

Ministry of Justice and Public Security
MJSP Ordinance No. 688, of May 24, 2024

Provides for the processing of requests for international legal cooperation in matters of international abduction based on the Convention on the Civil Aspects of International Child Abduction and the Inter-American Convention on the International Return of Children, within the scope of the Ministry of Justice and Public Security.

The Minister of State For Justice and Public Security, in the exercise of the powers conferred on him by item II of the sole paragraph of Article 87 of the Constitution, considering Article 15 of Decree No. 11,348, of January 1, 2023, contained in the Convention on the Civil Aspects of International Child Abduction, concluded in the city of The Hague on October 25, 1980, promulgated by Decree No. 3,413, of April 14, 2000, in the Inter-American Convention on the International Return of Children, adopted in Montevideo on July 15, 1989, promulgated by Decree No. 1,212, of August 3, 1994, and in Administrative Proceeding No. 08099.008942/2023-09, declares:

Chapter I

General Provisions

Art. 1 To establish the administrative procedures to be adopted by the Department of Asset Recovery and International Legal Cooperation of the National Secretariat of Justice, in the processing of active and passive requests for international legal cooperation in cases of international abduction of children and adolescents, based on the Convention on the Civil Aspects of International Child Abduction, concluded in the city of The Hague on October 25, 1980 and promulgated by Decree No. 3,413, of April 14, 2000, and in the Inter-American Convention on the International Return of Children, adopted in Montevideo on July 15, 1989 and promulgated by Decree No. 1,212, of August 3, 1994.

Sole Paragraph - The administrative procedures referred to in the caput of this article aim to promote the immediate and voluntary return of children and adolescents under 16 (sixteen) years of age illegally transferred from the country of habitual residence and to guarantee the right to visitation of parents or guardians, under the terms of the Conventions dealt with in this Ordinance.

Art. 2 It is incumbent upon the Department of Asset Recovery and International Legal Cooperation of the National Secretariat of Justice of the Ministry of Justice and Public Security to exercise the function of central authority provided for in item IV, Article 15 of Annex I of Decree No. 11,348, of January 1, 2023, which includes receiving, analysis of the admissibility requirements, instruction and forwarding of active and passive requests for international legal cooperation of international abduction.

Art. 3 For the purposes of this Ordinance, the following shall be considered:

I - passive international abduction: the removal of a child or adolescent from the country of habitual residence to Brazil, without the consent of the applicant, as well as the retention in Brazil for a period longer than that authorized by the applicant;

II - active international abduction: the removal of a child or adolescent from Brazil to another country, or retention in another country without the consent of the applicant;

III - applicant: the person who has custody or guardianship or the legally responsible public or private institution that seeks the return of the child or adolescent illegally transferred or retained in a country other than the country of habitual residence;

IV - defendant: the person who has unlawfully transferred or retains the child or adolescent in a country other than the country of habitual residence; and

V - Right to visitation: guarantee of presential or virtual contact between the applicant and the child or adolescent, through any available means, also including the right to take the child or adolescent, for a limited period of time, to a place other than the one where he or she usually resides.

Art. 4 An act or decision related to the right of custody and maintenance, matters exclusive to the authority of the State of habitual residence of the child or adolescent, is excluded from the procedures regulated by this Ordinance.

Art. 5 The Central Authority shall encourage a consensual solution between the applicant and the defendant regarding the country of residence of the children.

Art. 6 The prevalence of the best interests of the child or adolescent is the informing principle of the procedures regulated by this Ordinance.

Chapter II

Passive International Legal Cooperation

Art. 7 The request for passive international legal cooperation begins when the foreign central authority requests from the Brazilian Central Authority assistance in promoting the return of the child or adolescent to his or her habitual State of residence.

Art. 8 The request for passive international legal cooperation submitted by the requesting Central Authority must be accompanied of:

I - copy of the applicant's identification document, with photo (RG, passport, or another legal document);

II - copy of the child's or adolescent's birth certificate;

III - copy of the defendant's identification document, with photo (RG, passport, or another legal document);

IV – contact information of the defendant, such as email, mobile phone number, address, if any;

V - copy of the marriage or stable union certificate, if any;

VI - copy of the custody sentence, if any;

VII - copy of the divorce sentence, if any;

VIII - copy of the judicial decisions proving the illegality of the transfer;

IX - copy of the travel authorization, if any;

X - documents proving that the requesting country was the country of habitual residence of the child or adolescent before the illegal international abduction, such as vaccination card, health insurance, school enrollment, statements from neighbors, entities/places frequented by the child or adolescent, etc.;

XI - documents proving that the applicant exercised the functions of custody of the child or adolescent and/or the right to decide their place of residence, such as custody/visitation court decisions, proof of payment of alimony, health plans, etc.;

XII - photo of the child or adolescent and the defendant;

XIII - information that leads to the location of the child or adolescent in Brazil, if available

XIV - other relevant documents or information about the case.

Paragraph 1 - Upon receiving the request for passive international legal cooperation, the Central Authority will analyze the documentation and request, by electronic means, adjustments and additions to the requesting Central Authority, if necessary.

Paragraph 2 - After the administrative admissibility judgment, the Central Authority shall send an electronic communication to the requesting Central Authority, confirming the regularity of the request for international legal cooperation and shall request the following information:

I - whether the practice of international abduction is a crime in the requesting country and, if so, whether there is an arrest warrant issued against the defendant;

II - whether there has been an allegation and proof of domestic violence against the defendant, whether the requesting country offers protection for the defendant and for the child or adolescent in the event of their return;

III - whether the applicant has access to the child or adolescent and, if so, under what conditions and means; and

IV - other information relevant to the continuation of the request for international legal cooperation.

Paragraph 3 - In case of suspicion of exposure of the child or adolescent to physical or psychological aggression by the defendant, the requested Central Authority shall request the assistance of the Guardianship Council of the place where the child or adolescent is.

Paragraph 4 - The requested Central Authority shall communicate to the court the processing of the request for international legal cooperation formulated on the basis of the Conventions dealt with in this Ordinance, for the purpose of suspending the proceedings relating to the custody of the child or adolescent that is in progress in the State Courts, in accordance with Article 16 of the 1980 Hague Convention.

Paragraph 5 - If the address of the defendant is not known, or if the defendant is not located at the address informed by the applicant, the Central Authority shall request assistance from the Federal Police, other public agencies and civil organizations to locate the child or adolescent.

Paragraph 6 - Once the defendant is located, the Central Authority will immediately contact the defendant by virtual means (telephone, instant messaging applications or e-mail) to verify the possibility of conciliation with the applicant.

Paragraph 7 - If consensus is reached between the parties, the Central Authority shall draft the terms of the agreement, which, after being signed by both parties and by two witnesses, shall acquire the status of an extrajudicial enforceable title, pursuant to Article 784, item III, of the Civil Procedure Code.

Paragraph 8 - If there is an express manifestation against the continuation of the conciliation, the defendant shall have a period of seven days to submit a written response to the applicant's allegations accompanied by evidence.

Paragraph 9 - Except during conciliation, the Central Authority shall only communicate with the applicant through the requesting Central Authority.

Paragraph 10 - If conciliation is not obtained and the deadline for the requested response has expired, the Central Authority will forward to the Attorney General's Office, within seven days, a technical note with the information necessary for the adoption of measures for the filing of the international abduction action based on the 1980 Hague Convention.

Paragraph 11 - Once the evident existence of the return exceptions provided for in Article 13, paragraph "b" of the 1980 Hague Convention has been demonstrated, the Central Authority will instruct the applicant, through the foreign Central Authority, to promote, if he wishes, the private action of international abduction, through a private lawyer or the Public Defender's office, provided that financial hypo-sufficiency is demonstrated, under the terms of Law No. 1,060, of February 5, 1950.

Paragraph 12 - The Central Authority will aid the Attorney General's Office in the event of the initiation of a lawsuit and will forward the information and documents received from the requesting or requested Central Authority, providing the necessary clarifications related to the case.

Paragraph 13 - Every 30 (thirty) days, or whenever necessary or requested, the Brazilian Central Authority will inform the requesting Central Authority of the progress of the lawsuit.

Paragraph 14 - Once the conditions for the return of the child or adolescent have been defined by the competent court, the Central Authority, once communicated, must inform the requesting Central Authority for the assumption of a commitment.

Chapter III

Active International Legal Cooperation

Art. 9 The request for active international legal cooperation must be accompanied of:

I - copy of the applicant's identification document, with photo (RG, passport, or another legal document);

II - copy of the child's or adolescent's birth certificate;

III - copy of the defendant's identification document, with photo (ID, passport, or another legal document);

IV – contact information of the defendant, such as e-mail, mobile phone number, address, if any;

V - copy of the marriage or stable union certificate, if any;

VI - copy of custody sentence, if any;

VII - copy of the divorce sentence, if any;

VIII- copy of court decisions proving the illegality of the transfer;

IX - copy of the travel authorization, if any;

X - documents proving that Brazil was the child's country of habitual residence or of the adolescent before the illegal international abduction, such as vaccination card, health insurance, school enrollment statements from neighbors, entities/places frequented by the child or adolescent, etc.;

XI - documents proving that the applicant exercised the functions of custody of the child or adolescent and/or had the right to decide his or her place of residence, such as custody/visitation court decisions, proof of payment of alimony, health plans, etc.;

XII - photo of the child or adolescent and the defendant;

XIII - information that leads to the location of the child or adolescent in the country to which he or she was transferred or is wrongfully retained, if available; and

XIV - other relevant documents or information about the case.

Paragraph 1 - Upon receiving the request for international legal cooperation, the Central Authority shall analyze the documentation and request adjustments and additions from the applicant, if necessary.

Paragraph 2 - After the judgment of administrative admissibility, the Central Authority shall forward to the requested Central Authority a request for assistance to ensure the return of the child or adolescent to Brazil.

Paragraph 3 - In case of suspicion of exposure to physical or psychological aggression, the requested Central Authority shall be immediately notified to adopt the necessary steps for the protection of the child or adolescent.

Paragraph 4 - When sending the request for active international legal cooperation, the Central Authority shall ask the requested Central Authority to verify whether the defendant is interested in the conciliation attempt.

Paragraph 5 - The central authority shall aid the requested Central Authority by forwarding the information and documents received from the applicant and providing the necessary clarifications related to the case.

Paragraph 6 - Every 30 (thirty) days or whenever necessary, the Central Authority shall request the requested Central Authority to update the request for international administrative or judicial legal cooperation.

Chapter IV

Extra-conventional Cooperation

Art. 10 In cases where the active international abduction of a child or adolescent involves a country that is not a participant of the Conventions referred to in this Ordinance, the Central Authority will forward to the Ministry of Foreign Affairs the requests for international legal cooperation to be processed through diplomatic channels, under the terms provided for by Interministerial Ordinance MRE/MJSP No. 501, of March 21, 2012.

Sole Paragraph - Upon receiving the rogatory letter in cases of passive international abduction that gives rise to a judgment of deliberation by the Superior Court of Justice, according to Article 216-O of the Internal Regulations of the Superior Court of Justice, the Central Authority shall arrange for the referral of the proceeding to the Presidency of the Superior Court of Justice for the granting of exequatur.

Chapter V

Administrative Closure

Art. 11 The requests for active and passive international legal cooperation will be administratively archived in the following cases:

I - the applicant does not perform the acts and steps incumbent on him within 10 (ten) days of his notification;

II - the applicant expressly withdraws from pursuing the request for international legal cooperation;

III - conciliation between the parties;

IV - the Central Authority concludes that the conditions required by the Conventions referred to in this Ordinance are not met or that the facts reported in the request for international legal cooperation do not characterize international abduction;

V - the requested Central Authority dismisses the request for international legal cooperation active; and

VI - the Attorney General's Office decides for the inadmissibility of the lawsuit based on the Conventions dealt with in this Ordinance.

Art. 12 The Brazilian Central Authority will immediately notify the applicant and, if applicable, the foreign Central Authority, of the closure of the requests for active or passive international legal cooperation, indicating the reason.

Art. 13 The archiving of the request for international legal cooperation does not prevent the applicant from having direct recourse to the judicial or administrative authorities of the signatory States of the Conventions referred to in this Ordinance.

Chapter VI

Final Provisions

Art. 14 The same procedures as those indicated in Chapters II and III apply to the request for international legal cooperation based on the right of access, pursuant to Article 21 of the 1980 Hague Convention.

Art. 15 It will not be up to the Central Authority to pay for air tickets or lodging for the execution of the return of the child or adolescent.

Art. 16 In case of return of the child or adolescent, it will be up to the defendant to promote the migratory regularization and the preparation of the travel documents of the child or adolescent, as long as it is necessary.

Art. 17 All documents must be accompanied by a translation (simple or sworn) into the language of the country to which the child or adolescent has been transferred to or where he or she is held, and any means for translation may be used, including automatic translators, as long as it is considered understandable by the Central Authority.

Art. 18 In the administrative procedure referred to in this Ordinance, the calculation of the deadlines shall be made in accordance with the rules established in Article 66 of Law No. 9,784, of January 29, 1999.

Art. 19 This Ordinance enters into force on June 3, 2024.

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This text does not replace the original one published in the official vehicles (Official Gazette of the Union - DOU and Service Bulletin - BS).