Entführungssache Emil Jung:

Ukrainische Verstöße gegen das Haager Kindesentführungs-Übereinkommen (HKÜ) im Rückführungsverfahren seit 2013

- vom Kindesvater vielfach gemeldet an Justizministerium, Auswärtiges Amt und Kanzleramt der Bundesrepublik Deutschland sowie ans Justizministerium der Ukraine -

1. *Artikel 1* - Es wurden **nicht die sofortige Kindesrückgabe sichergestellt** und **nicht das bei Entführungsbeginn bestehende Sorge- und Umgangsrecht geachtet.** Damit wurden **von Anfang an beiden wichtigsten HKÜ-Prinzipien mutwillig, vorsätzlich und dauerhaft verletzt.**
2. *Artikel 11 und 12* - Es wurden **nicht die sofortige Kindesrückgabe angeordnet** und **nicht mit der gebotenen Eile ein Gerichtsverfahren** gegen die Entführermutter **eingeleitet**, sondern erst nach einem vollen Jahr. In den höheren Instanzen fand ebenfalls **extrem lange Verfahrensverschleppung** statt - das wichtigste Mittel der Ukraine zur **kalten Legalisierung der Kindesentführung**.
3. *Artikel 7a* - Es wurde **nicht der Aufenthaltsort des Kindes ermittelt**, als es 2014 monatelang heimlich auf die Krim und an weitere Orte in der Ukraine verschleppt war.
4. *Artikel 7b* - Es wurde **nichts unternommen**, um weitere **Gefahren** - Dauerverschleppung von Ort zu Ort, Wegsperrung und Isolation, unzureichende medizinische Versorgung - vom Kind **abzuwenden**.
5. *Artikel 7f* - Es wurde **nicht** durch geeignete Maßnahmen **das zwischenzeitliche Umgangs- und Besuchsrecht** des zurückgelassenen Elternteils **gewährleistet**. Stattdessen wurde der Entführermutter freie Hand gelassen, jeglichen Kontakt zwischen Vater und Kind zu unterbinden und beide einander zu entfremden.
6. *Artikel 7h* - Es wurde nach der ukrainischen Rückführungsanordnung in erster Instanz vom Herbst 2014 die **Kindesrückgabe nicht vollzogen**.
7. *Artikel 7i* - Bekannte und gemeldete **Hindernisse bei der HKÜ-Umsetzung** wurden **nicht ausgeräumt**. Entsprechende vielfache Hilfsgesuche und Beschwerden des Kindesvaters blieben unbeantwortet und folgenlos.
8. *Artikel 14* - Das **Urteil des Münchener Familiengerichts** vom Winter 2013, das dem Kindesvater entführungshalber das **alleinige Aufenthaltsbestimmungs- und medizinische Sorgerecht** zugesprochen hat, wurde **nicht beachtet.** Gleiches gilt für den **Widerrechtlichkeitsbeschluß** desselben Gerichts vom Frühjahr 2015 zum Kindesaufenthalt in der Ukraine.

9. *Artikel 16* - Die **ukrainischen Gerichte** haben es in den höheren Instanzen **nicht unterlassen, Sorgerechtsregelungen vorwegzunehmen**, für die sie nicht zuständig sind. Dafür haben sie die **Beweislage** bezüglich der Illegalität der Zurückhaltung des Kindes mutwillig **verfälscht**. Selbst der **Oberste Gerichtshof** der Ukraine hat das HKÜ nicht angewandt, sondern ist bei der endgültigen Ablehnung der Kindesrückführung auf **inhaltsleeren Formalismus** ausgewichen.

Fazit:

Die Ukraine unterstützt aktiv und passiv die grenzüberschreitende Entführung von Kindern, wenn sie von deren ukrainischen Müttern ausgeht. Im allgemeinen **mißachten ihre erzkorrupte Verwaltung und Justiz das HKÜ** ebenso wie das **grundlegende Sorgerecht und die Würde der ausländischen Kindesväter**. Die **sowjetisch geprägten Gerichte** sind **weder unabhängig noch gesetzestreu** - und deshalb bei der Bevölkerung **völlig diskreditiert**. Es gibt **keine wirksame Prozedur zur HKÜ-konformen Kindesrückführung**. Stattdessen betreibt die Ukraine eine **Politik der schrittweisen Legalisierung solcher Kindesentführungen** - mittels

a. **jahrelanger Verschleppung der Rückführungsverfahren**,
b. **Duldung und Förderung von Vater-Kind-Zwangstrennung und -entfremdung**,
c. **Schutz der Entführermütter gegen Strafverfolgung und Sanktionen**,
d. **faktischer Übertragung des alleinigen Sorgerechts auf die Entführermütter**,
e. **schwerer Manipulation von Gerichtsverfahren und -urteilen** - u.a. unter **Beweis- und Gutachtenfälschung** -,
f. **institutioneller Gewalt und Repression** gegen die ausländischen Kindesväter.

Die aktuellen Fälle von **Emil Jung**, **Sabina Mertens**, **Erik Zardo** und **Rodolfo Prenesti** - von ihren ukrainischen Müttern aus Deutschland bzw. Italien entführt - beleuchten gleichzeitig die **extrem mißbräuchliche, rechtsverachtende und unmoralische Praxis der Ukraine zulasten des Wohls und der gesunden Entwicklung der Kinder**. Diese sind **Spätopfer der Sowjetunion** und ihrer weiterexistierenden ideologischen Einstellungen und Machtstrukturen.

Vize-Justizminister Petukhow hat in einem deutschen Fernseh-Interview im Frühjahr 2017 höchstamtlich eingeräumt: Allein aus **Deutschland** sind bisher **33 Rückführungsanträge** eingegangen, und trotzdem ist **kein einziges entführtes deutsches Kind zurückgegeben** worden. Diese Null-Quote steht für den **totalen HKÜ-Boykott der Ukraine** ! Ukrainische Bürgerrechtler geben an: Derzeit werden **über 400 Kinder aus aller Welt illegal in der Ukraine festgehalten** - ohne Aussicht auf Rückführung.

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28. CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION[1]

(Concluded 25 October 1980)

The States signatory to the present Convention,
Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,
Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,
Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions –

CHAPTER I – SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are –

a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

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.

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[1] This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law (www.hcch.net), under “Conventions” or under the “Child Abduction Section”. For the full history of the Convention, see Hague Conference on Private International Law, *Actes et documents de la Quatorzième session (1980)*, Tome III, *Child abduction* (ISBN 90 12 03616 X, 481 pp.).

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 16 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 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organisations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

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 organising 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.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

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 23

No legalisation or similar formality may be required in the context 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.
However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.