

THE ZEIT GIST

COMMUNITY: PARENTAL ABDUCTION

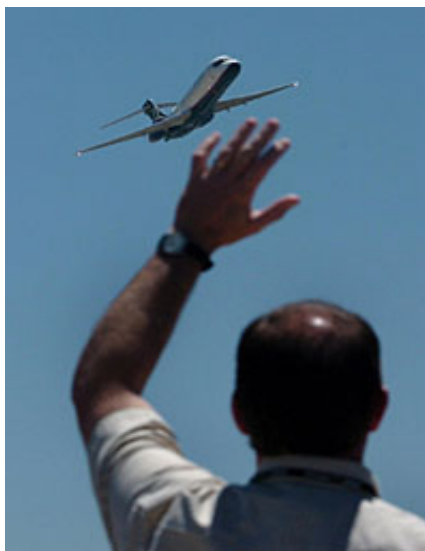
How will Japan respond?

By COLIN P.A. JONES

Special to The Japan Times

Japan has gotten a reputation as a haven for international parental child abduction. Cases making the news tend to be like that of Murray Wood, whose two children were spirited to Japan by their Japanese mother, even though Wood was granted custody by a Canadian court. A Saitama judge ignored the Canadian judgment by ratifying the children's Japanese living arrangements. This story is hardly unique, as is evidenced by a list on the Children's Rights Network of Japan Web site (www.crnjapan.com), which was set up by aggrieved non-Japanese parent.

The term "Japanese family law" may seem like an oxymoron to anyone who has experienced the well-intentioned but often ineffectual efforts of Japan's family courts in child-custody cases, particularly when a foreign parent is involved. Some foreign consular officers are privately scathing when discussing such cases. Diplomats from one G-8 country who discussed the problem with family-court representatives were even told that in such disputes, custody would always be awarded to the Japanese parent — because only they, not the foreign parent, have a family register.



Western diplomats have heard from the Japanese family court that in disputes between Japanese and foreigners, custody would always be awarded the Japanese parent. AP PHOTO

The U.S. State Department's Web site describes compliance

with Japanese family-court orders as "essentially voluntary, which renders any ruling unenforceable unless both parents agree." Since the courts cannot enforce the return of an abducted child or visitation, they often seem to take the easy way out by finding the status quo to be in the best interests of the children involved. How else can they avoid appearing powerless and irrelevant?

As awareness of these deficiencies becomes more widespread abroad, it is possible that Japanese authorities will have to do something to address the problem of international abductions, at least. But the most likely response will be to make it more difficult for foreign parents to leave Japan with children.

Because Japanese family courts have a poor reputation when it comes to protecting the parent-child relationship, many foreigners who are experiencing personal difficulties in their marriages to Japanese citizens may consider escaping with the kids to their home countries, either by taking them out of Japan or simply refusing to return after a holiday. Still, such actions are usually a criminal offense both in the destination country and, ironically, in Japan as well.

Unlike Japan, many countries have laws clearly stating that, barring exceptional circumstances, children should have frequent and continuous contact with both parents regardless of marital status. Although the first instinct of courts in such countries will — again, unlike Japan — likely be to allow children to return to their home countries, it may become easier to convince judges abroad that a return to Japan may result in the child losing all contact with the non-Japanese parent.

If such arguments succeed, Japanese parents will suffer at the hands of an alien legal system. While the Japanese media has long maintained silence on this issue, international parental child abduction might become a hot topic — only with Japanese as the victims and foreigners the villains. Japanese officials are most likely to actually engage the problem when there is pressure on them to protect the interests of Japanese people, which is their job. Unlike the intractable problems of abduction within Japan, outbound abductions should be easy to stop: all that needs to be done is to prevent foreign parents from leaving Japan alone with their children unless they have a letter of consent signed by the nontraveling Japanese

parent, or a court order allowing such travel. Since Japan already has exit controls, this would only involve an incremental additional restriction that only affects foreign residents.

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Though this would do nothing to remedy cases of abduction to Japan, it is the only response — if there is to be any at all — that can be expected from Japan on this issue for the foreseeable future. There is probably no part of the Japanese system that will ever benefit from taking "Japanese" children away from Japanese parents and returning them to a foreign country.

There has been at least one case of a foreigner being arrested and convicted for trying to leave Japan with their kids. Several years ago, a Dutch man was arrested for trying to do what Japanese parents have been getting away with for years — taking his child back to his native country. Since he was still married and retained full custody rights, law enforcement officials stretched to find something to charge him with. A little-used section of the Japanese penal code, Article 226, makes it an offense to use force or deception to remove someone from Japan, a provision that was intended to combat prewar human trafficking. The father was duly found guilty.

On appeal, Japan's Supreme Court affirmed his conviction and noted that notwithstanding the original purpose of the statute, the elements of the crime were satisfied by the father's attempt to remove someone who was living in Japan peacefully.

In 2005, this same article of the penal code was amended so that removing someone from any country, not just Japan, is now an offense. Applying the logic of Japan's Supreme Court in the case described above, parental child abduction to Japan is already a crime, meaning it should be possible for police to summarily return children to foreign parents, without relying on Japan's powerless family courts.

But no one should hold their breath waiting for this to happen.

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