

The letter dated July 30, 2004 regarding the abovementioned, refers. I submit hereunder inputs in respect of the questionnaire.

I. LEGAL BASES FOR THE ENFORCEMENT OF RETURN ORDERS.

1. No specific legislation is in place. The enforcement of such orders resorts under contempt of court proceedings, in similar fashion to a civil application.

2. No general legislative provision exists in South Africa concerning the enforcement of court orders in the area of Family Law and which govern the enforcement of return orders under the Convention.

3. The most significant judicial decisions so far:

K v K 1999(4) SA691(C)

WS v LS 2000(4) SA104(C)

Sonderup v Tondelli and another 2001(1) SA1171(CC)

Smith v Smith 2001(3) SA845 (SCA)

The CFA, Central Authority and R C Vonder v M S Vonder (unreported) Case No.10414/2001(WLD)

Pennello v Pennello 2004(3) SA100 (NPD)

Pennello v Pennello (Chief Family Advocate as Amicus Curiae) 2004(3) SA117 (SCA)

Practice Guidelines

A practice manual setting out guidelines for the application/interpretation of the Convention has been compiled by the Family Advocate unit and forms the basis upon which the Central Authority/ her appointees discharges its duties in terms of the Convention.

4. No additional comments.

II. ENFORCEABILITY AND LEGAL REMEDIES.

1. (a) Yes, the normal appeal procedures that are provided for in the Uniform Rules of Court will apply.

(b) Application for return orders are instituted in the relevant division of the High Court and the normal course of appeal will be as follows:

To the full bench of that specific division and following that to the Supreme Court of Appeals or to the Constitutional Court in the event that a constitutional issue arises/has been raised.

2. (a) The court order forms the basis for the enforcement of the actual return order.

(b) The court that is seized with the matter.

3. A return order issued by the court of first instance is subject to the normal appeal process to which the "losing party" would be entitled to ordinarily.

4. (a) No.

(b) Not applicable.

5. Not applicable.

6. No.

III. ENFORCEMENT PROCEDURE.

A. The order to be enforced and the aims of enforcement.

1. If an application for the return of a child under the Convention is successful the return of the child is to its state of habitual residence is ordered invariably together with a mirror order having been obtained by the aggrieved party.

2. Purpose of the enforcement order is to ensure the child's return to his or her state of habitual residence.

3. The Central Authority/appointee in conjunction with the state solicitor (state attorney).

B. Actors involved in enforcement.

1. No.

2. The Central Authority in consultation with the state solicitor initiates enforcement of the court's return order.

3.(a) The Central Authority and the state solicitor. The office of the Central Authority has access to social workers and psychologists. The Central Authority/appointee takes the lead in ensuring enforcement, in consultation with and in conjunction with the state solicitor.

(b) The Office of the Family Advocate who acts as the Central Authority has access to social workers and psychologist services in order to prepare the child and/or respondent for the return to the country of habitual residence.

(c) The presence of the applicant being the aggrieved party is not required.

4. (a) There is no supervision/control of the enforcement procedure by court. The enforcement of the order rests with the Central Authority.

(b) Not Applicable.

C. THE ENFORCEMENT PROCEDURE PROPER.

1. The timeline for enforcement is ordinarily crafted in the return order.
2. Depending on the manner in which the return order is crafted, it could happen that there may be a period of time for voluntary compliance with the return order. If compliance does not occur voluntarily the next step would be to institute contempt proceedings.
3. Aside from requesting the abducting parent to surrender his/her travel documents no other measure exists to prevent the child from taking the child into hiding after the return order is granted.
4. The Central Authority/appointee and the Police Service. The effect of a hiding has a direct bearing on the timeline for enforcement as the child/ren would have to be located in order to give effect to the return order.
5. To ensure that the terms of the return order are complied with for instance where the order requires the aggrieved parent to obtain a mirror order.
6. Presently there are no coercive measures available to ensure enforcement of the return order save for launching contempt of court proceedings.
7. (a) Contempt of court proceedings can only be initiated where the abducting parent who has agreed to accompany the child/ren on their return refuses to and/or delays to do so.

(b) Should problems persist in giving effect to the return order the court which issued the order will have to be approached to obtain authorisation for a specific order such as removal of the child from the care of the abducting parent. Thus the enforcing organs cannot unilaterally "upgrade" the intensity of the coercive measures.
8. Court orders can be obtained on an ex parte and on urgent basis.

D. COSTS.

1. All costs are borne by the state.
2. Where the central authority has initiated the process or consequent an attendant costs regarding the obtaining of the return order as well as its enforcement are borne by the state agencies involved.
3. The repatriation costs are borne by the parties concerned either equally or by agreement by the parties that either the abducting parent or the aggrieved parent would bear same. Advance payment in respect of travel costs may be a condition for enforcement if this is what is contained in the return order.
4. Foreign applicants are provided with information through the requesting Central Authority.

5. The primary enforcement organ is the Central Authority/appointee central authority who has to give effect to the terms of the return order.

6. No.

IV. STATISTICAL INFORMATION.

(Will be faxes separately on Monday.)

V. CO-OPERATION.

1. Although no formal agreement exists between the Central Authority and other state agencies that play a role in ensuring return of abducted children, a working relationship has been established between the offices of the State Solicitor, the South African Police Service, Social Welfare Agencies(government and non-government). This co-operation has developed over a period of time and has been a natural consequence of the role and duties performed by the Central Authority.

2. Presently no co-operation agreement exists between South Africa and other member states.

3. The agencies are numerous. Government agencies may be accessed on <http://www.gov.za> <<http://www.gov.za/>> , which is a general Government website with links to the various departments. The senior Family Advocates in the various provinces are also often appointed ad hoc central authority in accordance with our domestic legislation, as and when the need arises. Such appointments are however channelled through the office of the Chief Family Advocate, whose contact details appear on the signature to this e-mail.

4. No.

VI. TRAINING AND EDUCATION FOR PROFESSIONALS.

1. Training is conducted in conjunction with the Justice College, the State Solicitor that specialises in child abduction, members of Interpol, the department of Social Development, led by the Office of the Chief Family Advocate.

2. In- house, Justice College, the specialist state solicitor, the Chief Family Advocate and some senior Family Advocates.

3. This training occurs by way of presentation of workshops and seminars. The training has not been regularised and takes place on an ad hoc basis presently.

4. It would be helpful to the various Central Authorities to share and exchange their views regarding the interpretation and application of the Convention which can culminate in a training program with the view to ultimately harmonise the manner in which the various Central Authorities execute their mandate.

VII. OTHER INFORMATION.

1. We are in the process of designing a website through with the assistance of our IT section, which we hope to launch before the end of the year.

2. The envisaged website will be in English only. The information has been furnished by the office of the Chief Family Advocate. Brochures will be produced in the next financial year starting April 2005.

VIII. ORDERS GRANTING RIGHTS OF CONTACT/ ACCESS/ VISITATION.

The coercive measures are the same as with return orders. The enforcement order may be coupled with a suspensive warrant of committal to gaol against the defaulting parent, especially when the contact period has already elapsed, to prevent future non-compliance. The aggrieved parent may approach the court by way of urgency while the contact period subsists.

It is trusted that the responses herein will be of assistance to your research.

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