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Estranged parents snatch own kids in `abduction friendly' Japan

By PAUL BAYLIS, Asahi Shimbun News Service

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Frustrated parents in the United States are considering a class-action lawsuit against the Japanese government to gain access to their children.

After Sam Lui filed for divorce in 1998, the court in Orange County, California, gave Liu custody of his 2-year-old son, and allowed his wife regular visits. The court also ruled that Lui's wife, who is Japanese, could not take the boy outside the county and had to surrender her passport. But somehow, she obtained another passport, and on one of her visits, she took her son to Japan, where they have been ever since, out of reach of the boy's father.

For the past two years, at a cost approaching \$100,000 (13 million yen), Lui has fought battle after battle in the Japanese courts to get his son returned, or at least to get regular visits. At each level, all the way to the Supreme Court, the courts have supported the California court's judgment.

But after every victory, Lui's ex-wife has appealed, keeping the case tied up in legal wrangling, and meanwhile, keeping the boy away from his father. In the process, she has strengthened her argument that the boy is most familiar-and therefore belongs with-his mother.

The case may be in the courts for another two years or more, and even after every possible legal measure has been exhausted, there is no guarantee Lui will be able to see his son, since, as critics and experts agree, it is nearly impossible to enforce a court decision in a case like this if the loser is unwilling to cooperate.

``It's outrageous," said Thomas Flippen, Lui's Osaka-based U.S. lawyer. ``This is the case that goes on forever."

Flippen and others say that because Japanese courts have little power to enforce their judgments, and because Japan does not respect international treaties on children's rights to have access to their parents, Japan is a virtual haven for parental abduction.

That means, when a marriage falls apart and one parent is determined to keep the children away from the other, there is little the other parent can do about it.

While this is a common-even accepted-situation among many Japanese, more and more are starting to question the wisdom and justice of it. And with an increasing

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International Standards of Children's Rights.

In the United States, some parents have become so frustrated they are exploring the possibility of filing a class-action lawsuit against the Japanese government.

``The law and the legal system are conducive to kidnapping," said Flippen. ``The judges have authority but no power. Unless Japan signs up with the rest of the world, the courts will remain toothless."

Wife disappears

One of the longest-running international custody disputes dates back to 1986.

That year, Louis Pau, a French citizen living in Denmark and married to a Japanese woman, was ``severely handicapped" in an airplane accident that damaged his spinal cord and put him in a wheelchair until 1989. He still uses crutches.

According to Pau, soon after the accident, his wife ``completely vanished" with their 1-year-old daughter. In 1988, through contacts in Japan, Pau learned his wife had placed the daughter in a children's home, and he succeeded in having her enrolled in a Christian school in Kyoto.

But then in 1994—the year he was legally divorced from his wife through a Paris court that granted custody to him—Pau's wife's family reclaimed the girl, and promptly disappeared.

Taking the matter to Japanese courts, the Kyoto Family Court ruled that Pau should be allowed to meet with his daughter twice a year at a hotel in either Fukuoka or Kumamoto, but he would not be allowed to know her exact address. That arrangement continued until 1998, when all communication again stopped.

Through an international legal commission, a French and Danish judge proposed visiting Japan to work with a Kyoto judge to try to reach a lasting settlement. But while the Kyoto judge was willing, the proposal was vetoed by the Ministry of Justice.

As a result, the French Embassy in Tokyo filed a formal protest with the Foreign Ministry. Meanwhile, Pau filed criminal charges against his wife in a French court, which issued a warrant for her arrest.

``I am paying the price and my daughter is paying the price," he said. ``I only wish to have regular contact with my daughter so she can have choices."

Pau estimates he has spent about \$400,000 fighting to get access to his daughter.

In May 2000, U.S. State Department official Mary Ryan visited Tokyo to urge action against the rising number of parental abductions involving Japanese reported to the State Department.

``Currently, there is no enforcing mechanism that will help solve parental abduction cases," she said.

According to State Department spokesman Chris Lamora, over the past five for



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involve an American father and a Japanese mother. Eleven involve abductions and four involved access issues, he said.

“In our view, Japan is indeed an ‘abduction-friendly’ country,” said Lamora by e-mail. “There has never been, in our memory or record, a single case of a Japanese court ordering the return to the U.S. of the child of a Japanese mother, or ordering enforceable visitation by American fathers with their children in Japan.”

One thing Japan needs to do, Lamora said, is ratify the Hague Convention on the Civil Aspects of International Child Abduction, which seeks to “secure the prompt return of children wrongfully removed to or retained in any contracting state.”

The convention provides grounds for governments to work through the courts to have children returned to their country of “habitual residence.”

The convention, which went into effect in 1980, currently has 70 nations on board. The United States signed in 1988. Japan is the only member of the Group of Seven industrialized countries that has not ratified it.

Japan says no

According to an official in the Treaties Bureau of the Ministry of Foreign Affairs, ratification is not likely soon, since that would entail overhauling many domestic laws and procedures.

“It would take a major initiative between government branches and ministries,” the official said. “This kind of cooperation does not exist at this time. The only signals we are getting are from the United States. At the domestic level, the government doesn’t feel the need exists.”

Ryan said about 2,000 children brought to the United States had been returned to their countries of “habitual residence,” about 90 percent of the cases reported to her office.

The most famous case is undoubtedly that of Elian Gonzalez, the 6-year-old son of an estranged Cuban couple who was rescued at sea after his mother died as they fled Cuba. Elian was eventually returned to his father in Cuba amid much political and emotional controversy.

During the deliberation process on Elian’s fate, the U.S. Senate Judiciary Committee took a statement from Walter Benda, one of the co-founders of the Japan chapter of the Children’s Rights Council (CRC), which describes itself as “a children’s advocacy organization working to protect and ensure the child’s rights to both parents.”

Benda has been seeking access to his two daughters, who, he says, were abducted by their Japanese mother when the family lived in Tokyo in 1995, when the girls were 6 and 4.

“I have exhausted every possible channel in the Japanese legal system all the way up to the Japanese Supreme Court,” said Benda in his Senate statement. “After years of jumping through legal hoops in Japan, I still don’t have access to my children—not even a minimal level of access to them.”



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Benda's wife has been indicted by a federal grand jury in Virginia for international kidnapping. If convicted, she could be imprisoned for up to three years and fined \$250,000.

Benda is now working with a lawyer on a possible class-action lawsuit against Tokyo to ``embarrass" the government into establishing regular visitation rights for parents with children in Japan.

According to Toshimitsu Takaesu, a lawyer who has written a book on Japanese family law, domestic disputes, especially those involving foreign spouses living abroad, are among the most difficult to resolve.

``It's a defect in law," he said. ``Sooner or later we will need an international court where a Japanese and foreign judge will sit on the same court and get a resolution."

But even in cases where Japanese courts find that non-custodial parents should have access to their children, there is little the court can do in the way of enforcement, Takaesu said, since all the court can do is impose fines. It is at the discretion of the police when to use force, and in cases involving domestic disputes, they almost never do so, he said.

Stephen Murphy-Shigematsu, an associate professor of clinical psychology at Tokyo University, who works with divorced couples, adds, ``In every case I've worked with, even though they've been granted the rights by the court, the police do not intervene when the rights are denied. So there's a problem with enforcement."

Compounding the issue is the common expectation among many Japanese that the non-custodial parent should simply disappear from the life of his or her children.

According to Frances Marr, the director of the Tokyo branch of DivorceCare, a counseling program for people coping with divorce, ``It appears there is some sort of norm in Japan, that if the wife has full custody, then the father must somehow disappear from the picture. Especially if the husband perpetrated the divorce, the wife and her family will usually cut him off."

The most notable example of a father ``disappearing" is Prime Minister Junichiro Koizumi, who has been reluctant to meet his third son, born after Koizumi and his wife split 19 years ago. According to Koizumi's office, the two met briefly for the first time at Koizumi's mother's funeral in November.

According to a recent survey by the Supreme Court, about half of divorced parents ordered by family courts to pay child support stop paying after a year. In such cases, the court can seize the wages of those ordered to pay. But out of 200 divorce settlements, the survey found no instances of this happening.

Fathers aren't the only ones expected to disappear. Yoko Hamada (not her real name), a divorced woman whose Japanese husband has denied her access to her two children for seven years, said most custody battles are a matter of who acts fastest.

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disappears."

For foreign parents, however, the idea of "disappearing" can be especially wranklesome.

"All of the foreign spouses expect joint custody, and all the rights that accord with that," said Murphy-Shigematsu. "When they don't get those rights, it comes as quite a shock. Japanese parents don't seem to expect and don't demand visitation privileges."

A double-standard?

Caught in this legal-cultural labyrinth, some parents become desperate, leading them to take drastic measures.

In September 2000, Engel Nieman, an English teacher from the Netherlands living in Kofu, tried to take his daughter out of the country to visit his ailing father following a dispute with his estranged wife. Police reacted swiftly, arresting Nieman as he tried to board a ferry in Osaka to Shanghai, and charging him with a seldom-used offense: abduction of a minor with the aim of transporting him or her overseas.

Some experts questioned whether the charge wasn't an indication of a double standard because the parent was a foreigner.

Nieman is appealing his three-year suspended sentence, during which he cannot leave the country without risking arrest on his return.

"I lose my child, I lose everything," he said.

Still legally married, Nieman continues to negotiate through the family court for access to his daughter.

"Why do I need to go to a family court to see my own daughter?" he asks. "I am the legal father and we are not divorced. I love my daughter as much as my wife does."

Other parents, however, continue to use more conventional channels to get access to their children, despite the success rate in such cases being close to zero.

In some cases, parents are resigned to never having a relationship with their children while the children are growing up. These parents hope only that after the children become adults, they will become curious about the absent parent and try to re-establish contact.

Meanwhile, the effects on children are difficult to quantify, but experts suggest the damage is considerable.

"It affects them through adulthood," said DivorceCare's Marr. "We believe it is to the benefit of all to let the child see both parents."

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