

Title	Study by Asociación Internacional de Juristas de Derecho de Familia (AIJUDEFA)
Document	Info. Doc. No 9 of October 2023
Author	Asociación Internacional de Juristas de Derecho de Familia (AIJUDEFA)
Agenda Item	XII.2
Mandate(s)	N/A
Objective	To share the latest study by the Asociación Internacional de Juristas de Derecho de Familia (AIJUDEFA)
Action to be Taken	For Decision <input type="checkbox"/> For Approval <input type="checkbox"/> For Discussion <input type="checkbox"/> For Action / Completion <input type="checkbox"/> For Information <input checked="" type="checkbox"/>
Annexes	N/A
Related Documents	N/A



REPORT ON:
INTERNATIONAL RELOCATION OF MINORS

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A. REPORT BACKGROUND

The purpose of this document is to present a summary of the reports prepared by AIJUDEFA members belonging to 10 countries, regarding the problems arisen in each country in relation to the manner in which the international relocation of children and adolescents operate when there is no agreement between parents.

AIJUDEFA submitted this report on April 20, 2020, jointly with the pertinent recommendations, to the HCCH Permanent Office so as to evaluate the convenience of bringing it to the consideration of its Council on General Affairs and Politics.

AIJUDEFA is a Spanish speaking International Association of Family Law jurists, made up by more than 80 well known jurists (lawyers, judges, attorneys and outstanding specialists) of different nationalities, who are experts in the fields of Family and Inheritance Law.

AIJUDEFA was born out of the need to bring together Family Law specialist leaders to work jointly on the family new reality and legal challenges faced by this matter in each jurisdiction at international level.

It is one of our goals comprise to cooperate with international bodies and national associations of Family Law.

B. PROBLEMATIC ISSUES

When a couple made up of international individuals separates and the joint project comes to an end, the problem appears whether the minor should maintain his/her usual place of residence or,

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should any of the parents' desire to return to his/her country of origin or move abroad for other reasons, should they take the minor with them.

There are many cases of national and foreign individuals who, after separating from their couples, decide to relocate their residence. Their objective becomes a true judicial battle, with high economic, emotional and legal costs, that even comes to the point of totally disrupting family relationships with terrible consequences for the children. At times, driven by despair, parents even resort to illegal removals or retentions that derive in processes of international restitution of the children.²

At AIJUDEFA we wonder:

Whether the processes of international relocation of minors might become a prevention element in the light of the constant increase of international abduction and retention, if such processes had a special and agile proceeding with clear guidelines.

Bearing this in mind, each jurisdiction has been asked to prepare a report about the legal treatment of the issue of international relocation of minors in each country, by answering to the following items:

1. Is there a specific procedure in your country to deal with these cases?
2. Average duration of these processes in your country.
3. Jurisprudential tendencies, in your country, of the Appellate Courts regarding international relocation.
4. Would you say that relocations are generally granted or denied?
5. Is the Washington Declaration of 2010 known in your country? If so, do you believe it is applied when a case needs to be solved?
6. Identify the challenges and problems existing in your jurisdiction.

C. ISSUES POSED IN EACH JURISDICTION

1. Is there a specific procedure in your country to deal with these cases?

1.1 All **Latin American countries** consulted, and **Spain** have informed that:

² GOMEZ GUERRERO, Sonia Rocío. "Report on the situation of international relocation of children and adolescents in Colombia". Bogotá, Colombia. February 2020.

- a) There is no specific procedure for international relocation cases, for which reason most cases undergo an ordinary proceeding or the applicant must select among different processes.
- b) They have no specific title that allows to identify them. In general, they are submitted as travel authorizations with residency purposes.
- c) In most countries consulted, the situation of processes related to the use of the Hague Convention of 1980 on cases of international abduction is different since these do have a special proceeding.

1.2 On the contrary, in the **United Kingdom** there is a proceeding with specific rules regulated by “The Children Act 1989”. And it is very interesting to point out that if the application entails relocation to a country that has not signed The Hague Convention of 1980 on civil aspects of the abduction of minors, jurisdiction used to lie with the High Court of London: a higher instance to that of family courts with judges who are specialized in international family law.³ This rule has been modified⁴ and these claims are now heard by the Family Courts of the child and adolescent residence, but it is possible to request a different judge category, the Deputy High Court Judge, if there are complex elements such as the need for an expert report of the country to which relocation is requested, if the country is not signatory of The Hague Convention of 1980.

1.3 In turn, in the **State of New Jersey, United States of America**, following the Supreme Court rulings *Bauers vs. Lewis*, 167 NJ 91 (2001) and the case *Bisbing vs Bisbing*, 166 A.3d 1155 (NJ 2017), the courts have clear guidelines to evaluate relocation cases.⁵ In the Bisbing case, the Supreme Court changed the standards and at present, the father who seeks relocation must demonstrate that such relocation will be “in the child’s best interest”, while in the Baures case, a mother or father could relocate provided he/she had good reason for that and the relocation was not contrary to the child’s best interest.

It is interesting to underline the fact that in New Jersey there are two kinds of custody: residential and legal. If a parent has the principal legal custody, he/she does not need the other parent’s permit for relocation; but if they share the custody, even if he/she has the primary residential custody, this parent will always need the other parent’s permission or the Court’s permission, when the Court analyses the issue under the standards

³ MARIN PEDREÑO, Carolina “International Relocation of Minors, England and Wales”. London, February, 2020. 2014 Allocation and Gatekeeping Guidance

⁵ RODRÍGUEZ, Maritza Esq. “Report on United States of America – New Jersey”. New Jersey, USA, February 2020

established in the Bisbing case, which comprises the same factors evaluated when a custody is being determined.

1.4 Regarding **Uruguay**, it should be mentioned that the minor is allocated a child's attorney and such child is another party in the travel authorization process (art. 8 of the childhood and adolescence code) to relocate abroad. (art. 191 of the childhood and adolescence code).

2. Average duration of these processes in your country.

In **Argentina**, since the process follows an ordinary procedure and considering the fact that the resolutions are always claimed, processes **take several years**, which generate discouragement and much anxiety not only to the parties but specially to the children who are in the middle of a judicial process and a very serious dispute between their parents.⁶

In **Brazil**, in average, judicial procedures for the authorization of international travel with change of usual residence last from **six (6) months to one (1) year** of a regular lawsuit, if no claims are submitted to the Appellate Court.⁷

In **Chile**, the first instance process must be added the eventual appeals before appellate and cassation courts, which implies that there are cases in which the process may reach even the Supreme Court of Justice, thus making the process up to **more than two years** long. Another controversial element in this proceeding is that it admits counterclaims and therefore, the party opposing the relocation may file other actions in the same procedure which makes it even longer.⁸

In **Colombia**, these processes last **from six months to one year** in average, but generally such parent opposing the relocation tries to extend the process and requests evidence and valuations that require much time.⁹

In **Spain**, the Voluntary Jurisdiction proceeding should be theoretically quick (two, three months) but the fact is that it may take longer due to the work burden of certain family courts. Also,

⁶ GRANILLO OCAMPO, Victoria; KUYUMDJIAN de WILLIAMS, Patricia; MATTERA, Marta del Rosario. "Report on International Relocation in Argentina". Buenos Aires, Argentina, February 2020.

⁷ HAPNER, Adriana. Commission on "International relocation". San Pablo, Brazil, February 2020

⁸ HORVITZ LENON, Daniela; ZARRICUETA, Juan Francisco. "International Relocation of Children in Chile", Santiago de Chile, February 2020.

⁹ GOMEZ GUERRERO, Sonia Rocío. "Report on the situation of International Relocation of children and adolescents in Colombia". Bogotá, Colombia. February 2020.

duration may vary depending on the province where it is heard, leaving aside appeals (which do not prevent the execution of the first instance resolution).¹⁰).

In **Dominican Republic**, the process duration many times depends on the time consumed by the social work undertaken in the country where the minor will reside, a prior and obligatory report before a resolution may be issued. It may last **from seven months to one year**.¹¹

In the **United Kingdom**, these kinds of demands are usually resolved between **six and eight months** as from the time the demand was filed. The change of residence decision may be appealed. However, in practice, the judge making the decision does not allow an appeal, unless an unusual new legal aspect has developed. Consequently, the times required are shorter than in the rest of the jurisdictions consulted.¹²

In **Uruguay**, the duration will depend on the proof offered, but the sentence has no suspensive effect, therefore the child may leave the country if authorized, with just the first instance sentence, unless the other parent files a precautionary measure. **The term in principle would be shorter than one year**.¹³

In **New Jersey, United States of America**, judicial procedures in a relocation case vary between several months and one or two years. The shortage of judges in New Jersey is causing delays in judicial processes. Lack of judges render it impossible for session days of a lawsuit to be scheduled consecutively, so a lawsuit requiring several days may take several months. Judges usually refer lawyers and their cases to mediation, where most cases are resolved.

3. Jurisprudential tendencies, in your country, of Appellate Courts regarding international relocation.

We have not been able to access any official data in **Argentina**. However, the non-official research conducted would suggest that the children opinions are one of the most relevant guidelines considered in order to consent or deny them.¹⁴

¹⁰ BAYO DELGADO, Joaquín; LÓPEZ MUELAS, Lola y VARELA, Carmen. "Report relative to Spain". Barcelona and Murcia, Spain. February 2020.

¹¹ JORGE MERA, Dilia. "Report on International Relocations Dominican Republic". Santo Domingo, February 2020.

¹² MARIN PEDREÑO, Carolina "International Relocation of Minors England and Gales". London, UK, February 2020

¹³ LEGNANI, Bernardo. "Report on Uruguay", Montevideo, Uruguay, February 2020.

¹⁴ GRANILLO OCAMPO, Victoria; KUYUMDJIAN de WILLIAMS, Patricia; MATTERA, Marta del Rosario. "Report on International Relocation in Argentina". Buenos Aires, Argentina, February 2020.

It is not possible to distinguish a criterion or tendency in **Chile**, of the Court of Appeals, considering also the non-existence of specialized courts. As regards the Supreme Court, the tendency distinguished is to acknowledge the viability of relocation outside the national territory; there even exist rulings where statements are included referring to the necessary harmony that there should exist between the custodian parent's wellbeing and the child's superior interest. An element repeated in the last decisions is the due evaluation of the guarantees existing for the non-custodian parent to be able to maintain a direct and regular contact.¹⁵

The **Spanish** Provincial Courts of Appeal and the Supreme Court (or Supreme Courts of Justice of Autonomic Regions with a local civil law and autonomic cassation courts) acknowledge reviews on appeals and of cassation respectively, of litigation processes. The tendency is to allow the relocation when it is due to a required relocation of such parent having exclusive custody. In general, the problem lies in that the parent's needs are valued first and once these have been established, the effect on the child is considered and not the other way around. In the case of shared custodies, (which are becoming increasingly frequent) the problem is more complex, but the manner of approaching the conflict remains the same.¹⁶

In **El Salvador**, according to the report, no international relocation cases have been identified in jurisprudence or doctrine.¹⁷

The guiding principle in the **United Kingdom**¹⁸, is the minor's interest, section 1 (1) of the Children Act. In 2001, in the *Payne vs. Payne* case, the Court of Appeal established the guidelines to be followed in relocation cases, clearly providing that the essential issue is the minor's interest and future plans of each parent regarding the child. Originally, the judicial decisions are based on:

1. The reason for the request, particularly if the applicant parent is trying to exclude the defendant parent from the child's life;
2. The planning and preparation level behind the request;
3. The basis for opposing the proposals, especially if it's based on the child's wellbeing rather than having a covert motive;

¹⁵ HORVITZ LENON, Daniela; ZARRICUETA, Juan Francisco. "International Relocation of Children in Chile", Santiago de Chile, February 2020.

¹⁶ BAYO DELGADO, Joaquín; LÓPEZ MUELAS, Lola y VARELA, Carmen. "Report relative to Spain Informe". Barcelona and Murcia, Spain, February 2020.

¹⁷ CALDERON CASTRO, Mauricio, "El Salvador. Report on Relocations", El Salvador, February 2020.

¹⁸ MARIN PEDREÑO, Carolina "International Relocation of Minors England and Wales". London, UK, February 2020.

4. The extent of the damage in the child's relation with the defendant parent if the relocation has already taken place, including making focus on the proposals submitted for the permanent contact.

4. Would you say that relocations are generally granted or denied?

In **Argentina**, judges are in principle, reluctant to grant them and the processes excessive duration discourage the parties.

In general, in **Brazil**, requests for a change in the child's or adolescent's usual place of residence are granted in first or second instance, provided the direct or indirect benefits derived from the relocation to a different country can be proved in line with the Principles of Human Dignity and the child's ultimate interest.¹⁹

In **Chile**, jurisprudence coming from Superior Courts of Justice show that, even if in the last decade and especially as from 2014 onwards, there is a greater tendency to grant relocation requests, the lack of a proceeding and the excessive duration of the processes, **operate in fact as a denial** to relocation and generate a perverse stimulus to look for illegitimate ways of undertaking the relocation.²⁰

In **Colombia**, the family judge may grant the authorization for a permanent relocation of residence after justifying the socio-economic conditions that guarantee the sons' and/or daughters' rights. However, if the request were denied, a new demand may be filed in a new process, because rulings about custody, visit regime and regulation of child support or exit from the country, do not constitute material *res judicata*.²¹

In **Spain**, the tendency is to grant relocation in the case of exclusive custody because the right of liberty of residence and the "reasonable" interests of the requesting parent prevail, in addition to the relationship with the primary parent and the visit regime with the non-custodian parent. However, it is more complicated in shared custodies, where there are two primary parents.²²

¹⁹ HAPNER, Adriana. Commission on "International Relocation". San Pablo, Brazil, February 2020

²⁰ HORVITZ LENON, Daniela; ZARRICUETA, Juan Francisco. "International Relocation of Children in Chile", Santiago de Chile, February 2020.

²¹ GOMEZ GUERRERO, Sonia Rocío. "Report on the situation of International Relocation of Children and Adolescents in Colombia". Bogotá, Colombia. February 2020.

²² BAYO DELGADO, Joaquín; LÓPEZ MUELAS, Lola y VARELA, Carmen. "Report relative to Spain". Barcelona and Murcia, Spain. February 2020.

In **Dominican Republic** judges also tend to grant relocation. Courts are mainly focused on the “material stability” of the minor and not in his/her emotional stability and they do not consider the impact that the change of country may entail in other aspects such as family or cultural issues.²³

At present, in the **United Kingdom**, due to existence of more families where parents take care of minors along similar or shared time periods, it is in practice quite more difficult for a parent to obtain the change of residence.²⁴

In **New Jersey**, in the Bisbing case, the Supreme Court changed the standards and at present it is more difficult for the parent holding the main custody who requests a relocation to obtain it because such parent is now requested to demonstrate that the relocation will operate “in the best interest” of the daughter or son, while in the Baurus case, a father or mother could relocate provided she/he had a good faith motive to do so and the relocation would not oppose to the best interest of the son or daughter.²⁵

In **Uruguay**, authorizations are granted when the other parent is not complying with alimony or the applicant parent undergoes a violent situation.

5. Is the Washington Declaration of 2010 known in your country? If so, do you believe it is used when a case needs to be solved?

In all the countries consulted the **Washington Declaration is absolutely ignored except for the United Kingdom and the United States of America.**

On the contrary, both in the United States of America and in the United Kingdom such declaration is known and in both judicial systems, the courts have been setting guidelines to solve these cases. At times, in the United Kingdom, the Washington Declaration is quoted in the sentences, even if it lacks legal value. In the United States it is not applied at present.

In Argentina, even if it participated in the conference held in Washington D.C., the officers contacted at the International Legal Assistance Department of the Ministry of Foreign Relations

²³ JORGE MERA, Dilia. “Report on International Relocations Dominican Republic”. Santo Domingo, February 2020.

²⁴ MARIN PEDREÑO, Carolina “International Relocation of Minors England and Wales”. London, UK, February 2020.

²⁵RODRÍGUEZ, Maritza Esq. “Report on The United States of American – New Jersey”. New Jersey, USA, February 2020

and Cult informed that no follow up or dissemination activities were performed and none of the family judges consulted were familiar with it. ²⁶

Reports from Brazil, Chile, Colombia, El Salvador, Spain, Dominican Republic and Uruguay stated that the Declaration was totally unknown in their jurisdictions.

6. Identify the challenges and problems existing in your jurisdiction

We have identified that the problems and challenges are as follows:

Problems:

1. Lack of a special process to apply to these cases. The need that relocation applications be different processes from simple authorizations to leave the country
2. Excessive duration of processes with uncertain results.
 - a. Since there is no specific process, the period allowed for producing evidence is extremely long and discourages the family.
 - b. Having to go through two or three instances, since in some countries, it is escalated until the Supreme Court.
 - c. The consequence is that many parents who are desperate about the situation decide to carry out illegal relocations or abductions.
3. High costs which are difficult to bear by many families
4. Lack of guidelines in Latin American countries and Spain, that judges may refer to in order to grant or deny relocations, which generates great discretionary behaviours.
5. Family jurisdiction is highly overburdened due to the number of different processes that are litigated. Therefore, the need to solve the family issue of international relocation is not considered urgent, leaving the families in a situation that force them to take unilateral decisions or actions to solve their situations.²⁷
6. In the event of lack of agreement between parents, the judicial path leads to further conflict leaving children trapped as hostages.
7. Lack of guarantees on different aspects: the manner in which the maintenance of a relation and direct as well as regular communication with non-custodian parents (and

²⁶ GRANILLO OCAMPO, Victoria; KUYUMDJIAN de WILLIAMS, Patricia; MATTERA, Marta del Rosario. "Report on International Relocation in Argentina". Buenos Aires, Argentina, February 2020.

²⁷ GOMEZ GUERRERO, Sonia Rocío. "Report on the Situation of International Relocation of Children and Adolescents in Colombia". Bogotá, Colombia. February 2020.

extended family) will be secured; the manner in which the alimony agreed or judicially allocated will be paid, and in general, all other relevant aspects for the future life of the child that will be relocated in a new country.

Challenges:

- a) Convenience to generate procedural standards that would establish the steps, evidence and terms to govern the relocation proceeding.
- b) Preparation of guidelines at national or international level that will limit the judges' discretion.
- c) Variation of the jurisprudential approach in the authorization in order to first consider the superior interest of the minor to which his/hers parents' legitimate interests should subject.
- d) Need to guarantee, possibly with direct communications or mirror agreements, different aspects of the communication regime, alimony, participation of the other parent in his/her child life when the latter is abroad.
- e) In Argentina, it would be convenient to perform research about the issue in order to promote training programs in the matter and eventually submit the possibility to prepare a performance protocol that would allow some agility and uniformity to relocations in country to the National Supreme Court of Justice's consideration.²⁸
- f) In Spain, it would be necessary to bring awareness to the existence of art. 9 of the 2201/2003 Rules (and, as of 1/8/2022, of art. 8 of the new consolidated text, 2019/1111 Rules), that awards jurisdiction to the court of the European Union Member State (except Denmark) where the child whose relocation was illegal (according to a judicial decision or by operation of law) has resided in order to regulate the contacts of the parent remaining there, until the court of the European Union Member State of new residence establishes a different regime. Furthermore, according to art. 41, the decision on the contact regime (whether pre-existing, adopted at the time of relocation or ordered in the three mentioned months) is automatically executable in the Member State of the new residence without any exequatur whatsoever and with the only possibility of objection to immediate execution being the existence of another decision of the Member State of the

²⁸ GRANILLO OCAMPO, Victoria; KUYUMDJIAN de WILLIAMS, Patricia; MATTERA, Marta del Rosario. "Informe sobre Relocalización Internacional en la Argentina". Buenos Aires, Argentina, febrero 2020.

new residence. It would be convenient to have its equivalent in the 1996 The Hague Convention.²⁹

g) Make the Washington Declaration known to judges.

D.- CONCLUSIONES

The issue of family relocation has become a recurring issue in international families; conflicts about parental responsibility require a special treatment just because their main objective is the superior interest of children in each case.

The present globalization faces us with new challenges in order to provide answers to international or cross-border families; therefore, it is necessary to promote legislation on the matter of international relocation of children and adolescents so as to:

1. Guarantee that children's rights are a priority.
2. Avoid long and unpredictable processes that make them victims.
3. Look for legal reciprocity of the rulings related with the judicial resolutions.
4. Guarantee the child's right to maintain permanent contact, both virtual and physical with the parent in the distance and a parenting plan for those cases that would include, for instance, that the child may spend most of his/her vacation with the other parent.³⁰
5. Generate formation, training and awareness spaces on the international family relocation for administrative and judicial officers and law professionals that are, firstly, those called in to assess consultations on these issues related to international family legal matters.³¹
6. Promote formation in matters of family mediation in cases of international family relocation in order to avoid future conflicts.
7. Avoid children abduction or illegal retention.
8. Elaborate standards in line with the globalized time we live in, as well as a harmonic interpretation of the children's rights and custodian parent's needs, which would jointly result in a solution that would sufficiently guarantee the ultimate interest of children and adolescents.
9. Make the Washington Declaration known both inside the judicature and among the systems operators, so that it becomes an enlightening instrument.

²⁹ BAYO DELGADO, Joaquín; LÓPEZ MUELAS, Lola y VARELA, Carmen. "Report relative to Spain". Barcelona and Murcia, Spain. February 2020.

³⁰ HAPNER, Adriana. Commission on "International Relocation". San Pablo, Brazil, February 2020

³¹ GOMEZ GUERRERO, Sonia Rocío. "Report on the Situation of International Relocations of Children and Adolescents in Colombia". Bogotá, Colombia. February 2020.

10. Promote the practice of direct judicial communications among the judges of the different jurisdictions involved, with the purpose of helping establish, acknowledge and enforce relocation orders.

E. JURISDICTIONS AND PARTICIPATING AIJUDEFA MEMBERS.

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