

Best Interests of the Child Applied in Cross-border Fight for Child Support Fee

Description

You may have noticed on this blog we have frequently mentioned and discussed the application and impact or implications brought up by the [Law of the People's Republic of China on Choice of Law for Foreign-related Civil Relationships](#), effective as from April 1, 2011.

In most cases we have handled, this law was triggered in relation to divorce and inheritance disputes esp in terms of [matrimonial property regime](#) and [intestate succession](#).

Just recently, we have noted that the High Court of Guangdong province in Southern China has published 7 typical cases tried in its jurisdiction in respect of protection of minor children's rights and interests. Among those published 7 cases, one is about application of foreign laws in awarding child support fee.

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1. Case Summary

In April 2016, Mr. Gu (mainland Chinese citizen) and Ms. Ba (Russian citizen) had a son (Gu Xiaomou) in Hong Kong after getting married, and the child was granted Hong Kong residency.

After October 2017, Gu Xiaomou lived in Russia with Ms. Ba.

In 2020, the couple divorced by court judgment, and [custody of the child](#) was granted to Ms. Ba.

Due to Mr. Gu's failure to pay child support, Gu Xiaomou filed a lawsuit requesting a lump-sum payment of the unpaid child support and monthly payments until he turns 18. Mr. Gu argued that he could no longer afford the payments and claimed that the amount should be based on the cost of living in the Russian city where Gu Xiaomou lives. Apparently the father knew that living costs in Russia is was relatively lower than other two places.

2. Key Legal Issue

The parties in this case involve Mainland China, Hong Kong and Russia. Three different jurisdictions, so the pertinent law of which jurisdiction shall be applied will surely make a huge difference in terms of the amount of [child support fee](#) available to the child. Here comes the law we mentioned in the first paragraph above.

According to the Article 25 and 29 of *Law of the People's Republic of China on Choice of Law for Foreign-related Civil Relationships*, the applicable law should be the one most favorable to protecting the child's rights and interests.

Article 25 provides: The laws at the mutual habitual residence shall apply to the personal and property relations between parents and children; if there is no mutual habitual residence, the laws in favor of protecting the rights and interests of the weak in the laws at the habitual residence or of the state of nationality of one party shall apply. And Article 29 provides: The laws in favor of protecting the rights and interests of the persons being maintained in the laws at the habitual residence, of the state of nationality or at the locality of the main properties of one party shall apply to maintenance.

Both provisions touch on the issues of child protection between parents and children, and both refer to the same principle: the best interests of the child.

Therefore, the issue is which law among the three offers the best benefits to the child in relation to child support fee after parents divorce.

3. Court's Decision

Then it comes to the issue of how to find out and determine and compare among and between the related laws in the three jurisdictions.

The court commissioned the Research Center Of Foreign Law associated with East China University of Political Science and Law situated in Shanghai to investigate relevant Russian child support laws. Then after comparing the legal standards on child support amounts, duration, and payment methods under Mainland Chinese law, Hong Kong law, and Russian law, the court found that Hong Kong law best met the child's actual needs and offered the strongest protection. Therefore, Hong Kong law was applied in this case.

The result is definitely worthy of applauding and promising.

It is promising to foreign parents who may need to go after the other parent in China to support their Child living outside China. We have seen an increasing trend in this type of cases where foreign moms want to sue their Chinese spouses or partners in China for child maintenance fee.

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