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HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION

Introduction

The Hague Convention on the Civil Aspects of International Child Abduction (Convention) adopted on October 25, 1980, during the 14th Session of the Hague Conference on Private International Law, was ratified by Ecuador on September 12, 1994.¹

I. Domestic Laws and Regulations Implementing the Hague Convention

The Central Authority for the Convention in Ecuador is the *Direccion Nacional de Proteccion de Menores* (DNPM) of the Ministry of Social Welfare under a temporary appointment until the *Consejo Nacional de la Ninez y Adolescencia* (CNNA) provides for a definite Central Authority.² The *Codigo de la Ninez y la Adolescencia* (CNA)³ provides that the state must protect children and adolescents against their illegal abduction within the country or abroad.⁴ However, there is no specific national implementing legislation of the Convention; therefore, the Code of Civil Procedure⁵ (CPC) will apply for Convention related return or visitation petitions. The *Juzgados de Ninez y Adolescencia* (JNA) (Minors Court) with jurisdiction where the child is located will have competence to decide cases under the Convention.⁶

A. Return Requested from Abroad

Under the provisions of the CNA,⁷ the competent judge to provide for the return of a child or to enforce visitation rights under the Convention, is the JNA where the child is located or where the child is being retained.⁸

This request will be applied as a summary procedure which guarantees due process and the right to the effective judicial protection.⁹

The National Police will be assisted by a police body specialized in the protection of minors will

¹ REGISTRO OFICIAL (R.O.) Sept. 22, 1994.

² NORMAS DE APLICACION DEL CNA, Executive Decree 1187, in R.O. Dec. 24, 2003, art. 14 and *infra* 3, art. 195.i.

³ CODIGO DEL A NINEZ Y LA ADOLESCENCIA, LAW 2002-100 in R.O. Jan. 3, 2003.

⁴ *Id.* art. 74.3.

⁵ CODIGO DE PROCEDIMIENTO CIVIL, Editorial Juridica del Ecuador, Quito, 2000.

⁶ *Supra* note 3, art. 259.

⁷ *Id.* art. 266.

⁸ *Id.*

⁹ *Id.* art. 267.

provide assistance thereto.¹⁰ The specialized police has professionals specialized in children's and adolescents' issues.¹¹ The CNA provides for the specific procedures to carry out the judicial investigation to locate a child.¹²

If an agreement between the parties is not reached at the administrative level with the intervention of the Central Authority, a public defender,¹³ will be appointed to intervene in the judicial proceedings.

The *Ministerio Publico* (state attorney) will always be a part of the proceedings and must report monthly on the actions taken and the advance in the investigation.¹⁴

B) Return Requested from Ecuador

When the Ecuadoran Central Authority is the requesting party, once the return or visitation petition is received, with regard to a child who has been taken to a country party to the Hague Convention, the documentation may be translated as appropriate. However, since Ecuador has not made any declaration as to the need to have documents translated, the provisions of the Convention will apply, and the documents will be sent to the competent Central Authority abroad.

The Ecuadoran Central Authority is required under the Convention to provide guidance and assistance to the petitioners. Once all of the documents have been submitted, the Central Authority will follow up on the petition abroad and try to reach to a friendly resolution of the case. If this is not possible, judicial proceedings will be instituted to return the child back to Ecuador or to reinstate the effective visitation schedule.

II. Domestic Laws Regarding Child Abduction and Parental Visitation

The CNA provides that taking or retaining children or adolescents in violation of custody rights, visitation rights, or the requirements for authorization to leave the country is forbidden.¹⁵

Children and adolescents who have been illegally taken or retained, have the right to be returned to their family and enjoy visits from their parents and other relatives according to law. In these cases, the state will take all measures necessary to return and reinsert the child in his family environment.¹⁶

In all cases, where the custody or parental authority of a minor is judicially assigned to one of the parents, the court will have to set up a visitation schedule.¹⁷

¹⁰ *Id.* art. 208.

¹¹ *Id.*

¹² *Id.* art. 268.

¹³ *Supra* note 6.

¹⁴ *Supra* note 3, art. 269.

¹⁵ *Id.* art. 77.

¹⁶ *Id.*

¹⁷ *Id.* arts. 122-123.

The non-custodial parent, or anyone else who unduly retains a child whose parent authority or custody has been assigned to someone else, or if the visitation schedule is not complied with, may be judicially called to immediately return the child to the appropriate person and will be liable for any damages incurred by the illegal retention, including the request and return expenses.¹⁸

If, after being judicially requested, the individual in questions does not comply with the court's order, he or she may be arrested and the search, without any prior resolution, of his dwelling or the one where the child is suppose to be located, in order to secure the child's return.¹⁹

III. Court System and Structure – Courts Handling the Hague Convention

When Ecuador is the requested country and there is no voluntary return of the child, the competent court for return proceedings under the Convention will be the JNA with jurisdiction where the child is located.²⁰ The JNA are assisted by an Office of Professionals, which includes physicians, psychologists, social workers, and other professionals who specialize in children's issues.²¹

The JNA are required to perform their duties based on the rule of law prioritizing the principles of fairness, legality, gratuity, morality, quickness, and efficiency over procedural rituals.²² The superior interest of the child will always govern these procedures with the guarantee that the child's opinion will be heard in his parents presence or without it, if the court decides that it does not affect the interest of the child.²³

While it does not suspend the enforcement of the decision, a case may be appealed to the respective Court of Appeals, and it must be decided within five days after a hearing of the parties.²⁴ The Court of Appeals decision may be reviewed by the Supreme Court only for legality control (*recurso de casacion*).²⁵

The courts, public defenders, lawyers, experts, or any court related official who, without justification, unduly delays the judicial proceedings provided in the CNA, may be penalized with a fine of US\$100 to 500.²⁶

¹⁸ *Id.* art. 125.

¹⁹ *Id.*

²⁰ *Supra* note 6.

²¹ *Supra* note 3, art. 260.

²² *Id.* art. 256.

²³ *Id.* art. 258.

²⁴ *Id.* arts. 279-280.

²⁵ *Id.* art. 281.

²⁶ *Id.* art. 253.7.

According to the Ecuadoran Central Authority,²⁷ since the appointment of the CNA had taken place only 3 months ago and then the prior Central Authority (Court of Minors) was dissolved, there are no available records or statistics on the number of cases at this time.²⁸

IV. Law Enforcement System

The National Police and police who deal with minors (DINAPEN), as well as other technical units of the police, will be part of the investigation to assist in the location of children and to secure the enforcement of authorities' orders.²⁹

The Ecuadoran Central Authority could not provide any statistics on return or visitation at this time, because of the reasons above stated.³⁰

V. Legal Assistance Programs

The Ecuadoran Central Authority provides legal assistance during Convention proceedings before the courts in Ecuador.³¹

There is no information available on the Internet about legal assistance programs. However, the following is the current contact information:

Direccion Nacional de Proteccion de Menores
Av. Orellana 1725 y 9 de Octubre
Quito
Ecuador
Carlos Iglesias
Tel: (5932) 2505-883 or 2544-339
e-mail: dnpm@niniezmbz.gov.ec

Ministerio de Relaciones Exteriores
Dr. Christian Cruz
Tel: (5932) 299-3220
Fax: (5932) 299-3221

VII. Conclusion

The application of the Convention in Ecuador is relatively recent. Since no records or statistics could be obtained at this time, it is difficult to arrive to any conclusion. However, it seems that there is a set of rules ready to be used in the application of the Convention. It also appears that Ecuador is

²⁷ Dr. Carlos Iglesias and Dr. Christian Cruz.

²⁸ *Id.*

²⁹ *Supra* note 3, arts. 268-270.

³⁰ *Supra* note 28.

³¹ *Supra* note 3, arts. 211.h and 211.i.

working towards a more organized Central Authority in the near future.³²

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³² *Supra* note 14.