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VENEZUELA

HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION

Introduction

The Hague Convention on the Civil Aspects of International Child Abduction (hereinafter the Hague Convention) adopted on October 25, 1980, during the 14th Session of the Hague Conference on Private International Law, was ratified by Venezuela¹ on July 19, 1996 and came into force on January 1, 1997.² At the time of ratification, Venezuela made a declaration under article 24 of the Convention requiring that all communications addressed to the Central Authority be translated into Spanish.³ Venezuela also made a declaration concerning article 26, stating that it is not obliged to provide for legal counsel in Convention proceedings.⁴

I. Domestic Laws and Regulations Implementing the Hague Convention

The Central Authority for the Convention in Venezuela is the *Dirección General de Relaciones Consulares* of the Ministry of Foreign Affairs.⁵ A statute on the *Ley Organica de Proteccion del nino y del adolescente (LOPNA)*⁶ provides that the state must protect children and adolescents against their illegal abduction within the country or abroad.⁷ However, there is no specific national implementing legislation of the Convention, and therefore, the LOPNA procedural rules apply to Convention related return or visitation petitions. The *Tribunales de Proteccion del Nino y del Adolescente (TPNA)* (Minors Court) with jurisdiction where the child is located will have competence to decide cases under the Convention.⁸

A. Return Requested from Abroad

Under the provisions of the LOPNA,⁹ it has been determined that the competent judge to provide for the return of a child, or to enforce visitation rights under the Convention, is the *TPNA* where the child is located or being retained, consisting of the *Sala de Juicio*, that will decide in first instance, and then a

¹ GACETA OFICIAL (G.O.) July 19, 1996.

² LEY DE DERECHO INTERNACIONAL PRIVADO of August 6, 1998, LIBRO HOMENAJE A GONZALO PARRA-ARANGUREN, VOL II, Tribuna l Supremo de Justicia, Caracas, 2001, at 425.

³ *Supra* note 1, final provisions.

⁴ *Id.*

⁵ REGLAMENTO ORGANICO DEL MINISTERIO DE RELACIONES EXTERIORES, in G.O. December 22, 1999, art. 15.8.

⁶ LEY ORGANICA DE PROTECCION DEL NINO Y DEL ADOLESCENTE, LOPNA, in G.O. October 2, 1998.

⁷ *Id.* art. 40.

⁸ *Id.* art. 177.

⁹ *Id.*

Corte Superior that will decide at the appellate level.¹⁰ The *Sala Civil* of the Supreme Court hears the cases as the court of last resort.¹¹

Under the provisions of the Convention, the Central Authority is required to take all necessary measures to locate the child. The National Police will provide assistance thereto. If an agreement between the parties is not reached at the administrative level with the intervention of the Central Authority, a *Fiscal* (public defender),¹² will be appointed to intervene in the judicial proceedings. However, since Venezuela has made a declaration stating that it is not obliged to provide free legal counsel in Convention proceedings, if applicant decides to name a private attorney, the Central Authority is not required to pay for such expenses.¹³

B. Return requested from Venezuela

When the Venezuelan Central Authority is the requesting party, under the return or visitation petition, the documentation is translated as appropriate and sent to the competent Central Authority abroad.¹⁴ The Venezuelan Central Authority must provide guidance and orientation to the petitioners. Once all documents have been submitted, the Central Authority will follow up on the petition abroad and try to reach a friendly solution to the case. If this is not possible, judicial proceedings will be instituted to return the child to Venezuela or to reinstate the effective visitation schedule. Venezuela will not provide legal assistance for judicial proceedings abroad.¹⁵

II. Domestic Laws Regarding Child Abduction and Parental Visitation

The LOPNA provides that in cases of divorce, separation, nullity of marriage, or if the parents of a child are residing in different places, both parents will decide who will have the custody of a child 7 years of age or older.¹⁶ Children younger than 7 years of age must live with the mother, unless she does not have parental authority or it is in the best interest of the child, for reasons of health or safety, to be separated from the mother either temporarily or permanently.¹⁷ In case of disagreement, the judge will decide on the custody of the children.¹⁸

¹⁰ *Id.* art. 175.

¹¹ *Id.* art. 176.

¹² *Supra* note 6.

¹³ *Supra* note 4.

¹⁴ Statements by legal counsel of the Central Authority, Dra. Maria Cristina Barroso.

¹⁵ *Supra* note 3.

¹⁶ *Supra* note 6, art. 360.

¹⁷ *Id.*

¹⁸ *Id.*

Parents assigned parental authority have the custody of their children; they are civilly, administratively and criminally liable for their compliance with its enforcement.¹⁹ In case of a disagreement on any aspect of the custody arrangement, either parent may petition a change or clarification of the custody terms before the judge of the *Sala de Juicio*. The court will decide after hearing from the parties and the child and after trying to solve the case through conciliation. This decision may not be appealed.²⁰

With regard to visitation rights, the LOPNA provides that the parent who abducts or retains a child whose custody has been assigned to the other parent or a third person, is judicially obligated to return the child and will be liable for the damages caused by his wrongdoing. The abductor must reimburse all the expenses incurred in securing the return of the child.²¹

In these cases, the LOPNA provides that whoever abducts or illegally retains a child from his legal guardian, will be sanctioned with imprisonment of 6 months to 2 years. In addition, the abductor will be liable for all travel related expenses to return the child to his residence.²²

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

When Venezuela is the requested country and there is no voluntary return of the child, the competent court for return proceedings under the Convention will be the lower courts of the place where the child is located or where he is being retained.²³ The case may be appealed only once to the respective Court of Appeals and must be decided within a maximum of 20 days; the appeal does not suspend its enforcement.²⁴

According to the Venezuelan Central Authority, since the Convention came into force recently, there is not much experience under the Convention, and its application has not been as widespread as expected. More information about it needs to be provided in order to increase its application, it is stated.²⁵

A case involving children whose residence was in the United States is illustrative. After the divorce of their parents, the mother traveled with the children on vacation to Venezuela, but they did not return. The father claimed that although the taking of the children was legal, their retention in Venezuela was not, because such an action violated his rights of custody of the children under U.S. law, where the children were habitually resident.²⁶ Although the mother petitioned a Venezuelan court for sole custody of the children, the court decided under the Convention return petition and ordered the immediate return

¹⁹ *Id.* art. 359.

²⁰ *Id.*

²¹ *Id.* art. 390.

²² *Id.* art. 272.

²³ *Supra* note 10.

²⁴ *Supra* note 22.

²⁵ *Supra* note 14.

²⁶ *Supra* note 2, at 421.

of the children to their country of residence. It concluded that, unless the Convention is considered inapplicable, Venezuelan courts are not competent to decide on the actual custody of the children, because their legitimate place of residence was the United States. However, the return could not be executed, and the minors remained in Venezuela.²⁷

IV. Law Enforcement System

The National Police and Interpol are responsible for assisting in the location of children and securing the enforcement of the orders of the authorities.

According to its records, as of 2004, the Venezuelan Central Authority has received 19 incoming return and 3 incoming access applications, for a total of 22 incoming applications. Venezuela made 32 outgoing return and 10 outgoing access applications so far in 2004.²⁸

Venezuela has received applications for return from Argentina, Bonaire, Canada, France, Italy, Mexico, the Netherlands, Portugal, Spain, and United Kingdom, but the majority come from neighboring Colombia. Venezuela has requested returns from Australia, Chile, Colombia, France, Italy, Mexico, Peru, Portugal, and the United Kingdom, but the most requested countries are Ecuador, Spain, and the United States.

V. Legal Assistance Programs

The Venezuelan Central Authority provides legal assistance during Convention proceedings before the courts in Venezuela through a body of attorneys called, *Fiscales*.²⁹ However, Venezuela has declared under article 26 of the Convention that it has no obligation to provide free legal counsel in Convention proceedings.³⁰ Further information is available on the website of the Central Authority:

Ministry of Foreign Affairs
Dirección General de Relaciones Consulares-Asuntos Especiales
Torre Ministerio de Relaciones Exteriores
Conde a Carmelitas Piso 6
Caracas 1010
Venezuela
<http://www.mre.gov.ve/consular/servicio.htm>

VI. Conclusion

The application of the Convention in Venezuela is recent and has encountered a number of difficulties due to the lack of expertise in the courts, lawyers, and the public at large and the lack of resources to implement a comprehensive program to promote and inform the population. The website of the Central Authority lacks statistics and basic informational tools, such as online forms that could be

²⁷ *Id.* at 422.

²⁸ *Supra* note 14.

²⁹ *Supra* note 13.

³⁰ *Id.*

easily downloaded throughout the country. However, this situation is in a process of change, and there are several proposals to improve it in the near future.³¹

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³¹ *Supra* note 14.