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PANAMA

HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION

Law No. 22 of December 10, 1993, approved the Hague Convention on the Civil Aspects of International Child Abduction on October 25, 1980.<sup>1</sup> The Convention applies to Panama as a result of accession.<sup>2</sup> Therefore, according to article 38 of the Convention, the accession has effect only regarding the relations between Panama and such contracting states as have declared their acceptance of the accession.<sup>3</sup> The Convention came into force between the United States and Panama on June 1, 1994.<sup>4</sup>

**I. Domestic Laws and Regulations Implementing the Hague Convention**

In compliance with article 6, paragraph 1, of the Convention,<sup>5</sup> Panama has designated the *Dirección General de Asuntos Jurídicos y Tratados* of the Ministry of Foreign Affairs as the Central Authority. According to the Political Constitution of Panama, the Convention became part of the legal order of the Republic upon its enactment, approval, and promulgation.<sup>6</sup> Panama is a party to the Vienna Convention on the Law of Treaties,<sup>7</sup> which states that “[e]very treaty in force is binding upon the parties to it and it must be performed by them in good faith.”<sup>8</sup>

The Hague Convention application must be accompanied by the following additional documents which must be either in Spanish or translated to Spanish:

- a Hague Convention application
- birth certificate
- divorce certificate (if applicable)
- child custody agreement (if applicable)
- a copy of the requesting state applicable legislation on child custody, parental authority and rights, including visitation rights
- a photo of the abducted child and the abductor parent

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<sup>1</sup> Law No. 22 of Dec. 10, 1993 (Gaceta Oficial, Dec. 15, 1993).

<sup>2</sup> Hague Conference on Private International Law, Convention # 28 of 25 October 1980 on Civil Aspects of International Child Abduction, available at <http://www.hcch.net/e/authorities/caabduct.html>.

<sup>3</sup> Hague Convention on the Civil Aspects of International Child Abduction, 19 I.L.M. 1501 (1980), art. 38.

<sup>4</sup> Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, available at [http://travel.state.gov/hague\\_list.html](http://travel.state.gov/hague_list.html).

<sup>5</sup> *Supra* note 3, art. 6.

<sup>6</sup> Constitución Política de la República de Panama (Editorial Publipan, Panama, 1993), art. 179, § 9, and 167.

<sup>7</sup> Vienna Convention on the Law of Treaties, with annex, 8 ILM 679.

<sup>8</sup> *Id.* art. 26.

- documentation proving the child’s habitual residence in the requesting state together with additional documents of various nature such as medical, vaccines, school, etc.<sup>9</sup>

## II. Domestic Laws Regarding Child Abduction and Parental Visitation

### A. Child Abduction

The competent courts to decide on cases related to the wrongful removal and retention of a child are the family courts [*juzgados seccionales de familia*] of the city where the child resides.<sup>10</sup> There are six family courts located in the judicial district of Panama City. The procedure involves assigning each case to any of the six courts of the judicial district that is governed by the Judicial Code of Panama. The same rules are applicable to the rest of the country.<sup>11</sup> Panama has not promulgated legislation implementing the Hague Convention. Therefore, courts directly apply the text of the Convention to proceedings in these types of cases.<sup>12</sup>

Child abduction by close relatives is a criminal offense punished with imprisonment from 2 to 6 years. However, parents are excluded from this provision.<sup>13</sup>

### B. Parental Visitation

The competent courts to decide parental visitation include the *juzgados seccionales de familia* where the child resides.<sup>14</sup> This same court is competent in proceedings under the Hague Convention.

When there is no compliance with a custody agreement or a court resolution, or there is a violation of visitation rights, the Court may change its resolution or the terms of the agreement without prejudice to the criminal responsibility created by such conduct, which may be declared in contempt of court.<sup>15</sup> In deciding on custody, visitation rights, or relocation orders, the court issues its decisions based upon the best interest of the minor involved in the particular case.<sup>16</sup>

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<sup>9</sup> Sustracción Internacional de Menores (International Child Abduction), Ministry of Foreign Affairs, Republic of Panama, Nov. 26, 2003, available at <http://www.mire.gob.pa/menores.php>.

<sup>10</sup> Código de La Familia, special edition (Asamblea Legislativa, Panama, 1996), art. 752.

<sup>11</sup> Código Judicial (Editorial Jurídica Bolivariana, Panama, 1997), ch. II.

<sup>12</sup> Telephone interview with Carla Ramirez, an attorney and an officer at the Central Authority of Panama (Dec. 14, 1999).

<sup>13</sup> Código Penal de la República de Panama, Editorial Mizrachi & Pujol, Panama( 1993), art. 212.

<sup>14</sup> Código de Familia, *supra* note 10.

<sup>15</sup> *Id.* arts. 329 and 321.

<sup>16</sup> *Id.* arts. 318, 321, 326, and 327.

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

The trial court is the *juzgados seccionales de familia*.<sup>17</sup> The court of appeals for these cases are the *Tribunales Superiores de Familia*.<sup>18</sup> It does not appear that any decisions have been issued by the Supreme Court on cases of child abduction under the Hague Convention.<sup>19</sup>

### IV. Law Enforcement System

Final decisions of the court are enforceable immediately. If there is a refusal to comply with the court's final judgment, the court may issue an order of imprisonment and request the assistance of the police and the immigration authorities to prevent the obligated party from leaving the country and taking the child with him.<sup>20</sup>

Once the court issues a departure restriction order, it is immediately notified to the National Immigration Directorate, who in turn, issues an alert warning to all the airport and borders authorities in the country. In addition to the court, the Attorney General is the only other authority who may issue orders to prevent an individual from leaving the country.<sup>21</sup>

### V. Legal Assistance Programs

The Panamanian Central Authority after receiving a Hague Convention case presents the case to the *Tribunal Superior de Familia*, which then refers the case to the appropriate *Juzgado Seccional de Familia*. In addition, the Central Authority is present at court hearings and provides assistance to the judge on the interpretation and implementation of the Hague Convention if necessary. The Central Authority is impartial. It does not represent the parties nor does it advocate for them. The *Fiscalia de Familia*, under the authority of the Attorney General (*Ministerio Publico*), represents the interest of the minor in court. Applicants are free to hire a Panamanian attorney to represent their interests in a Hague case.<sup>22</sup> However, Panama provides legal assistance to those foreigners who request it and prove that they do not have economic means to hire an attorney in Panama.<sup>23</sup>

### VI. Conclusion

Although Panama has not promulgated specific legislation to implement the Convention, by law it may be enforced directly by the courts. The Central Authority provides assistance to the court when

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<sup>17</sup> *Id.* art. 752.

<sup>18</sup> *Id.* art. 755.

<sup>19</sup> *Supra* note 12.

<sup>20</sup> Telephone interview with Ianna Quadri, head of the Panamanian Central Authority (Dec. 16, 1999).

<sup>21</sup> Panamanian Central Authority answers to questionnaire on preventive measures by the Permanent Bureau of the Hague Conference on Private International Law, at <ftp://ftp.hech.net/doc>.

<sup>22</sup> *Supra* note 20.

<sup>23</sup> *Supra* note 9.

needed to achieve full implementation of the Convention.<sup>24</sup> As of May 31, 2003, Panama had 9 abduction cases open.<sup>25</sup>

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<sup>24</sup> Information on international child abduction and the Panamanian law is available in the website of the Panamanian Ministry of Foreign Affairs, in the link of the General Directorate of Legal Issues and Treaties (*Dirección General de Asuntos Jurídicos y Tratados*) <http://www.mire.gob.pa>.

<sup>25</sup> International Parental Child Abduction, U.S. Department of State, *available at* [http://travel.state.gov/2003\\_June\\_Hague\\_Attach.html](http://travel.state.gov/2003_June_Hague_Attach.html).