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MEXICO

HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION

I. Domestic Laws and Regulations Implementing the Hague Convention

The Hague Convention on the Civil Aspects of International Child Abduction was ratified by Mexico effective March 6, 1992.¹ Mexico has no specific federal legislation for implementing the Hague Convention; rather, the Convention is implemented under existing Mexican state law.²

II. Domestic Laws Regarding Child Abduction and Parental Visitation

Mexican law provides that the parents will exercise custody of their children jointly.³ In the event the parents separate and do not come to an agreement as to the custodial rights of their children, a judge will award custody to one parent, specifying visitation rights of the non-custodial parent.⁴

In addition to the Hague Convention, Mexico is a member to the Inter-American Convention on International Restitution of Minors (IACIRM) adopted in Montevideo, Uruguay, on July 15, 1989, and ratified by Mexico on November 18, 1994.⁵ This Convention applies to any return case involving a minor whose permanent residence is in any of the member countries and has been illegally or wrongfully taken abroad.⁶ Member countries are: Argentina, Belize, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Haiti, Mexico, Paraguay, Peru, Uruguay, and Venezuela.⁷ The IACIRM provides that in cases involving parties to this Convention and to the Hague Convention on Civil Aspects of International Child Abduction, the IACIRM will apply, unless the parties agree otherwise through bilateral agreements.⁸

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

Mexico is a federal republic formed by 31 states and the Federal District.⁹ Each state has an

¹ Decreto Promulgatorio de la Convencion sobre los Aspectos Civiles de la Sustraccion Internacional de Menores, D.O., 3/6/1992.

² Telephone Interview with Rosa Isela Guerrero Alba, Central Authority in Mexico for the Hague Convention on International Child Abduction, Minister of Foreign Affairs in Mexico, Sept. 17, 2003.

³ Art. 414, Codigo Civil Federal, available at <http://www.cddhcu.gob.mx/leyinfo/pdf/2.pdf>.

⁴ *Id.* art. 416.

⁵ Decreto por el que se aprueba la Convencion Interamericana sobre Restitucion Internacional de Menores, D.O., Nov. 18, 1994.

⁶ Convencion Interamericana sobre Restitucion Internacional de Menores, art. 1, available at <http://www.oas.org/juridico/spanish/tratados/b-53.html>.

⁷ Paises miembros de la Convencion Interamericana sobre Restitucion Internacional de Menores, available at <http://www.oas.org/juridico/spanish/firmas/b-53.html>.

⁸ *Supra* note 6, art. 34.

⁹ Constitucion Politica de los Estados Unidos Mexicanos, art. 43, D.O., Feb. 5, 1917.

independent judicial organization empowered to apply and interpret the laws of that state.¹⁰ The judiciary in each state is headed by a Superior Court of Justice and contains civil, family, and criminal judges. It is the family judges who have jurisdiction over problems concerning custody, rights of access, and child abduction based on the laws of that state. Therefore, they are the judges who receive and rule on Hague Convention cases.

IV. Law Enforcement System

Mexico has established a Central Authority charged with applying the procedures of the Hague Convention by working with state authorities.¹¹ The Mexican Central Authority is part of the *Secretaria de Relaciones Exteriores*, or Foreign Ministry, and is responsible for cases of children taken to and from Mexico. The Central Authority generally coordinates its work through the offices of *Desarrollo de Integral de la Familia* (DIF), similar to offices of family services in the United States.¹² The Mexican Central Authority, upon receipt of the Hague Convention application, will prepare a written communiqué for the court, containing an explanation of the Hague Convention and its objectives. The special circumstances of the specific case and its possible solution are also outlined for the court.¹³

The first step in a Hague Convention case in Mexico is to confirm the location of the child. The judge serving the area where the child is living will have jurisdiction over the case. A case cannot move forward in the judicial system until the location of the child is known. If an application contains a known address for the child, the Mexican Central Authority will forward the application to the Superior Court of Justice of the state where the child is thought to be residing.¹⁴ That office will then assign it to the specific judge. When no specific address is known, the Mexican Central Authority submits a request to the appropriate police authority for them to locate the child.¹⁵

Once the case is in the court, the judge sets the schedule for the rest of the case. Generally, the family judge will encourage the parent who abducted the child to voluntarily return the child. If the abducting parent refuses, the judge can order that the parent cannot leave or take the child, or both, from the jurisdiction of the court until the Hague Convention case is finished.¹⁶

The Mexican Central Authority is notified in advance of the hearing date and time by the judge's office. After listening the arguments of the involved parties present at the hearing, the judge will issue the order of return (or denial of return) of the child. This order is usually effective immediately.

¹⁰ *Id.* arts. 40 & 41.

¹¹ Manual para la Restitucion Internacional de Menores, Secretaria de Relaciones Exteriores, p. 3. (Unpublished manual, on file with author.)

¹² *Id.* at 3, 8.

¹³ *Id.* at 9.

¹⁴ *Id.*

¹⁵ *Id.* at 12.

¹⁶ International Parental Child Abduction: Mexico, Official Website of the U.S. Department of State, available at http://travel.state.gov/abduction_mexico.html.

Generally, the judge will order that the child be turned over to the Central Authority for coordination of the logistics of the return.¹⁷

Notwithstanding the actions that the Mexican government has taken so far in order to comply with the Hague Convention, there are reports indicating that Mexican authorities have not been able to fully implement the Convention.¹⁸ Systemic problems continue to delay the resolution of cases. These problems include: the Mexican Central Authority's lack of adequate resources, the lack of implementing legislation integrating the Convention into the Mexican legal system, and an apparent lack of understanding of the Convention among the judiciary.¹⁹

The lack of resources, including personnel, resulted in difficulties in communication between the Office of Children's Issues in the Bureau of Consular Affairs, which acts as the United States Central Authority (USCA), and the Mexican Central Authority (MCA). Communication began to improve in May 2002, when monthly meetings to discuss cases began between the MCA and the consular section at the United States Embassy in Mexico.²⁰

Currently, there is a judicial precedent in which a federal court of appeals in Mexico determined that an order to return a child can be contested at anytime.²¹ The ability of the Mexican courts to reconsider the facts of a case at any stage of the proceeding is a major area of concern. It highlights how the lack of implementing legislation integrating the Convention into the Mexican legal system has made the Convention less effective.²²

Another systemic problem is the apparent lack of understanding of the Convention's purpose and intent by many judges in Mexico.²³ The Convention was not designed to address underlying custody issues. Those were meant to be dealt with by the courts in the country of the child's habitual residence, after the child had been returned.²⁴ However, the lack of implementing legislation has allowed judges to apply Mexican procedural and custody law in Hague cases to deny return when the only issues the court is supposed to examine are: (a) whether the child was "habitually resident" in another Hague state prior to the abduction or illegal retention; (b) whether the left-behind parent had some form of custodial rights at the time; and (c) whether those rights were being exercised.²⁵

The USCA has raised these issues with the MCA and the Embassy of Mexico in ongoing meetings and conversations. The Assistant Secretary for Consular Affairs raised concerns about the implementation

¹⁷ *Supra* note 11, at 11.

¹⁸ See <http://travel.state.gov/2003haguereport.html>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Tribunales Colegiados de Circuito, "Penayo, Mirta," 6 S.J.F. 767 (1999. Epoca, 1997).

²² *Supra* note 18.

²³ *Id.*

²⁴ *Supra* note 11, at 10.

²⁵ *Id.*

of the Convention in Mexico during a meeting that took place in November 2002.²⁶ A Binational Working Group agreed to work together to ensure the passage of implementing legislation and to promote judicial training aimed at improving compliance with the Convention. As a result, a group of Mexican judges and Central Authority officials visited Washington in December 2002 for a U.S. Government arranged program focused on familiarization with Hague Convention implementation in the United States.²⁷ In November 2003, the United States and Mexico agreed again to work together in order to resolve issues pertaining to the implementation of the Hague Convention, such as promotion of judicial training, regular meetings on specific cases, and the use of visitors programs which allow key officials and judges to focus on implementation of the Convention.²⁸

V. Legal Assistance Programs

While the Mexican Central Authority will not assign an attorney to take charge of the case, they will prepare the documents needed to submit the case to the judge.²⁹ Family judges in Mexico are authorized to intervene *ex-officio* in matters involving family and have the power to enforce their decisions, so the moving party is not strictly required to retain the services of a private attorney.³⁰ However, there are parents who believe that having a private attorney resulted in less time delays in the application process.³¹ Conversely, a federal court of appeals in Mexico considered that abducted children and their legal representatives must be afforded the right to legal counsel during a Hague Convention case.³²

VI. Conclusion

In the last few years, Mexico has taken important measures to address international child abduction issues, such as the adoption of the Hague Convention in 1992. Nevertheless, Mexico has not enacted the implementing legislation to integrate the Convention into the Mexican legal system. In addition, the Mexican Central Authority's lack of adequate resources, and an apparent lack of understanding of the Convention among the judiciary, has prevented Mexico from fully implementing this international agreement. A United States-Mexico Working Group agreed to work together to ensure passage of implementing legislation and to promote judicial training aimed at improving compliance with the Convention in Mexico.

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²⁶ *Supra* note 18.

²⁷ *Id.*

²⁸ U.S.-Mexico Binational Commission Working Group on Migration and Consular Affairs, *available at* <http://www.state.gov/p/wha/rls/rpt/26216.htm>.

²⁹ *Supra* note 16.

³⁰ *Supra* note 11, at 10.

³¹ *Supra* note 16.

³² *Supra* note 21, at 767.