

Failure of the Hague Abduction Convention: M.J. Carrascosa's fate

M. J. Carrascosa and her ex-husband P. Innes met in a bar in New Jersey in 1999. They married that year in Spain and returned to the U.S., where they both worked. Their daughter V. was born in April 2000.

The couple separated in 2004. The parties reached a settlement under which the child would live with the mother, but Innes was entitled to visit her regularly; they also agreed that the girl would not be driven out of the U.S. without the written consent of the other parent. In January 2005, M.J. travelled to Spain with his daughter and settled in Valencia without permission from the father. Innes got a divorce sentence and the custody of the child in the U.S., while the Spanish courts ruled on the same but in favour of MJ Carrascosa. Innes asked the Spanish courts to apply the Hague Convention on child abduction, which is in force both in Spain and in the USA. The Spanish justice held that the marital agreement was a mere declaration of intent, which also unduly limited the freedom of establishment guaranteed by the Spanish Constitution; the custody of the girl belonged to the mother, the transfer of the minor had not been unlawful, and therefore the Convention was not applicable. US courts think otherwise. Apparently the problem lies in the lack of a uniform meaning of the right of custody.

Carrascosa went to U.S. to stand trial in 2006, carrying the Spanish sentences. She was arrested and is imprisoned ever since. Last Thursday she was found guilty by a jury in New Jersey of a crime of obstruction of justice and eight others for failure to comply with what the U.S. courts decided on the custody of the child. The punishment will be decided on 23 December; Innes will appear before the judge as victim and state which penalty he would like. M.J. faces a sentence of ten years imprisonment, though optimistic voices indicate she might get only five. As she has already served more than half, she could be released immediately.

V. lives in Valencia with her grandparents. Since 2006, she has not seen neither her mother nor her father.

Source: El País, Sunday 15 November 2009.

(See also Charles Kotuby's post on the subject)