

QUESTIONNAIRE ON PREVENTIVE MEASURES

The questionnaire which appears below is addressed to States Parties to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and some Non-Governmental Organisations. It should be emphasised that respondents are also invited to identify and comment upon matters concerning preventive measures, which are not addressed specifically in the questionnaire. Where information is available on web sites, please feel free to merely state the web site address.

The Permanent Bureau requests responses to the questionnaire to be sent to the Permanent Bureau, if possible in electronic form. Responses should be received no later than April 1^o 2003.

QUESTIONS

A. LEGISLATION AND COURT ORDERS

1. Please give details of any civil legislative provisions which exist in your State which may act as a deterrent to a potential abductor, or may have a preventive effect.

Article 264 quater of the Argentine Civil Code establishes that in some cases, express consent of both parents will be required in order for the minor to carry out certain actions.

This provision refers to parents legally married and living together with the child, as well as parents that have separated or are divorced, where in most cases one of the parents has physical custody of the minor, and the other has legal access with the minor.

Among the actions for which express consent is required of both parents, is included the authorization to leave the country (4^o). This means that either the father or the mother may grant or deny this authorization, or grant it for a limited period of time, and therefore express his or her agreement or disagreement regarding a possible change of residence of the minor.

In other words, from article 264 quater derives the need to comply with the consent of both parents in order for the child to be able to change his residence to a foreign country.

2. Please give details of any criminal legislative provisions which exist in your State which may act as a deterrent to a potential abductor, or may have a preventive effect.

Act 24.270 of the Argentine Penal Code establishes that the parent or third person who, wrongfully, prevents or hinders the contact between children and their non custodial parent, shall be punished with one month to one year imprisonment.

Article 2^o of the same act, indicates the same punishment for the parent or third person who in order to prevent contact between the child and it's non custodial parent, removes it from it's home without judicial authorization.

In case the child is taken abroad for the same purpose, without judicial authorization, the punishment is elevated.

Article 146 of the Argentine Penal Code makes punishable the behavior of a person who withdraws a minor under the age of 10 from the custody of his parents, tutor, or the person in charge of his care, as well as the conduct of anybody who retains or hides the minor.

On this matter, jurisprudence is divided between those judges who understand that this punishment applies to a parent, and those who limit its application to acts performed by a person other than the parents of the minor.

3. Please give details of any court orders which can be obtained during, for example, divorce or custody proceedings which prohibit, restrict or criminalise removal or retention of a child.

A civil court, within a divorce or custody proceeding, may order the prohibition of the minor to leave the jurisdiction of the court or the country, but cannot criminalize the removal or retention of the child. Once the removal has occurred, a criminal judge may intervene.

Moreover, if any suspicion or risk arouses that a parent may abduct a child, the civil court may withhold the passport of the minor. If the passport is already being issued, the civil court may order the police authorities not to deliver the document to his parent.

4. Please give details of any court orders which can be obtained in emergency situations. Can these orders be obtained out-of-hours and ex parte?

Prohibitions to leave the country may be granted ex parte, but can only be ordered during judicial hours.

The withdrawal of the child from his parent's custody can also be required of a civil judge as a precautionary measure, but the emergency and danger of the delay will have to be demonstrated if it is to be extended ex parte, and may be ordered only during judicial hours.

5. Do you have any comments relating to relocation orders?

When a parent wishes to relocate with the child in a foreign country, he or she will need to acquire the court's authorization when a legal custody arrangement has been settled, and this is also the case when a parent has only physical custody of the minor, since according to art. 264 of the Argentine code, consent of both parents is required in order to leave the country.

The inconvenient is that when a parent is denied the relocation order, there is a risk that he or she may abduct the child.

6. Do you have any other comments relating to legislative provisions, or court orders, or administrative measures including any comments on the effectiveness of these provisions and orders, and how often they are used in practice?

Provisions and measures of the kind described, may become ineffective when border controls in the country are not duly carried out.

B. BORDER CONTROLS

1. Please give details of any rules or procedures relating to the issuance or withdrawal of passports which may help to prevent removal or retention.

According to Argentine law, consent of both parents is required for the issuance of a minor's passport.

On the other hand, the withdrawal of a passport can only be ordered by a court, as described above.

2. Please give details of any rules or procedures relating to the issuance or withdrawal of visas which may help to prevent removal or retention.

In the particular case of Argentina, a judicial order is needed in order to deny or restrict the issuance of visas.

3. Are you aware of any co-operative arrangements with other States with regard to children who maintain more than one nationality?

There are co-operative arrangements with countries such as Italy and Spain regarding double nationality, although no specific regulations are referred towards children.

Nonetheless, if a minor has his residence in Argentina, he will need to comply with the regulations of Argentina in order to leave or enter the country. Moreover he will be expected to present his Argentine passport and parents' authorization to travel if he or she is not travelling with both parents.

4. Are there any foreign States which it is possible for nationals from your State to enter without a visa or a passport or without passing border controls? On what basis is this possible, i.e. legislation/bilateral agreement/custom etc.?

Passports and visas are not required for Argentine nationals in order to enter border States (Chile, Brazil, Uruguay, Paraguay and Bolivia).

This regulation arises from bilateral and multilateral agreements.

There are also many other States (67 States) that don't require Argentine nationals visa to enter their country.

Notwithstanding, border controls cannot be avoided even between border countries.

5. Are there any foreign States whose nationals can enter your State without a visa or a passport or without passing border controls? On what basis is this possible, i.e. legislation/bilateral agreement/custom etc.?

In most cases, due to reciprocity amongst States, the same provisions required of Argentine nationals to enter border and non-border States is applied for nationals of those countries to enter Argentina. For that reason, the answer given to question 5. B also applies to this question.

6. Please give details of any port alert or similar emergency systems which can operate to prevent removal from your jurisdiction including the conditions required to put these procedures into effect.

When a judge orders a prohibition to leave the country, the court informs this circumstance through "ISOPRO", a net belonging to the Ministry of National Security,

which gives instant communication to all authorities in charge of border controls, including the National Police and Inmigrations.

7. Please give details of any specific duties on air carriers / ferries relating to the carriage of children.

As answered in question 1. A of the questionnaire, consent of both parents is required for a minor to leave the country. Therefore, if the child is not travelling with both parents, air carriers and ferries will demand authorization of the other parent, for the minor to leave the country.

8. Do you have any other comments relating to border controls, including any comments on the effectiveness of these measures to prevent removal or retention and how often they are used in practice?

Border controls are highly effective in terms of air carriers and ferries but become less effective in dry/land boundaries, due to the territorial extension of the Argentine borders.

C. INFORMATION FOR PARENTS

1. Please give details of any web pages, and provide copies of any brochures, or information packs or similar which contain information or advice on preventive measures and which are available to parents in your State.? Who provides this information?

Information can be acquired through the web page www.menores.gov.ar which is provided by this Central Authority and through non-government agencies such as Fundación Niños Unidos para el Mundo (www.foundchild.org.ar) and Missing Children Argentina (www.missingkids.com).

2. When was this information compiled? When was it last updated? How is the information made available?

The web page provided by this Central Authority is in use since 1999 and its last update was made in 2002.

3. Do you have any other comments relating to information for parents, including any comments on whether such information is effective in preventing abductions?

There is insufficient information due to the lack of human and material resources.

D. TRAINING AND EDUCATION FOR PROFESSIONALS

1. Please give details of any training or education that is available in your State for professionals (including, Central Authority personnel, lawyers, mediators, police officers, port or airport authorities and social workers) as a means of assisting them to operate preventive measures.

The only training or education available is provided by this Central Authority, which is carried out by conferences given in the Bar Association of Buenos Aires as well as in schools and universities.

2. Who provides this training and education?

The Argentine Central Authority.

3. What form does this training take and how regularly does it occur?

The training and education is insufficient due to the lack of human and material resources.

4. Do you have any other comments relating to training and education of professionals, including any comments on the effectiveness of this training and education as a means of preventing abduction?

There is no specific training provided for Central Authority personnel.

E. PUBLICITY

1. Please give details of any means used to publicise the Convention or the work of the Central Authority.

The web page www.menores.gov.ar includes an article which has also been publicised in "La Ley", a law review that can be accessed by public in general.

There have also been newspaper articles publicising the work of the Argentine Central Authority in regards to the application of the Convention, as well as publications in Bar Associations' magazines.

2. Please give details of any means used to publicise other preventive measures operating in your State.

3. Do you have any other comments relating to publicity, including any comments on the effectiveness of publicity regarding preventive measures?

There is a serious deficiency of publicity due to the lack of human and material resources.

F. CO-OPERATION

1. Please give details of any co-operative agreements existing between different agencies within your State, either formally or informally, with regard to preventive measures? How did this co-operation develop?

2. Please give details of any co-operative agreements with other States, either formal or informal between different Central Authorities or agencies? How did this co-operation develop?

3. Please provide details (including contact details, web sites etc.) of all agencies in your State which have a role to play in preventing the removal or retention of children.

Family Law Courts as well as Inmigrations Office and Security Forces are involved in preventing the removal or retention of children. Should you need to make contact with any of these agencies, you may reach them through this Central Authority.

There are also non-government agencies working in the field of international abduction, such as Fundación Niños Unidos para el Mundo (www.foundchild.org.ar) and Missing Children Argentina (www.missingkids.com).

4. Do you have any other comments relating to co-operation, including any comments on the effectiveness of such agreements?

G. OTHER INFORMATION

1. Please provide any other information which may be relevant to the issue of preventive measures and their effectiveness.

2. Please provide details of any other bodies or authorities in your State who may have information useful to this research.

3. Have you any general comments to make regarding preventive measures?

The Permanent Bureau would like to thank you for taking the time to consider this questionnaire. If you have any further questions or comments please do not hesitate to contact us.