

## **Response of the Argentine Republic to the Questionnaire on the Enforcement of Return Orders under the 1980 Hague Convention**

TRANSLATION.-----

1.

There is no specific legal provision in relation to the execution of decisions for return in compliance with the Hague Convention.

2.

In the Argentine Republic, the State is organized along federal lines. Hence, legal activity is distributed in two fields: in the national sphere, legislative bodies rule substantive laws, while procedural, adjectival or formal law is a power each province reserves for itself, and therefore each one of them decides on procedural matters. Each of the 24 provinces and the City of Buenos Aires have their respective Codes of Procedure, and in some cases their special laws setting forth the procedural regulations applicable to family proceedings. In all jurisdictions, the respective procedural rules provide for enforcement of sentence proceedings, which are very similar. If the defendant fails to return a child, the Judge, at the party's request and bearing in mind the circumstances of the case, shall request a judicial authority (officer of the court), if necessary through the police, a minors adviser, a psychologist, etc., to return the child to the petitioner.

3.

In the case of the enforcement of child return orders, and in the absence of a specific legislation and procedure, the provisions of the Codes of Procedure of the corresponding jurisdiction shall replace them. These Codes provide for the execution of sentences referring to property matters, which shall be adapted and interpreted by the judge using rules of analogy.

Experience shows that once the return order is entered, mediation techniques may be applied for its execution.

4.

There is no specific law on return requests, and therefore it is convenient to recommend the States Parties to adopt rules of procedure about the steps to follow in connection with the request for international return of children, as well as its execution.

As regards case law from a procedural perspective it is interesting to mention a case decision in the province of Córdoba in which the return was ordered –in a shorter term than the one provided for in the Agreement-, and its execution (in a mediation) was agreed as follows: The return was ordered but the child's parent could not travel from Colombia to Argentina to take the child, so it was agreed by the parties that the father's mother could do it. When she arrived in this City she had an interview with the Judge and the child was returned in the presence of a psychologist and a Minors Ministry representative. (In January 2005 this case was sent to the "Judges Newsletter" for publication).

## II. ENFORCEABILITY AND LEGAL REMEDIES

1.

As mentioned above, Argentina's federal structure allows each Province to adopt its own code of procedure, and therefore although they are not identical, all of them provide for the ordinary remedies of appeal and nullity. The first one in general must be filed five days after notification of resolution. It is difficult to estimate the time a Court of Appeals will take for its decision, according to its workload. Notwithstanding the foregoing, experience shows that it takes at least two months to issue a resolution. In exceptional cases, this sentence could be appealed before the Supreme Court of the respective province, and in very exceptional cases there is an extraordinary remedy filed with the National Supreme Court of Justice. In higher courts, terms are even less predictable and are longer.

b)

Remedies are ruled by a principle whereby all objections must be filed together. In the event of failure to do so, a subsequent filing will not be admissible. The time for proper submission will vary. We refer to the answer given in the previous question.

2. a)

No authorization or any other measure is necessary. The sentence becomes enforceable upon expiry of the terms set forth to file the respective appeals mentioned in item 1. In case of final sentence, the Judge may order its enforcement by the police.

b)

Court designations vary from province to province, but the First Instance Courts will always be the ones having jurisdiction on family matters (divorce, custody, visitation rights, support, etc.).

3.

It depends on the effect with which the remedy was granted. The effect of remedies on these subjects must exceptionally be subject to the decision of the judge who may modify the effect of the remedy, i.e. to rule whether it will have a staying effect or non-staying effect (with no stay of decision) in accordance with factual circumstances, and the judge must in all cases give grounds for his decision regarding the effects. This is due to the particular nature of the interests at stake and because it is possible that the parent who committed the abduction makes use of any means to frustrate the return of the child. The judge may assess the conduct of the one under custody according to the facts or procedural rules.

4.

If the appeal was granted with no stay of decision, a remedy to suspend enforcement could be filed, and decided by the Court of Appeals.

b)

It can only be filed once and if denied, enforcement will begin.

5.

Legal remedies may be filed in relation to the substantive decision and to enforcement.

6.

We consider it is convenient that in case of an appeal, sentences be rendered with no stay of decision, in order to continue with the enforcement. Otherwise it is almost impossible to comply with the terms provided for in the Agreement, which means failure to comply with the goal of avoiding settlement of the child in the new environment.

### **III. ENFORCEMENT PROCEDURE**

#### **A. Decision to be enforced and objectives of enforcement**

1.

Generally, when a child's return is ordered, it is allowed that the child is returned to the father/mother who took care of him until the transfer of the child. If the person who abducted the child was the one who took care of the child till the moment of transfer and is not willing to return, the child will be returned to the other parent (father/mother).

2.

c) to ensure the return of the child to the State of habitual residence

3.

This will be the responsibility of the Judge before whom the return petition proceeding is pending. The judge will give the Central Authority all information related to the procedure, if necessary to repatriate the child without the presence of a family member, he will also request relevant instructions. In practice, work is done in close collaboration with the Central Authority, in order to coordinate the return of child in the least traumatic form.

#### **B. Participants involved in enforcement**

1. In the Judge's decision the abductor is ordered to return the child in a certain way. The applicant should report any failure to comply with the order to the Judge who will then authorise police intervention.

2.

3. a)

In enforcing the decisions on return the Judge will order the intervention of the most appropriate persons or institutions in each particular case, whether psychologists, guardians ad litem, police officers, etc. Participation is not compulsory for any of them, but it is left to the discretion of the Judge, who will consider each request made by the parties in this respect.

b)

All the Family Courts have a psychologist on hand to offer support to the minor and/or abductor at the time of the enforcement.

It is also important to emphasise that throughout the whole procedure the Judge must play a fully active role not only in terms of adjudicating but also by performing coordination functions with other bodies, notably the Migrations Office, Central Authority, etc., conciliation with a view to seeking general agreement on a handover and lastly to solve the order of return once and for all. Experience shows that although agreement may have been reached on handover, a decision must be made as to the resolution ordering the return of the minor. There should also be agreement between the parties concerning how exactly to formalise the handover. This is of utmost importance since if the agreement is ever thwarted, after a court decision on the return, the enforcement route will still be open.

c) The presence of the applicant or of a person appointed by the applicant is required when formalising the return.

4. a)

The enforcement procedure is supervised by the Judicial Authority which adopts the decision.

b)

The First Instance Judicial Authority, because once the decision is made, the file is submitted to the Lower Court for enforcement.

### **C. The enforcement procedure**

1.

Local procedural laws specify no time limit.

2.

The resolution usually gives specific guidelines as to the way in which the handover should occur, and the Judge is empowered to set reasonable time limits for compliance with the measure.

3.

There are measures, such as depositing passports with the Court, ordering a prohibition on the minor leaving the country, to be notified to the Federal Police and Migrations. Once the minor has been localised, and until such time as the handover is effected and the parent who requested the measure is present, the child may be ordered to remain in the care of a substitute family already selected by the Court with the help of interdisciplinary teams.

4.

The participation of criminal justice is sought and a police search is ordered. The removal of the child abroad is forbidden and this is notified to border authorities. The photograph of the child and his abductor may be ordered to be published in newspapers of the city and the country where he is, and information may be transmitted through the media.

5.

All measures related to the enforcement of a judicial order.

6.

In case of non-compliance with a judicial order the Court may impose monetary penalties, transmit antecedents to the criminal justice for contempt of court, order judicial search warrant, etc.

7.

These measures must be ordered by the judge where the request for return and the corresponding enforcement of the ordered return measure are pending.

b) If necessary, an increase of enforcement measures must be ordered by the judge where proceedings are pending.

8.

Yes, the Judge may order that urgent measures be enforced outside Court working hours.

As an example the following case ruled by Courts in the province of Cordoba may be mentioned: In the proceedings for the return of a child aged one year and a half, initiated by a Judge in Brazil through a letter rogatory, since the mother of the girl resides in that country, the father had removed the child and was living with him in a lorry and he travelled with the child. Once the return was ordered, the girl could not be found and so it was ordered to publish the photo of the girl and her father in the city newspapers informing both the police and Interpol of the search. By an anonymous call from someone who saw the photos, Police were informed that at a certain address a child and her father with identical characteristics as shown in the photograph had been seen. The police reported this to the acting judge who ordered that the child be rescued by the Police. Once rescued, the girl was taken to the Court where a team comprising a psychologist and a social worker could attend to her, in the presence of a Court officer. This happened during a weekend and the steps were taken during the weekend.

#### **D. Costs**

1.

Enforcement entails the payment of costs, regardless of those generated by the procedure of return. They are costs for the enforcement itself. The estimate is made in accordance with the provisions of the Duty Schedule for the estimate of professional fees. Since this is an enforcement with no economic basis, as it is not a financial matter,

costs are very low and they are estimated in accordance with the procedural steps followed and relate to enforcement work.

2.

The defeated party must pay for enforcement costs and payment is to be made to the petitioner of the measures. In an action through the free legal Assistance system, payment of costs may be delayed until the party who must pay for the costs improves its financial situation. In order to be eligible for such system it is necessary to be sponsored by Public Defenders whose work includes providing legal assistance to the poor as provided by law; the person must not own real estate or valuable personal property or an income exceeding a certain amount. In the case of international abduction, if the Foreign Central Authority informs that the petitioner does not have enough resources to pay for a lawyer in his country of residence, free legal assistance in the Argentine Republic is ensured. It is not necessary to pay in advance to the relevant enforcement agencies.

3.

Repatriation costs are included in the costs of the enforcement procedure and costs have to be paid by the one who wrongfully removed the child, pursuant to the adjectival law in coincidence with art. 26 of the Hague Convention, final part. Notwithstanding this, normally the one who pays for the ticket is the petitioner of the measure who is not the person who must pay for costs. Payment in advance is not a condition for enforcement.

4.

The Central Authority (specified on web page: [www.menores.gov.ar](http://www.menores.gov.ar)) or the respective professional may provide that information).

5.

The Court dealing with the enforcement has all the powers established by law to ensure child repatriation.

6.

No.

**IV. STATISTICAL INFORMATION**

1.

2001	
Voluntary returns	4
Ordered returns	4 (1 with compulsory enforcement)
2002	
Voluntary returns	2
Ordered returns	0
2003	

Voluntary returns 2  
Ordered returns 3 (1 with compulsory enforcement)

2.

2001: 12 requests processed. One case appealed. 2 still pending.

2002: 7 requests processed. No return ordered, several were refused, others were rejected, and in other cases the return was voluntary.

2003: 12 requests processed. Three were appealed, one of which is still pending.

3.

None was successful.

4.

In various cases the decision was enforced on the day of the hearing, while in others it was enforced in the following days. However, it is always expeditious. Enforcement occurs when the sentence is final.

## **V. COOPERATION**

1.

Interpol works closely with the Central Authority and with the Courts in those cases in which its participation is necessary to locate the child or to enforce the sentence. There is no formal agreement at national level, but at a global level Interpol is expressly committed to collaborating in cases of cross-border abductions of minors.

2.

There are no agreements. That is the responsibility of the court.

3.

Please refer to previous answer.

4.

No.

## **VI. PROFESSIONAL TRAINING AND EDUCATION**

1.

Magistrates Associations, Bar Associations, NGOs and different universities offer training courses on the enforcement of measures dealing with family matters generally. There is no permanent specific course on the functioning of the Hague Convention.

2.

Please refer to previous answer.

3.

No specific courses on return enforcements within the framework of the Hague Convention are offered.

4.

No.

## **VII. OTHER INFORMATION**

1.

They do not exist.

2.

See previous answer.

3.

No.

4.

5.

6.

No.

7.

No.

## **VIII. DECISIONS THAT GRANT A RIGHT TO MAINTAIN CONTACT / RIGHT OF ACCESS**

The same guidelines are applied for both national and international access.

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