subject of proceedings for enforcement or of any other proceedings concerning the recognition of the decision.

Article 11

- (1) Decisions on rights of access and provisions of decisions relating to custody which deal with the rights of access shall be recognised and enforced subject to the same conditions as other decisions relating to custody.
- (2) However, the competent authority of the State addressed may fix the conditions for the implementation and exercise of the right of access taking into account, in particular, undertakings given by the parties on this matter.
- (3) Where no decision on the right of access has been taken or where recognition or enforcement of the decision relating to custody is refused, the central authority of the State addressed may apply to its competent authorities for a decision on the right of access if the person claiming a right of access so requests.

Article 12

Where, at the time of the removal of a child across an international frontier, there is no enforceable decision given in a Contracting State relating to his custody, the provisions of this Convention shall apply to any subsequent decision, relating to the custody of that child and declaring the removal to be unlawful, given in a Contracting State at the request of any interested person.

Article 13

- (1) A request for recognition or enforcement in another Contracting State of a decision relating to custody shall be accompanied by:
 - (a) a document authorising the central authority of the State addressed to act on behalf of the applicant or to designate another representative for that purpose;
 - (b) a copy of the decision which satisfies the necessary conditions of authenticity;

(c) in the case of a decision given in the absence of the defendant or his legal representative, a document which establishes that the defendant was duly served with the document which instituted the proceedings or an equivalent document;

(d) if applicable, any document which establishes that, in accordance with the law of the State of origin, the decision is enforceable;

(e) if possible, a statement indicating the whereabouts or likely whereabouts of the child in the State addressed;

(f) proposals as to how the custody of the child should be restored.

Article 15

(1) Before reaching a decision under paragraph (1) (b) of Article 10, the authority concerned in the State addressed:

(a) shall ascertain the child's views unless this is impracticable having regard in particular to his age and understanding; and

(b) may request that any appropriate enquiries be carried out.

(2) The cost of enquiries in any Contracting State shall be met by the authorities of the State where they are carried out.

Requests for enquiries and the results of enquiries may be sent to the authority concerned through the central authorities.

THIRD SCHEDULE

(Section 13)

Reservations

(1) The Government of Malta declares that it shall not be bound to assume any costs resulting from the participation of legal counsel or advisers or from court proceedings, except in so far as those costs may be covered by legal aid.

(2) In accordance with Article 24 of the Convention, Malta reserves the right to accept translations of the original documents only in English.

A 278

FOURTH SCHEDULE

(Section 14(2))

Reservation

In accordance with Article 17, paragraph 1 of the Convention, the Government of Malta reserves the right to refuse recognition and enforcement of decisions relating to custody, in cases covered by Articles 8 and 9 or either of these Articles, on any of the grounds provided under Article 10, paragraph 1(a), (b), (c) and (d).

Passed by the House of Representatives at Sitting No. 138 of 21st July, 1999.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives