

OEA/Ser.L/V/II.
Doc. 394
December 15, 2020
Original: Spanish

REPORT No. 377/20
CASE 13.399
REPORT ON THE MERITS

ARNALDO JAVIER CÓRDOBA AND D.
PARAGUAY

Approved by the Commission at its session No. 2198, held on December 15, 2020
178th session

Cite as: IACHR, Report No. 377/20. Case 13.399. Merits. Arnaldo Javier Córdoba and D.
Paraguay. December 15, 2020.

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I. INTRODUCTION

1. On January 30, 2009, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition lodged by a petitioner whose identity is confidential (hereinafter “the petitioner”) alleging the international responsibility of the Republic of Paraguay (hereinafter “the State,” “the Paraguayan State,” or “Paraguay”) to the detriment of alleged victims Arnaldo Javier Córdoba (hereinafter “Mr. Córdoba”) and D., for alleged violation of the rights to humane treatment, a fair trial, a family, and of the best interests of the child.

2. The Commission approved Report on Admissibility No. 147/17 of October 26, 2017.¹ On November 27, 2017, the Commission notified the parties of the report and placed itself at their disposal with a view to friendly settlement, without the conditions obtaining for the launch of that procedure.² The parties had the statutory periods for submitting their additional observations on the merits. All information received was duly forwarded to the parties.

3. It should be noted that this matter has two related requests for precautionary measures. In connection with the first, on July 14, 2009, the IACHR decided not to grant precautionary measures (MC 36/09). Regarding the second, on May 10, 2019, the IACHR decided to grant precautionary measures for the protection of adolescent D.³

II. POSITIONS OF THE PARTIES

A. Petitioner

4. The petitioner indicates that Mr. Javier Arnaldo Córdoba, an Argentine national, married Mrs. M.R.G.A.,⁴ a Paraguayan national, establishing their family home in the Province of Buenos Aires, Argentina. On February 26, 2004, their son was born in Argentina (hereinafter “D”). The petitioner maintains that on January 21, 2006, D’s mother, “using sleeping pills and while [the father] was asleep, took [the child D] to the Republic of Paraguay,” with assistance from a third party. The petitioner alleges that, at the time, the child was 1 year and 11 months old, suffered from seizures and epilepsy, and was receiving specialized treatment in Argentina.

5. The petitioner maintains that, in view of the events, Mr. Córdoba filed a report with Police Station V of Moreno, Buenos Aires Province, to which responded the Fifth Prosecutor’s Office of Mercedes Judicial Department and the First Court of Guarantees of Juvenile Rights [*Juzgado de Garantías del Joven No. 1*] of Moreno Judicial Department. At the same time, on February 26, 2006, through the Ministry of Foreign Affairs, International Trade, and Worship, a request was filed with the National Secretariat for Children and Adolescents of Paraguay for the international return of the child. On June 26, 2006, the Third Court of Caacupé ordered that D be returned to Argentina. The petitioner indicates that M.R.G.A. challenged the decision and the appeal was granted, with suspensive effect, although the Juvenile Code of Paraguay provided for appeal without suspensive effect. On August 14, 2006, the Court of Appeal upheld the judgment. Therefore, M.R.G.A filed an action challenging the constitutionality of that decision, which the Supreme Court of Justice of Paraguay rejected *in limine* on September 18, 2006.

6. The petitioner maintains that M.R.G.A fled with the child, failing to comply with the order for his return. It alleges that no Paraguayan authority enforced the judicial order. It gives account of different steps taken to locate D, in both Paraguay and Argentina, which led to the issuing in the latter country of an international warrant for the arrest of the child’s mother. It adds that in January 2008, Argentina requested M.R.G.A.’s extradition and in April 2008, the Criminal Judge of the First Court of Guarantees of Paraguay issued a warrant for her arrest for failure to appear at the hearing for return [of the child].

¹ IACHR, Report No. 147/17, Petition 120-09. Admissibility. Arnaldo Javier Córdoba and D., Paraguay, October 26, 2017. In that report, the IACHR declared the petition admissible in connection with the possible violation of the rights enshrined in Articles 5, 8, 17, 19, and 25 of the American Convention, read in conjunction with the obligation established in Article 1.1 of that instrument.

² On July 26, 2018, the IACHR notified the parties that, in accordance with Article 40 of its Rules of Procedure, in response to the petitioner’s communication of June 29, 2018, it declared terminated its participation in the friendly settlement procedure and proceeded to process the case.

³ IACHR, Resolution 25/19, PM 1188/18.

⁴ As established in the Report on Admissibility, the mother’s name is to remain confidential to protect the identity of D.

7. The petitioner maintains that despite the outstanding arrest warrant and the various opportunities to arrest Mrs. M.R.G.A, for ten years, the Paraguayan authorities did not take steps to locate the child and that the raids ordered were of dubious efficacy. It argues that the State never determined whether D. had been treated in any hospital or other care facility with a view to finding him and ascertaining his health status.

8. The petitioner indicates that in 2015, INTERPOL located D. and Mrs. M.R.G.A., who was placed in pretrial detention. That same day, the child was placed in the temporary custody of his maternal aunt, and the precautionary measure was ordered for the progressive restoration of ties between D. and Mr. Córdoba, for the purpose of fulfillment of the return order. It alleges that the measure for progressive restoration of ties has been ineffective since Mr. Córdoba lives in Argentina. Therefore, the few occasions for them to meet without the judge having set specific times, involved time and money which, in his capacity as a worker, required major effort on his part. He adds that these meetings took place in the presence of third parties, which prevented him from creating an atmosphere of trust and intimacy. It alleges that, once the child was found, the lack of interaction has resulted in a failure to implement his return.

9. The petitioner mentions that the Argentine Embassy made its premises available to provide accommodation for the child, and his father and paternal grandmother, and offered an opportunity for professionals designated by Paraguayan authorities to visit the child D on a daily basis and provide psychological and emotional support. He indicates also that the Argentine Court of Guarantees urged the First Duty First-Instance Juvenile Court of Paraguay to return the child D., sending a “repetition” of its request.

10. The petitioner maintains that on February 4, 2016, the Office of the Public Defender for Children of Paraguay requested different measures from the lower court judge prior to returning D., such as a guaranteed residence in Argentina for a minimum of six months, enrolment in the educational institution where the child would continue his studies, and medical insurance for the child, among other things. It maintains that although these steps were taken, the judge did not order enforcement of her judgment for the return of the child.

11. It indicates that on March 31, 2017, the Third Caacupé Court ordered as a new precautionary measure that the child D remain in Paraguay, contravening not only the international norms but also its own return order. The petitioner maintains that that order was issued based on a psychological report issued by a medical board that blocked, without argument, participation by the Argentine professional proposed by the National Secretary for Children and Adolescents at the request of the Argentine Consulate. Therefore, it brought an action to declare the precautionary measure unconstitutional, which was denied by the Supreme Court of Justice.

12. The petitioner maintains that Mr. Córdoba has had various difficulties in relating to his son, citing as an example that he invariably calls child D by phone once a week, and that the child’s guardians do not bring him to the phone. It alleges that as a result, he requested the IACHR to issue a precautionary measure.

13. It alleges that the object of the Hague Convention, like other conventions in this area, is to restore the situation prior to the wrongful removal, and the consequent return of the child to his habitual environment for resolution of issues related to custody, visits, and others. It maintains that the judge in this case has not complied with the international guidelines since, following the child’s appearance, she not only extended D’s stay in Paraguay, but also ordered him to remain in that country. It adds that Argentina and Paraguay have ratified the 1984 [sic] Inter-American Convention on International Traffic in Minors, which expressly prohibits deciding on the merits of custody claims, giving precedence to the duty of return. It maintains that the actions of the judiciary stripped the Inter-American Convention on the International Return of Children of all meaning and usefulness.

14. The petitioner alleges that the State has failed to take useful and effective steps to execute the judgment that ordered D’s return. It maintains that the State failed to refer to the steps taken to guarantee medical care for the child, although D should have had urgent access to medical care.

15. It maintains that the State has violated the rights to a fair trial and to judicial protection, that the ineffective process of restoring ties between D. and his father has violated the right to protection of the family and that the child’s best interests were not safeguarded, since by ordering that D. remain in Paraguay, the party

who wrongfully removed him and kept him in hiding was being favored. Lastly, it maintains that the years of the judicial proceedings have impacted the humane treatment of the alleged victims.

B. The State

16. The State of Paraguay indicates that the National Secretariat for Children and Adolescents (SNNA), as Paraguay's central authority, has been involved in the process for D's international return since receipt of the note of February 8, 2006, by which the Ministry of Foreign Affairs, International Trade, and Worship, Argentine central authority, forwarded the international return request. It indicates that on May 5, 2006, it notified the child's mother and that, in view of her refusal to agree to the return, the Secretariat for Children forwarded the matter to the Juvenile Court of Cordillera Judicial District.

17. It indicates that the judgment of June 26, 2006, issued by the Juvenile Court of the city of Caacupé, ordering the return, was upheld by the courts of second and third instance, and therefore was "final and enforceable." The central authority requested the court to execute the judgment in accordance with Article 13 of the Inter-American Convention on the International Return of Children. Therefore, the Juvenile Court of Caacupé ordered the execution hearing. The failure of the mother and child to appear at the hearing led to a series of unsuccessful raids. This led the court, on September 28, 2006, to order a nationwide search for the child and an official letter was sent to INTERPOL. It adds that for years, the SNNA and the Interior Ministry made efforts to comply with the search order for the child and for the arrest of his mother, including search operations and intelligence efforts by specialized personnel of the INTERPOL Counter-Abduction, and Intelligence Departments. The State refers to different steps taken. It adds that on October 12, 2006, the Court ordered that the file be forwarded to the duty Criminal Prosecutor's Office, and a criminal action was brought in which, in 2008, an arrest warrant was issued for the child's mother.

18. It argues that the delay in enforcing the return order initially was due to the fact that the whereabouts of Mrs. M.R.G.A and the child D. were unknown for nine years and that, despite the efforts of the State to locate the child, the situation was difficult, since for the first six years of the search, the child had no school records, nor were entries made in his medical file. Therefore an order was issued for the nationwide search and location of Mrs. M.R.G.A. and D., periodically requesting information from the investigations of the Interior Ministry and the National Police. Additionally, although D's mother had indicated a real domicile in the international return process, that domicile was actually that of her parents, which made it difficult to locate her.

19. The State indicates that on May 22, 2015, the child D. and his mother were located, and Mrs. M.R.G.A. arrested and taken to a correctional facility. That the court, safeguarding the child's best interest, decided to place him in the custody of his closest family relative, his aunt. It indicates that, in view of the time passed between the return order and the location of the child, it had become more difficult to fulfill the objective of the resolution, in view of his age and the roots he had put down. In that context, the central authority proposed launching a process of restoring ties between the father and child, with a view to the child's return. It adds that the State was taking all steps necessary for the success of the restoration of ties, in the framework of the precautionary measure ordered by the IACHR, and that a number of medical boards had been formed with support from psychologists that had followed the process. It maintains that although Mr. Córdoba had on four occasions requested an order for restoration of ties, he had not taken advantage of them, indicating that it would have meant interacting with his son with third parties looking on, and at the place the child was living.

20. It maintains that, safeguarding the child's best interests, on October 20, 2016, the order was postponed that was contained in the judgment of August 14, 2006, ordering the child's return, for continuity of the plan for interaction between father and son, taking into account the profile prepared by a clinical psychologist that indicated that D. was not in a condition where he could change his residence.

21. On February 16, 2017, the Court ordered the formation of a board of three psychologists to prepare a diagnostic assessment and determine whether return would impact D., taking into consideration that he had been in Paraguay for nine years. Although initially it was agreed that an Argentine professional could participate, the court later decided that it would consist only of the Paraguayan professionals that had been closely involved in

the case. It adds that that year, considering D's emotional sensitivity, the Office of the Defender for Children and Adolescents had requested the court to issue a precautionary measure for D to remain in Paraguay.

22. The State indicates that the professionals identified, as possible consequences of moving the child, anxiety, stress, and/or depression. It maintains that on March 31, 2017, in a final judgment it was decided to approve the request for a precautionary measure for the child D to remain in Paraguay. It adds that, in the juvenile area, precautionary measure judgments are not final, since the "principle of the possibility of modification" of judgments governed. It adds that, additionally, D's view was respected that he did not want to leave the country because he had put down deep roots in society and was integrated into the city of Atyrá, where he had grown up and developed emotional, cultural, and social ties. It indicates that on May 22, 2019, the Constitutional Chamber of the Supreme Court had decided not to admit the unconstitutionality action brought by Mr. Córdoba, considering, among other things, the child's current circumstances and the harm that implementation of the return order could cause to his rights and integral development.

23. The State argues that the rights of the alleged victims were not violated. Regarding the right to a fair trial, it maintains that it has guaranteed all rights and remedies available under the law, that Mr. Córdoba's right to due process had been respected, and that in fact three domestic courts had decided in his favor. It indicates that although over ten years have passed since the return order was issued, no resolution ordered in the juvenile area would be final under Article 167 of the Juvenile Code, which indicates that judgments can be modified or reversed, by the court or on application by a party, provided the conditions on which they were based no longer obtained. It indicates that in the case of the child D., his best interests were taken into account, as were his views. It maintains that the reports of the medical board established to monitor and follow the case show that if the child D were returned or moved, the consequences could be latent anxiety, stress, and/or depression.

24. It maintains that the State, through its central authority, has prepared different proposals for restoration of ties, and had coordinated those proposals with the Argentine central authority, for their implementation. It indicates that Mr. Córdoba has had an opportunity to attend the interaction sessions. However, he did not attend them because he was seeking to interact without interference from others. However, the State, safeguarding the child's emotional health, decided that the first stage would take place in the presence of maternal relatives. It maintains that the State, even in December 2019, had prepared details of the process for restoration of ties in specific stages so that they would effectively be restored.

25. Regarding the alleged victim's argument that the State "knew exactly where the mother and child were," the State maintains that the raids carried out by the competent bodies showed that the child D and Mrs. M.R.G.A. were not found in the places that the petitioner indicated during the proceedings. It explains that different search operations and intelligence efforts were carried out together with and in coordination with different state areas involved in the case, such as the Interior Ministry, the National Secretariat for Children and Adolescents, and the National Police.

26. The State indicates that Mrs. M.R.G.A.'s arrest resulted from her failure to heed the judicial order to appear at the return hearing set. It maintains that the conduct of D's mother was not defined in Paraguayan criminal legislation since the person who removed the child was his own mother, for which reason one of the extradition requirements was not met, i.e., double criminality, since the crime had to be defined in the legislation of both the extraditing country and the sentencing country.

27. It argues that the IACHR cannot fail to take into account the child's best interests and respect his right to be heard, both rights enshrined in the Convention on the Rights of the Child. It adds that on November 7, 2017, the request for restoration of ties between the child D and his father was approved and such a plan was again established, a decision that remains in full effect.

28. It maintains that, safeguarding the protection of the family, it has made different proposals for restoring ties between the child and Mr. Córdoba, but it has not been possible reach agreement with the father. It concludes that it did not seek to disregard Mr. Córdoba's rights; rather, at all times it had respected the principle of the child's best interest, taking into account that at the time that the child D was found, the factual circumstances had changed and, therefore, were he to be returned, it could lead to irreversible emotional consequences, considering

that 13 years had now gone by.

III. DETERMINATIONS OF FACT

A. Relevant normative framework

29. Article 54 of the Constitution of Paraguay establishes “child protection” as follows:

Family, society, and the State have an obligation to guarantee the child’s harmonious integral development, and the full exercise of his or her rights, protecting him or her from abandonment, malnutrition, violence, abuse, trafficking, and exploitation. Anyone may request the competent authority to fulfill these guarantees and to ensure that infractors are punished. In case of conflict, the rights of the child shall take precedence.

B. Facts

30. On February 26, 2004, the child D was born, to Mr. Córdoba, an Argentine national,⁵ and his wife, Mrs. M.R.G.A., a Paraguayan national.⁶ D was born in Argentina in Argentina⁷. D is an Argentine national⁸ and was diagnosed at 10 months with epilepsy, requiring neurosurgical check-ups.⁹ On January 21, 2006, D. was taken from Argentina, without his father’s consent, from the family home in Argentina to Paraguay.¹⁰

31. Mr. Córdoba reported the facts to the Fifth Police Station of Moreno, Buenos Aires Province, to which responded Prosecutor’s Office No. 5 of Mercedes, Buenos Aires Province, the body that requested an international search warrant for “child abduction and concealment.”¹¹ Also responding was the First Juvenile Court, Buenos Aires Province, which opened case 6812, “C.G.D.A.Y. S/International Return.”¹² On January 25, 2006, Mr. Córdoba filed a request for international return of the child D with the Department of International Judicial Assistance of the Ministry of Foreign Affairs of Argentina, central authority designated for application of Inter-American Convention on the International Return of Children.¹³

32. On February 26, 2006, the Ministry of Foreign Affairs and Worship of Argentina submitted to the National Secretariat for Children and Adolescents, in its capacity as central authority of Paraguay, a request for return of the child D.¹⁴ On April 10, 2006, the National Secretariat for Children and Adolescents of Paraguay filed a petition for international return with the Duty One Court for Civil, Labor, and Juvenile Matters. On April 19, 2006, that court instituted proceedings pursuant to Law 928/96, adopting the Inter-American Convention on the International Return of Children, and issued as a precautionary measure the prohibition of the removal of child D. from the country, the Defender for Children responding.¹⁵

33. On May 5, 2006, Justice of the Peace of the city of Atyrá was commissioned to notify D’s mother of the request for return, informing her that she could return the child voluntarily to his customary place of abode, and,

⁵ Annex 1. National Identity Document of Arnaldo Javier Córdoba. Petitioner’s submission of September 12, 2011.

⁶ Annex 2. “Files a Complaint.” Submission from Arnaldo Córdoba to Senator of the Nation of Argentina Carlos Rossi. Petitioner’s submission of September 12, 2011.

⁷ Annex 3. Extract of the birth certificate of child D. Petitioner’s submission of September 12, 2011.

⁸ Annex 4. Motion to Vacate.” Submission signed by the Duty 6 Defender for Children and Adolescents, August 4, 2006. Petitioner’s submission of September 12, 2011.

⁹ Annex 5. Medical assessment of Posadas National Hospital. Petitioner’s submission of September 12, 2011.

¹⁰ Annex 6. “Busca a su hijo que se lo llevó su madre a Paraguay,” [Looking for his Son Taken by His Mother to Paraguay] *Diario El Comercial*. Petitioner’s submission of September 12, 2011.

¹¹ Annex 2. “Files a Complaint.” Submission of Arnaldo Córdoba to Senator of the Nation of Argentina Carlos Rossi. Petitioner’s submission of September 12, 2011.

¹² Petitioner’s submission of August 9, 2019.

¹³ Amicus curiae brief submitted by the Republic of Argentina, dated October 22, 2009.

¹⁴ Petitioner’s submission, enlarging on the report and requesting precautionary measures, dated April 18, 2018.

¹⁵ Annex 7. Report on actions set forth in the file titled “[D] S/International Return,” issued by the Judge of the First-Instance Juvenile Court of Caacupé to the President of the Criminal Chamber of the Supreme Court of Justice, of November 10, 2008. Petitioner’s submission dated September 12, 2011.

if she refused, to submit within eight days the reasons for her refusal, with evidence. A defender of absent parties was also designated for the applicant parent. On May 25, 2006, Mrs. M.R.G.A. indicated her refusal to return the child. On June 1, 2006, the Court deemed that the petitioner had appeared and her domicile established, and the Defender for Children was informed of Mrs. M.R.G.A.'s opposition set forth in the record.¹⁶

34. On June 26, 2006, the Court rejected *in limine* the reasons for refusal submitted by D's mother and ordered through judgment No. 15 to approve the request for international return of the child D., setting the return hearing for July 6, 2006. It also lifted the precautionary measure prohibiting D's departure from the country in order to give relevant notifications once the child had been formally handed over to the father.¹⁷

35. On July 4, 2006, Mrs. M.R.G.A. lodged an appeal against the judgment with the Juvenile Appeals Court, which was granted with staying effect.¹⁸ In the appeal proceedings, D's mother argued that the child was under five years old and that in case of dispute over which parent the child was to live with, "preference should be given to the mother." She added that the court had not ordered an evidentiary hearing, despite having requested the submission of evidence. By Judgment No. 123, of August 14, 2006, the aforementioned court upheld all aspects of the judgment of the court of first instance, considering that it had established that removal of the child to Paraguay had been illegal in the terms of Law No. 828/96.¹⁹

36. D's mother filed a motion for clarification with the court because the judgment had not rendered a view regarding the "cohabitation [sic - "convivencia"; should be "conveniencia" - advisability] of the child D going to live in the home of the father since he suffers from permanent mental illness and bearing in mind that in the instant case, the child's best interest must take precedence." on August 24, 2006, the Juvenile Appeals Court declared that motion inadmissible, because in cases of international return, "the judge or court is prohibited from analyzing the merits of the matter, and must only consider whether return would be in conformance with the international convention governing the area," as it was in this case.²⁰

37. Subsequently, M.R.G.A. filed an appeal requesting reversal of the decision allegedly violating the constitution [unconstitutionality action], which was rejected *in limine* on September 18, 2006, considering that violation of constitutional norms had not been demonstrated.²¹

38. Following the judgment of the Supreme Court, a return hearing was convened for September 28, 2006, for D to be brought before the court by his mother under penalty, with a view to effecting the return. When M.R.G.A. failed to appear on the day of the hearing, a visit to the mother's home was ordered, a procedure carried out by the court's court reporter, accompanied by the forensic psychologist, with assistance from the police. Therefore, the court sent an official letter to the Command of the National Police. The record shows that Mr. Córdoba requested a raid of M.R.G.A.'s home.²²

39. On October 9, 2006, a raid of the home of D's extended family was ordered. However, neither the child nor his mother was found.²³ On October 11, 2006, Mr. Córdoba requested the First-Instance Juvenile Court of Caacupé to officially request INTERPOL to search for the child. At the same time, on October 12, 2006, the

¹⁶ Annex 7. Report on actions set forth in the file titled "[D] S/International Return," issued by the Judge of the First-Instance Juvenile Court of Caacupé to the President of the Criminal Chamber of the Supreme Court of Justice, of November 10, 2008. Petitioner's submission dated September 12, 2011, pp. 3-4.

¹⁷ Annex 8. Final Judgment No. 15, of June 26, 2006. First-Instance Juvenile Court of Caacupé. Petitioner's submission of September 12, 2011.

¹⁸ Annex 7. Report on actions set forth in the file titled "[D] S/International Return," issued by the Judge of the First-Instance Juvenile Court of Caacupé to the President of the Criminal Chamber of the Supreme Court of Justice, of November 10, 2008. Petitioner's submission dated September 12, 2011.

¹⁹ Annex 9. Agreement and Judgment No. 123, August 14, 2006. Juvenile Appeals Court. Petitioner's submission of September 12, 2011.

²⁰ Annex 10. Agreement and Judgment No. 132, August 24, 2006. Juvenile Appeals Court. Petitioner's submission of September 12, 2011.

²¹ Annex 11. Judgment of September 18, 2006. A.I. N°1487. Supreme Court. Petitioner's submission of September 12, 2011.

²² Annex 7. Report on actions set forth in the file titled "[D] S/International Return," issued by the Judge of the First-Instance Juvenile Court of Caacupé to the President of the Criminal Chamber of the Supreme Court of Justice, dated November 10, 2008. Petitioner's submission dated September 12, 2011.

²³ Annex 7. Report on actions set forth in the file titled "[D] S/International Return," issued by the Judge of the First-Instance Juvenile Court of Caacupé to the President of the Criminal Chamber of the Supreme Court of Justice, dated November 10, 2008. Petitioner's submission dated September 12, 2011, p. 7.

Caacupé Court ordered the file to be forwarded to the Duty Criminal Prosecutor's Office for it to launch an investigation for "act punishable w/the government - resistance," given the impossibility of effecting the return.²⁴

40. On October 18, 2006, Mr. Córdoba requested the Interior Ministry to officially request INTERPOL to locate D., along with other steps to locate him.²⁵ On November 6, 2006, Mr. Córdoba reported M.R.G.A. to the Fifth Public Prosecutor's Office of Mercedes, Buenos Aires, Argentina, for the crime of "child abduction and concealment." The Public Prosecutor in charge requested an international warrant for the arrest of D's mother.²⁶

41. On January 10, 2007, the First-Instance Juvenile Court of Caacupé reiterated the search order for the child. The case file contains a note from the Secretariat for Children and Adolescents indicating that on January 19, 2007, a person appeared at the offices of that entity who said she was M.R.G.A. "with her son and a man," alleging that she and the father were living in the city of Encarnación and "since they hadn't found us," she would call later. According to that entity, that communication was never produced and the child's father denied having been the party who had gone to the offices. Therefore, the Court was asked to forward a search order to INTERPOL in Itapua Department, by note of February 26, 2007.²⁷

42. On September 26, 2007, the Consulate of Argentina in Asunción requested the court involved to conduct another raid of the home of the child's maternal grandparents.²⁸

43. On April 17, 2008, the First Court of Guarantees of Asunción issued an arrest warrant for D's mother, "for purposes of extradition."²⁹

44. On May 5, 2008, a raid was ordered of the Atyrá home in order to locate D. However, neither the child nor his mother was found. On May 7, 2008, the Court reiterated the order to search for and locate the child D. at the national and international level, in particular, the Atyrá home³⁰

45. On November 4, 2008, "taking account of [D's] medical history," the Juvenile Court of Caacupé requested the collaboration of the National Secretariat for Children and Adolescents in ordering an interdisciplinary team to appear at the residence of the child's mother to provide guidance for the family member regarding Mrs. M.R.G.A.'s recalcitrant behavior.³¹

46. According to an INTERPOL letter, searches for the child had been conducted from 2006 to 2009 in both the aunt's and the maternal grandparents' homes, without success. It reported the same regarding the search for the child's mother for extradition purposes.³²

47. The record shows that on April 16, 2009, in the framework of the resolution of the Board of Directors of the Latin American Parliament, Argentine Senator Carlos Rossi, accompanied by Argentine Embassy personnel, held a series of meetings with Republic of Paraguay officials to request collaboration for the child D's return to Argentina, including meetings with the President of the Human Rights Commission of the Chamber of Deputies

²⁴ Annex 7. Report on actions set forth in the file titled "[D] S/International Return," issued by the Judge of the First-Instance Juvenile Court of Caacupé to the President of the Criminal Chamber of the Supreme Court of Justice, dated November 10, 2008. Petitioner's submission dated September 12, 2011, p. 8.

²⁵ Annex 12. Submission to the Interior Ministry, of October 18, 2006. Petitioner's submission dated September 12, 2011.

²⁶ Amicus curiae brief submitted by the Republic of Argentina on October 22, 2009.

²⁷ Annex 7. Report on actions set forth in the file titled "[D] S/International Return," issued by the Judge of the First-Instance Juvenile Court of Caacupé to the President of the Criminal Chamber of the Supreme Court of Justice, of November 10, 2008. Petitioner's submission dated September 12, 2011.

²⁸ Annex 7. Report on actions set forth in the file titled "[D] S/International Return," issued by the Judge of the First-Instance Juvenile Court of Caacupé to the President of the Criminal Chamber of the Supreme Court of Justice, of November 10, 2008. Petitioner's submission dated September 12, 2011, p. 11.

²⁹ Annex 13. Official Letter No. 468, issued by the Criminal Judge in charge of the First Court of Guarantees, dated April 17, 2008. Petitioner's submission dated January 30, 2009.

³⁰ Annex 7. Report on actions set forth in the file titled "[D] S/International Return," issued by the Judge of the First-Instance Juvenile Court of Caacupé to the President of the Criminal Chamber of the Supreme Court of Justice, of November 10, 2008. Petitioner's submission dated September 12, 2011.

³¹ Ibid.

³² Annex 14. Official Letter IP/259/OF/15.04.2009/AG-4028, of May 26, 2009, from the INTERPOL Police Department to the Ministry of Foreign Affairs. State's submission dated June 17, 2009.

and of the Senate, the Director General for Human Rights of the Vice Ministry of Justice, the Public Defender, and the Vice President of the Republic of Paraguay.³³ Likewise, on June 29, 2011, Deputy Roque Arregui, in his capacity as coordinator of the Latin American Parliament's subcommittee for reporting human rights violations, sent a communication to the President of Paraguay, reporting that in view of the refusal to comply with the return order in this matter, it had been decided to refer the matter to the IACHR.³⁴

48. On May 22, 2015, INTERPOL located the child and his mother in the city of Atyrá, Paraguay, and brought them before the First-Instance Juvenile Court of Caacupé, where they gave statements. The child indicated that at the time he was ten years old, was attending school in the city of Atyrá as well as catechism classes, and that he lived with his mother, his three-year-old brother, and his "daddy." He said that he did not know anything about his father Arnaldo Córdoba or his grandparents in Argentina, and that he did not want to live in Argentina, that he wanted to stay with his mother. He mentioned that in the past he had lived somewhere else in the same city and that they had also lived in his maternal grandmother's house. For her part, M.R.G.A. indicated that she did not want them to separate her from the child and did not want to return to Argentina, and that she had hidden for nine years as a result of the abuse she had suffered from the child's father. The record also shows that the child's maternal aunt appeared before the court, indicating that she was willing to be the child's guardian during the proceedings for his return.³⁵

49. In the framework of the proceedings, a report on D. was prepared that indicated that in his current situation, he required psychological support. It also indicates that the Defender for Children and Adolescents considered that the return order should be implemented since it was final and no errors had been made in issuing it, this with the support of the judiciary psychologist.³⁶

50. The record shows that M.R.G.A. was placed in pretrial detention in Women's Police Station No. 17 of Asunción, with the involvement of the First Criminal Court of Guarantees of that city,³⁷ and that the child was placed in the temporary custody of his maternal aunt.³⁸

51. According to the report of the forensic psychologist of Cordillera Thirteenth District, of June 26, 2015, psychotherapy had been recommended for D; establishment of father-son ties, allowing time for the child to adapt to the new reality; periodic meetings with his father, accompanied by the forensic psychologist to serve as intermediary to ensure the child's emotional stability; and for account to be taken of the child's school schedule to set the days and times for meetings with his father.³⁹

52. On July 8, 2015, the Juvenile Court of Caacupé ordered, as an eminently precautionary measure, a plan for progressive restoration of ties between Mr. Córdoba and D., including the extended paternal family. The court decided that the first four meetings for restoration of ties would take place on the premises of the Juvenile Court of Caacupé, in the presence of the forensic psychologist, and the following four meetings in the city of Atyrá, with assistance from the Justice of the Peace of the area and the supervision and support of the forensic social worker, after which the following meetings would be decided based on the report of the forensic professionals.⁴⁰

53. The first meetings for restoration of ties between D and his father took place between July 15 and 17, 2015. At first, direct interaction between the child and his father and paternal grandmother was discouraged, according to the forensic psychologist's report.⁴¹ On July 22, the judge with responsibility for the case ordered

³³ Annex 15. Report by Senator Carlos Rossi dated April 16, 2009. Petitioner's submission of September 12, 2011.

³⁴ Annex 16. Communication of June 29, 2011, from Congressman Roque Arregui. Petitioner's submission dated September 12, 2011.

³⁵ Annex 17. Resolution A.I. No. 89 from the First Duty Juvenile Court of Caacupé of July 8, 2015. Petitioner's submission of November 13, 2019, submitted in the framework of MC- 1188-18.

³⁶ *Ibid.*, p. 6.

³⁷ Amicus curiae brief submitted by the Argentine Republic, September 28, 2017.

³⁸ Annex 18. Report of the Juvenile Court Judge, dated March 7, 2017, in reply to the report requested by the Human Rights Bureau of the Supreme Court. Petitioner's submission dated April 18, 2017.

³⁹ Annex 19. Report of the forensic psychologist of the Thirteenth District of Cordillera of June 26, 2015. State's submission of April 30, 2020.

⁴⁰ Annex 17. Annex. Resolution A.I. No. 89 from the First Duty Juvenile Court of Caacupé of July 8, 2015. Petitioner's submission of November 13, 2019, submitted in the framework of MC- 1188-18.

⁴¹ Annex 20. Report No. 1251 by the forensic psychologist on the progressive restoration of ties between D and his father, of July 17, 2015. State's submission of April 30, 2020.

the involvement of the judiciary mediator to accompany the social worker in the restoration of ties between D and his father to be carried out on the Court's premises, the Juvenile Public Defender involved having to participate in that task.⁴² Meetings between D and Mr. Córdoba took place between July 20 and 23, 2015, the child completely refusing to approach his father. Some of these meetings took place in the presence of his maternal aunt.⁴³ According to a submission by the child's mother, on one occasion the child left before the meeting was over owing to "problems in his throat, in addition to his personal unwillingness to have that meeting, as stated by the child, causing him to feel nauseous and to vomit."⁴⁴

54. On July 24, 2015, in the hearings chamber and in the presence of the Judge of the First-Instance Juvenile Court, the child stated that he did not want to go with Mr. Córdoba and his paternal grandmother and hoped that his mother would be released.⁴⁵

55. On July 28, 2015, the central authority of the Argentine Republic sent a note to the central authority of Paraguay requesting that the Court's interdisciplinary teams prepare D for his return, in implementation of the judgment of June 26, 2006.⁴⁶

56. On August 5, 2015, the judge with responsibility for the matter ordered that, in response to Mr. Córdoba's request, she would continue the restoration of ties in the plaza of the Atyrá Court on Tuesdays and Thursdays, from 2:00 p.m. to 4:00 p.m., in the presence of the forensic psychologist, "in the custody of police dressed as civilians, until other relevant steps have been ordered, prior to international return."⁴⁷ On August 11 and 13, 2015, the meetings for restoration of ties between D. and Mr. Córdoba could not take place because the latter did not attend. In his report, the forensic psychologist indicates that it was fundamental for the child to begin psychotherapy.⁴⁸

57. On August 21, 2015, the forensic psychologist of the judiciary of Paraguay interviewed the child, during which he indicated that he was comfortable in Atyrá province, where he attended school and was happy with the ties he had formed, his refusal to return to Argentina, and that he was in the care of his aunt, and that after his mother was released on August 18, 2015, he had interacted with her through his aunt, who took him to see her every day.⁴⁹

58. On November 9, 2015, the International Return Bureau, in its capacity as central authority of Paraguay in the area of international return for the 1980 Hague Convention, requested execution of the judgment, and that security mechanisms be developed to ensure the return of the child "to his country of customary abode residence, that is, the Argentine Republic."⁵⁰

⁴² Annex 21. Resolution of July 22, 2015, in the proceedings "D. S/ International return." Petitioner's submission of November 13, 2019, submitted in the framework of MC- 1188-18.

⁴³ Annex 22. Report of the Atyrá Justice of the Peace, of July 24, 2015. Annex to the State's submission of observations of April 30, 2020. In particular, it indicates that on July 20, 2015, the social worker of Cordillera judicial district appeared at the Atyrá Justice of the Peace's facilities, observing that the child "resisted relating to his father, with whom he was unable to have any conversation," indicating that the child was sad and at times cried. She also reported that the child needed medical care owing to a persistent cough. On July 21, 2015, the same professional was present during the meeting for restoration of ties, with participation by the judiciary official, the Justice of Peace of Atyrá, D's aunt, the child, and Mr. Córdoba, the social worker indicating that the child clearly refused to interact with the father. On July 23, 2015, she reports that they tried to play soccer, forming a team with a judiciary official and another boy, but that the child did not want to participate (ID 1054959, p. 16-20. Report of July 22, 2015 and reports of July 23 and 24, 2015, signed by Lisa Ruth Benitez. Petitioner's submission of November 13, 2019, submitted in the framework of MC- 1188-18.)

⁴⁴ Annex 23. Submission "Justification for taking the child out before the time established in the hearing," submitted by M.R.G.A on behalf of D. Petitioner's submission of November 13, 2019, in the framework of MC- 1188-18.

⁴⁵ Annex 24. Record of the hearing of July 24, 2015. Annex. State's submission of observations dated April 30, 2020.

⁴⁶ Annex 25. Document submitted to the Judge of the First Instance Court of Caacupé by the Paraguayan central authority, of August 7, 2015. Petitioner's submission of November 13, 2019, in the framework of MC- 1188-18.

⁴⁷ Annex 26. Resolution of August 5, 2015, in the proceedings "[D.] S/International Return." Petitioner's submission of November 13, 2019, submitted in the framework of MC- 1188-18.

⁴⁸ Annex 27. Report of the forensic psychologist of Cordillera's Thirteenth District, of August 14, 2015. State's submission of additional observations dated April 30, 2020.

⁴⁹ Annex 28. Psychological report No. 60 Report of the forensic psychologist of the judiciary, dated September 1, 2015. State's submission of observations dated April 30, 2020.

⁵⁰ Annex 29. Submission of the International Return Bureau of November 9, 2015. Petitioner's submission of November 13, 2019, in the framework of MC- 1188-18. CHECK CLOSELY. MADE INADVERTENT CHANGE AROUND HERE.

59. On April 29, 2016, the clinical psychologist of Caacupé Regional Hospital reported that D. was emotionally vulnerable, with symptoms of depression, anxiety, and others that were resulting in personality disorders, concluding that his psychological health was not good enough for him to change environment.⁵¹

60. On October 20, 2016, the Caacupé Court ordered meetings for restoration of ties between D. and Mr. Córdoba from October 20 to 31, 2016, as well as psychological treatment for the boy. On October 21, 2016, the International Return Bureau filed a motion for clarification of the resolution, referring to the impossibility of complying as of the date on which it was issued, since Mr. Córdoba lived in Argentina, and therefore, for him to travel to Paraguay, he had to carry out administrative formalities with the Argentine Ministry of Foreign Affairs in order to obtain his tickets. The motion was denied since the Secretariat itself had proposed those dates. However, the Court proceeded to reschedule the meetings for restoration of ties for November 7 to 14, 2016.⁵²

61. On November 21, 2016, the forensic social worker of Cordillera Thirteenth District reported to the court that consideration needed to be given to enabling Mr. Córdoba to acquire tools for relating to an adolescent in order to promote a plan for them to get to know each other and so that D could “feel less forced and observed.” She added that it was of concern that the Public Defender for Juveniles manifested “a lack of interest when [S.] doesn’t even know her, and over time she has not reached out to ascertain the true situation in the field.”⁵³ On December 28, 2016, the Duty One Juvenile Court of Caacupé resolved to continue the plan for restoring ties between the child D. and Mr. Córdoba from January 16 to 20, 2017, and to continue the psychological support for the child.⁵⁴

62. On January 5, 2017, the central authority of Argentina for the Inter-American Convention on the International Return of Children forwarded a call issued by the First Court of Guarantees of Moreno Judicial Department - Gen. Rodríguez, in a document titled “D.G.D.A S/International Return,” requiring “compliance with the order for the return [to that jurisdiction of the child D] as a matter of urgency.”⁵⁵

63. On January 19, 2017, D. stated to First-Instance Juvenile Court of Caacupé that he was 12 years old, lived with his maternal aunt, attended a soccer school and catechism classes, and that he wanted to remain in Paraguay and had no feelings for his father. Mr. Córdoba indicated that they continually spoke badly of him in D’s presence, which gave rise to a hostile atmosphere towards the father on the part of the child. Mr. Córdoba also maintained that if the interaction had been more fluid, the results would have been better, and expressed his wish to continue the restoration of ties and that the return be implemented.⁵⁶

64. On February 7, 2017, the central authority of Paraguay, in the framework of the return proceedings, presented a request for restoration of ties guaranteed by the Consul General of Argentina in Paraguay, at the father’s request, for February 25 and 26 of that year.⁵⁷

65. On February 13, 2017, the psychologist of Caacupé Regional Hospital appeared before the Court, indicating her disagreement that D should return to Argentina, since he was very upset and at a vulnerable stage.⁵⁸

66. On February 16, 2017, the Court ordered the continuation of efforts to restore ties between D and his father on February 25 and 26, as well as the formation of a board of psychologists to issue an updated diagnostic

⁵¹ Annex 30. Psychological report on D., dated April 29, 2016. State’s observations submission of April 30, 2020.

⁵² Annex 31. Judicial Resolution A.I. No. 320 of the judiciary’s Cordillera District of October 26, 2016. Petitioner’s submission of November 13, 2019, in the framework of MC- 1188-18.

⁵³ Annex 31. Judicial Resolution A.I. No. 320 of the judiciary’s Cordillera District of October 26, 2016. Petitioner’s submission of November 13, 2019, in the framework of MC- 1188-18.

⁵⁴ Annex 32. Document sent by Lissa Ruth Benitez to the First Duty Juvenile Court of Caacupé. Petitioner’s submission dated April 18, 2017.

⁵⁵ Annex 33. Note No. 211/17, of January 5, 2017, issued by the central authority of Argentina for the Inter-American Convention on the International Return of Children. Petitioner’s submission dated April 18, 2017.

⁵⁶ Annex 34. Record of the hearing of January 19, 2017, in the First Instance Juvenile Court of Caacupé. Petitioner’s submission dated April 18, 2017.

⁵⁷ Annex 35. Document from the International Return Bureau requesting restoration of ties, dated February 7, 2017. Petitioner’s submission of November 13, 2019, in the framework of MC- 1188-18.

⁵⁸ Annex 36. Report on the hearing dated February 13, 2017. Petitioner’s submission dated April 18, 2017.

assessment of the child that discussed his emotional health and the feasibility and consequences of his possible removal to Argentina, among other things.⁵⁹ On February 22, 2017, the Argentine Consul in Paraguay requested authorization of participation on the board of psychologists by an expert psychologist designated by Mr. Córdoba in order to ensure impartiality.⁶⁰ On February 24, 2017, the Court decided not to admit a motion for clarification filed by Mr. Córdoba as to whether the meetings were to be held at the Argentine Embassy, as he had requested. The Court considered that there was no need for clarification, since the preamble to the resolution indicated that the interaction was to take place at places appropriate for the child's age.⁶¹ On March 15, 2017, the Court also decided not to admit the request for inclusion on the psychologists board of the expert proposed by Mr. Córdoba, because the board already included psychologists with knowledge of the case and one of them was his treating psychologist.⁶²

67. On February 20, 2017, the International Judicial Assistance Bureau of Argentina reported, in reply to a request it had received, on a set of guarantees to assist D's return to Argentina regarding access to education and medical care, which, it mentioned are free in Argentina. Additionally, regarding sustenance, it reported that Mr. Córdoba had his own home, durable furniture, and income he received from his work as a driver. It indicated that the costs of moving D to Argentina would be defrayed from Argentine State budget funds.⁶³ On February 22, 2017, the Argentine Consul indicated that the child's father had already enrolled him for the 2017 school year, and requested that that the Court proceed without further delay to return D to Argentina.⁶⁴ The record also shows that the Argentine Ambassador to Paraguay, in a meeting held with the National Secretariat for Children and Adolescents, had expressed concern regarding the delay in implementing the judgment.⁶⁵

68. On March 7, 2017, the Atyrá Health Center reported to the Caacupé Court that D. "was having periodic medical check-ups as needed, was in good health at the time of the check-up, and that supplementary studies were unnecessary."⁶⁶ On March 17, 2017, the clinical psychologist of Caacupé Hospital reported that D. fell within the extremely vulnerable classification, with repressive episodes [*sic?* - *episodios represivos*. *Episodios depresivos?* - episodes of depression?], anxiety, and eating disorders that in the future might lead to "severe mental disorders," so that no change of environment was advisable, recommending "at least two years of psychotherapy to make progress with his existing conflicts and for management of the child's symptoms."⁶⁷

69. According to a March 20, 2017 report, the psychologists board that the Court had created for this purpose indicated that the child was emotionally unstable, distressed, anxious, tense, and in an extremely vulnerable state, with gastrointestinal disorders, sleep disorders, and signs of depression. The board mentioned that complying with the return judgment "is deemed unfeasible from a psychological standpoint owing to [D.'s] extremely vulnerable mental state," maintaining that the child manifested deep family roots. The report also indicated that the restoration of ties between D and his father should take place in a pressure-free context, "and free from factors perceived by [D.] as negative and of risk, so that positive feelings may develop. In this specific case experience has sufficiently shown that a relationship cannot develop when one of the parties views the situation as a threat and that events deemed negative might occur. If that situation is relieved, the prospects for father-son ties are better."⁶⁸

⁵⁹ Annex 37. Resolution of February 16, 2017, issued by the First Duty Juvenile Court of Caacupé. Petitioner's submission dated April 18, 2017.

⁶⁰ Annex 38. Note CASUN AP N°11/ 2017, issued by the General Consulate of the Republic of Argentina to the National Secretariat for Children and Adolescents of Paraguay, dated February 22, 2017. Petitioner's submission dated April 18, 2017.

⁶¹ Annex 39. A.I. N°28, of February 24, 2017. Resolution on the motion for clarification issued by the First Duty Juvenile Court of Caacupé. Petitioner's submission dated April 18, 2017.

⁶² Annex 40. Resolution A.I. N°48 of the First Duty Juvenile Court of Caacupé, dated March 15, 2017. Petitioner's submission dated April 18, 2017.

⁶³ Annex 41. Ref: Request for Guarantees to the International Legal Assistance Bureau – International return [D.] Petitioner's submission dated April 18, 2017.

⁶⁴ Annex 42. Communication from the Consul General to the Director for International Return of Paraguay, dated February 22, 2017. Petitioner's submission dated April 18, 2017.

⁶⁵ Annex 43. Letter from the National Secretariat for Children and Adolescents to Juvenile Court of Caacupé of March 9, 2017. Petitioner's submission dated April 18, 2017.

⁶⁶ Annex 44. Report of the Atyrá Health Center to the Caacupé Juvenile Court dated March 7, 2017. Petitioner's submission dated April 18, 2017.

⁶⁷ Annex 45. Report of the clinical psychologist of Caacupé Hospital, dated March 17, 2017. Petitioner's submission dated April 18, 2017.

⁶⁸ Annex 46. Psychological report to the Caacupé Juvenile Court, of March 20, 2017. Petitioner's submission dated April 18, 2017.

70. On March 7, 2017, the Defender for Children and Adolescents and the Public Defender as a contributor, on behalf of D., requested application of the precautionary measure for the child to remain in the country. On March 31, 2017, the Caacupé Juvenile Court admitted the precautionary measure for the child to remain in Paraguay, deciding, therefore, that D. would continue to live at his customary place of abode in the city of Atyrá, Paraguay. The Court took into consideration Article 3 of Law 1.680/2001 regarding the child's best interests, Article 5 of the Convention on the Rights of the Child, and Articles 12 and 13 of the 1980 Hague Convention (noting in particular Article 13.b on grave risk of physical or psychological harm or if the ["child"] objects to being returned). It considered that his customary place of abode at present was the city of Atyrá, Paraguay, and that since over 11 years had gone by without it having been possible to implement the August 14, 2006 judgment, "[events have] given rise to other rights as the result of the child remaining in our country since the age of two, because he is now fully rooted in Paraguayan society," as shown in the documents "[D.] S/ International Return," taking into account the report of the psychologists board (citing the report that allegedly refers to "grave risks to his psychological well-being and even his health (...) a change of residence would severely harm his already broken psychological health", emphasizing that "they may even jeopardize his will to live") and the child's statements to the judiciary expressing his wish to remain in Paraguay. The Court noted that it had made efforts for D. and his father to interact, using different methods of bringing them together and that after the nearly two years of restoration of ties ordered, they had not been restored.⁶⁹

71. On June 26, 2017, the International Return Bureau, Paraguay's central authority, in representation of the Secretariat for Children and Adolescents, appealed to the Juvenile Court of Appeals based on lower court error, requesting reversal of the June 20, 2017 judicial order rejecting Mr. Córdoba's request for restoration of ties, taking into consideration the final judgment of March 31, 2017 in the documents "[D.] S/Precautionary Measure," "by which the judge purports to deem concluded the international return process." It argued that the restoration of ties had been requested in the international return file and that the resolution of July 8, 2015 ordering the launch of the restoration of ties had not been set aside.⁷⁰ On July 7, 2017, the appeal was rejected, and the court reversed "in the exercise of its prerogatives the June 20, 2017 order, and, therefore, the requested restoration of ties (...) taking into account decisions yet to be issued."⁷¹

72. The record shows that on July 19, 2017, by virtue of A.I. N° 662, the Caacupé Juvenile Court approved the request for restoration of ties issued by the International Return Bureau in representation of Mr. Córdoba, allowing the request for restoration of ties to proceed, and issuing a plan for interaction between D and his father in the Cordillera and Central jurisdiction, by common agreement with the child's aunt with custody of him.⁷²

73. Subsequently, the International Return Bureau requested that the restoration of ties take place in Argentina, the child travelling with a family member, given that the process aimed at reintegration into the family "cannot go on indefinitely" and considering that during the last visit, the father "spent very few hours with his son."⁷³ On November 7, 2017, the Caacupé Court decided to admit the request of the Director of the International Return Bureau in representation of Mr. Córdoba, agreeing to the requested interaction and issuing a plan for interaction between D and his father in the Cordillera and Central jurisdiction, by common agreement with the child's aunt with custody of him, without changing the location, as had been requested on November 1, 2017, in order to prevent negative impact on the stability of the child D.⁷⁴

74. On December 5, 2017, the Juvenile Court of Appeals of Caacupé resolved to confirm in all aspects the judgment of March 31, 2017. This resolution was challenged by Mr. Córdoba in an unconstitutionality action brought that indicated that final judgments could not be set aside "where the right of both parties to self-defense

⁶⁹ Annex 47. Resolution S.D. N° 28, of March 31, 2017. First Duty Juvenile Court of Caacupé. Petitioner's submission dated April 18, 2017.

⁷⁰ Annex 48. Submission of the Director of the International Return Bureau of June 26, 2017. Petitioner's submission of November 13, 2019, in the framework of MC- 1188-18.

⁷¹ Annex 49. Resolution of July 7, 2017 of the Judge of the Caacupé Juvenile Court. Petitioner's submission of November 13, 2019, in the framework of MC- 1188-18.

⁷² Annex 35. Submission of the Director of the International Return Bureau to the Caacupé Judge dated February 7, 2017. Petitioner's submission of November 13, 2019, in the framework of MC- 1188-18.

⁷³ Annex 50. Submission of the Director of the International Return Bureau of September 25, 2017. Petitioner's submission of November 13, 2019, in the framework of MC- 1188-18.

⁷⁴ Annex 51. Judicial Resolution A.I. N°843 of the Caacupé Juvenile Court of November 7, 2017. Petitioner's submission of November 13, 2019, in the framework of MC- 1188-18.

is fully respected and wherein it had already been decided to approve the return.”⁷⁵ On May 22, 2019, the Constitutional Chamber of the Supreme Court of Justice decided not to admit the unconstitutionality action brought by Mr. Córdoba.⁷⁶

75. On July 6, 2018, the extradition request was rejected that had been issued by the Judge of the Second Criminal Court of Guarantees of Mercedes Judicial Department, Buenos Aires. That resolution was upheld by the agreement and judgment of August 6, 2018, issued by Judge of the First Criminal Court of Guarantees of the Capital.⁷⁷

76. On January 18, 2019, the International Affairs Bureau of Paraguay prepared an assessment of D. and his family at the request of the Ministry for Children and Adolescents to report whether the child was in contact with his father and whether a visitation plan existed, as well as health status, among other things. According to the report prepared, D’s aunt alleged that he was in psychotherapy treatment once a month on instruction of the judge (it does not say when this started); D. was still living with his aunt and her husband and he interacted daily with his mother and that “he prefers to live with his aunt, since he was used to her owing to the years they have lived together”; from 2015 to 2018, at least four visits took place, three of which Mr. Córdoba attended with his mother and the last attended by himself alone (in that period, they allegedly were not in contact by phone); about D’s health status, the report indicated that regarding the father’s allegation about D’s epilepsy, “there are no medical records showing that this health condition has been identified, but that it would be relevant to make a medical evaluation to determine whether the child did in fact have epilepsy.”⁷⁸

77. D’s aunt also maintained that after her sister married, she communicated with her sporadically because Mr. Córdoba made her stay in the house, and had “confiscated” her identity card and other documents. She maintained that following a family visit to Paraguay during which Mrs. M.R.G.A told her family about the situation, they had secretly begun to send her money, which she had used to cross the border with help from individuals. She maintained that thereafter, M.R.G.A moved into her father’s house and “was protected by the Atyrá community.” She indicated that M.R.G.A was unable to work for two years because she did not have an identity card, and that D. had received medical care and had entered an educational institution. In D’s interview, he was asked about the difficulties of relating to his father, and he indicated that he didn’t like it that he [the father] referred negatively to his mother and that he [the father] was lying about how he felt, among other things. He indicated his wish to remain in Paraguay, where he played soccer and practiced taekwondo, played the tuba, and was comfortable in the community, and he agreed to the possibility of reestablishing assisted interaction with Mr. Córdoba. The report identified the fact that the family was overprotective of D. as an obstacle to the restoration of ties.⁷⁹

78. According to a report of the First Duty First-Instance Juvenile Court of Cordillera, the resolution for D to remain was final by virtue of the judgment of May 22, 2019, and as of May 27, 2019, the father had not requested a plan for restoration of ties. It also indicates that Mr. Córdoba “has not made requests of this court with a view to continuing the interaction with his son. Since the request for food assistance on behalf of the adolescent D. was made, he has even refused to receive the notification, therefore refusing to take part in the aforesaid proceedings.”⁸⁰

79. On May 23, 2019, the hearing with the Judge of the First Duty First-Instance Juvenile Court was held, where the adolescent D. and his guardian (his aunt) were heard, accompanied by their representative and in the

⁷⁵ Annex 52. Judgment No. 438, of May 22, 2019, issued by the Supreme Court of Justice State’s submission of July 2, 2019, in the framework of MC-188-18.

⁷⁶ Annex 52. Judgment No. 438, of May 22, 2019, issued by the Supreme Court of Justice State’s submission of July 2, 2019, in the framework of MC-188-18.

⁷⁷ State’s submission dated February 14, 2019, regarding MC-188-18. In its submission, the State refers to Final Judgment No. 36, dated July 6, 2018 and Agreement and Judgment No. 302, dated August 6, 2018.

⁷⁸ Annex 53. Report of the International Returns Bureau dated January 18, 2019. Petitioner’s submission of November 13, 2019, in the framework of MC- 1188-18.

⁷⁹ Annex 53. Report of the International Returns Bureau dated January 18, 2019. Petitioner’s submission of November 13, 2019, in the framework of MC- 1188-18.

⁸⁰ Annex 54. Report of the First Duty First-Instance Juvenile Court of Cordillera. State’s submission of July 2, 2019, in the framework of PM-188-18.

presence of the Defender for Children and Adolescents. On that occasion, D. stated that he was 15 years old, lived with his aunt but that he saw his mother every day, and that he had two siblings, 8 and 3 years old. He also stated that “I don’t want my father to bother me anymore” and that he didn’t want to interact with him, and that he wanted to live with his mother. He stated that his father would call him on the phone, and that if his father came to visit him, he would not have a problem about interacting with him as long as he allowed him to live with his mother. He also stated that his aunt and his mother paid his expenses.⁸¹

80. In another vein, on May 10, 2019, the IACHR granted a precautionary measure in this case.⁸² This was requested by the petitioner on September 24, 2018, alleging that as a result of the failure to implement the return order, the preservation of family ties between father and son was in jeopardy. The IACHR indicated that the judge had ordered hearings for restoration of ties, to which the father had for the most part agreed, even though he had to incur expenses and spend time that in his capacity as a “mere worker” called for extreme efforts, that the hearings did not respect the father’s availability, and that “in the context of the places and situations, they could hardly achieve improvement of the father and son relationship.” In the framework of the precautionary measure proceedings, the IACHR found that meetings allegedly took place in the following periods: July 20 to 23, 2015; November 8 to 14, 2016; February 25 and 26, 2017; January 2019 (four meetings); and March 2019 (two meetings of 45 minutes each). It also found that visits had been scheduled for August 11 to 13, 2015, and 16 to 20, 2017, which could not take place because the father did not attend. The petitioner also mentioned fear for D’s health, since he suffered from epilepsy, and the petitioner did not know whether D was receiving medical treatment.

81. The IACHR requested the State to take the steps necessary to safeguard, in keeping with the child’s best interests, the rights to protection of the family, and to the identity and personal integrity of the adolescent D. In particular, that the State had to ensure that the adolescent D effectively maintained ties with his father, with the support of appropriate professional personnel, without unnecessary restrictions, in a suitable environment, and by means conducive to generating a meaningful relationship, in keeping with the applicable international standards in this area.

82. On July 2, 2019, in the framework of the precautionary measure, the State presented a proposal for restoration of ties in different stages. D’s father indicated that he considered that proposal illogical, not in accordance with law, nor adequate, and made a counter-proposal, indicating that the interaction should also include the paternal grandparents and the rest of the family, and requesting that psychological evaluations be made of D’s mother and guardian.

83. On December 5, 2019, the State presented another proposal for restoration of ties in different stages over a two-month period, in January and February 2020, also proposing, as requested, that psychological evaluations be prepared of the parenting skills of D’s parents and of his guardian, and of the adolescent regarding behavioral characteristics and preparation for the restoration of ties. It also indicated that the multidisciplinary technical team could be composed of Argentine professionals proposed by Mr. Córdoba, presenting a timetable of activities. On February 24, 2020, a working meeting was held. On February 25, 2020, the petitioner indicated that Mr. Córdoba had already been evaluated by a psychologist in the judicial proceedings in Argentina, so that they considered another evaluation unnecessary. The State also indicated that the paternal grandparents should be evaluated as part of the extended family, and that the guardian did not encourage telephone communication with D.

84. On July 9, 2020 the State reiterated the proposal for restoration of ties presented in December 2019, and explained that the plan would be implemented by a Ministry for Children and Adolescents psychologist, as well as a social worker, both with experience of the international return process and restoration of family ties. The State also indicated that “it had not yet received a clear view of the proposals presented, which makes it difficult to move forward with implementation of the precautionary measures.” It maintained that on July 8, 2020, a team from the Return Department of the Ministry for Children and Adolescents had moved forward with the first stage of the plan for psychological evaluation of the adolescent, mother, and guardian, estimating that two visits per

⁸¹ Annex 55. Record of the hearing of May 23, 2019 before the Judge of the First Duty First-Instance Juvenile Court. State’s submission of July 2, 2019, in the framework of MC-188-18.

⁸² IACHR, PM 1188-18. Adolescent D., Paraguay. Resolution of May 10, 2019.

week would take place, and proposed that Mr. Córdoba begin meetings as of August or on any date he proposed for prompt recommencement of the process of restoration of ties.

85. On October 22, 2020, the petitioner indicated that “the strategies set out by Paraguay thus far do not constitute anything other than delays and an abuse of a position of power in the context of the behavior exhibited by [Mr. Córdoba’s] fellow citizen, Mrs. [M.R.G.A].” It asserted that the State had “developed a yarn to show that his fellow citizen (...) has not committed any crime and that Mr. Javier Córdoba has squandered processes for restoration of ties,” and that psychological professionals had engineered the reports on D’s health so as to conclude that “he does not wish to alter his situation.” Regarding the plan proposed by the State, it indicated that it was impossible to comply with it, “with nearly weekly visits, constant studies of Javier Córdoba’s personality, the expectations for which (...) were exceeded in the Argentine proceedings.” It indicated that D. should travel to Argentina “because he is an Argentine national, to be at rights with the law in the Court and in the record under which his international return is being processed.” It maintained that “recognition of the wrongful act of abduction is fundamental to resolving the conflict and regarding [D’s] general health”, and that it was fundamental for the criminal action for abduction [...] that is the subject of proceedings in Argentina move forward in accordance with the due process recognized in the respective constitutions and in the international instruments signed by both countries, which remain in force to date.” It indicated that the legal obstacles had to be removed if ties were to be normalized and that said process should be monitored by a neutral interdisciplinary team.

IV. ANALYSIS OF LAW

A. Rights to non-interference in private and family life,⁸³ protection of the family,⁸⁴ and rights of the child,⁸⁵ in connection with judicial guarantees⁸⁶ and judicial protection,⁸⁷ and in conjunction with Articles 1.1⁸⁸ and 2⁸⁹ of the American Convention

1. Considerations regarding the rights of the child and international return procedures

86. In its report on the "The Right of Boys and Girls to a Family," the Inter-American Commission maintained that "The term *corpus juris* on minors refers to the set of related basic standards intended to ensure the human rights of children and adolescents."⁹⁰ Likewise it has stated that both the Court and the Commission have held that "the notion of *corpus juris* of international human rights law comprises a set of international instruments of

⁸³ The pertinent portions of Article 11 of the American Convention provide: 2. No one may be the object of arbitrary or abusive interference with his private life, his family, or his correspondence, or of unlawful attacks on his honor or reputation.

⁸⁴ The pertinent portions of Article 17 of the American Convention provide: 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state. 4. The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.

⁸⁵ The pertinent portions of Article 19 of the American Convention provide: Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

⁸⁶ The pertinent portions of Article 8 of the American Convention provide: 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

⁸⁷ The pertinent portions of Article 25.1 of the American Convention provide: Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

⁸⁸ The pertinent portions of Article 1.1 of the American Convention provide: The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

⁸⁹ The pertinent portions of Article 2 of the American Convention provide: Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

⁹⁰ The Right of Boys and Girls to a Family. Alternative care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13. October 17, 2013, par. 31.

varied content and juridical effects (treaties, conventions, resolutions and declarations), as well as the decisions of international human rights organs. This conception pertaining to international human rights law, and the interpretation of treaties, is particularly important for the protection and defense of the human rights of children, which has advanced substantially by the evolutive interpretation of international protection instruments."⁹¹ Thus the IACHR has considered that "for an interpretation of the meaning, content, and scope of children's rights, particularly in relation to Articles 19 of the American Convention, VII of the American Declaration, and 16 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador -which guarantee the right of children to special measures of protection on the part of their families, society, and the State - it is important to make reference not only to the provisions of said instruments of the inter-American human rights system but also to other international instruments that contain more specific regulations on the protection of children."⁹²

87. In the instant case, the IACHR will analyze the alleged violations of the rights to judicial guarantees, judicial protection, protection of the family, family life, and the rights of the child in light of the international body of law (*corpus juris*) on protection of children. As mentioned earlier (above, par. 51), according to the IACHR⁹³ and the Inter-American Court of Human Rights (hereinafter "the Court" or "the I/A Court of H.R.")⁹⁴, that body of law should serve to define the content and scope of the obligations taken on by the State in the American Convention, whenever children's rights are being analyzed. The Commission highlights the fact that, specifically in cases relating to the international return of children, the European Court of Human Rights has considered applying instruments that form part of the *corpus juris* on the rights of the child when making decisions based on its competence *vis-à-vis* the European Convention on the Human Rights, pointing out that "in the area of international child abduction the obligations imposed by Article 8 on the Contracting States must be interpreted in the light of the requirements of the Hague Convention (...) and of the relevant rules and principles of international law applicable in relations between the Contracting Parties."⁹⁵

88. In light of the above, in analyzing the facts of this case particular mention will be made of the Convention on the Rights of the Child; the Convention on the Civil Aspects of International Child Abduction; the Inter-American Convention on the International Return of Children; General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1); and General Comment No. 12 on the right of the child to be heard, these last two being documents of the United Nations Committee on the Rights of the Child.

89. In addition, the Commission issues a reminder that it is not up to it to replace national courts and authorities that are better positioned to determine matters relating to care and custody and civil aspects regarding children. That said, the Commission observes that, when hearing cases relating to the international return of children, the European Court of Human Rights has referred to the need to make a "combined and harmonious application of ... the Convention and the Hague Convention."⁹⁶ To that end, and bearing in mind that the Hague Convention regulates the obligations of the Contracting States with respect to the international return procedure, the Commission deems it necessary to examine its provisions and, in particular, to verify whether the state authorities and the decisions they took were sufficiently substantiated, taking into account the obligations established in the American Convention with regard to the best interests of the child.⁹⁷

⁹¹ The Right of Boys and Girls to a Family. Alternative care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13. October 17, 2013, par. 32.

⁹² The Right of Boys and Girls to a Family. Alternative care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13. October 17, 2013, par. 34.

⁹³ The Right of Boys and Girls to a Family. Alternative care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13. October 17, 2013; IACHR, Report No. 25/18, Case 12.428. Admissibility and Merits, Fireworks Factory Workers in Santo Antonio de Jesús and their families, Brazil, March 2, 2018, par. 108.

⁹⁴ I/A Court H.R. Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparation, and Costs Judgment of March 9, 2018. Series C No. 351, par. 149; The "Street Children" Case (Villagrán Morales et al.) v. Guatemala. Merits. Judgment of November 19, 1999, paras. 149 and 195; Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63, par. 194; Case of Rochac Hernández et al. v. El Salvador. Merits, Reparation, and Costs Judgment of October 14, 2014. Series C No. 285, par. 106; I/A Court H.R. Case of Fornerón and daughter v. Argentina. Merits, Reparation, and Costs Judgment of April 27, 2012. Series C No. 242, par. 44.

⁹⁵ European Court of Human Rights. Case of X v. Latvia (Application no. 27853/09). Judgment of November 26, 2013, par. 93.

⁹⁶ European Court of Human Rights. Case of X v. Latvia (Application no. 27853/09). Judgment of November 26, 2013, par. 94-95.

⁹⁷ On that, see: European Court of Human Rights. Case of X v. Latvia (Application no. 27853/09). Judgment of November 26, 2013, par. 106.

a) Relevant provisions regarding international return procedures

90. Having established the above, the Commission observes that Article 1 of the Convention of October 25, 1980 on the Civil Aspects of International Child Abduction⁹⁸ states that its objects are: "a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States."

91. As the Convention establishes in Article 3, the removal or retention of a child shall be considered wrongful:

- a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
 - b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.
- The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

92. According to the Convention, after receiving notice of a wrongful removal or retention, the authorities of the requested State "shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice" (Article 16). In light of the above, the Commission observes that the Hague Convention refers in principle to an indication to the effect that the best interests of the child have to do with restoration of the status quo via a decision ordering his or her return to the country of habitual residence, where the substantive issues involved can be examined.⁹⁹

93. According to the Convention, Central Authorities shall co-operate with each other to secure the prompt return "of children" and shall take all appropriate measures to prevent further harm to the child or prejudice to interested parties and to secure the voluntary return of the child or to bring about an amicable resolution of the issues (Article 7). As the Convention establishes in Article 7:

- Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.
- In particular, either directly or through any intermediary, they shall take all appropriate measures -
- a) to discover the whereabouts of a child who has been wrongfully removed or retained;
 - b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
 - c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
 - d) to exchange, where desirable, information relating to the social background of the child;
 - e) to provide information of a general character as to the law of their State in connection with the application of the Convention;
 - f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make

⁹⁸ Hague Convention on the Civil Aspects of International Child Abduction, October 25, 1980.

⁹⁹ In this vein, see European Court of Human Rights. Case of X v. Latvia (Application no. 27853/09). Judgment of Tuesday, November 26, 2013, par. 94-97.

- arrangements for organising or securing the effective exercise of rights of access;
- g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

94. The Convention establishes that "The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children" and that "If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay" (Article 11).

95. Thus, Article 12 establishes:

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment. (...)

96. Article 13 establishes as exceptions to international return that:

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -

- a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
- b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

97. Article 7 of the Hague Convention on parental responsibility and protection of children, or Hague Convention 1996¹⁰⁰ establishes that:

- (1) In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State, and

¹⁰⁰ Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.

- a) each person, institution or other body having rights of custody has acquiesced in the removal or retention; or
- b) the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment.

98. For its part, the Commission notes that the pertinent provision in the Inter-American Convention on the International Return of Children establish as follows:¹⁰¹

Article 1: The purpose of this Convention is to secure the prompt return of children habitually resident in one State Party who have been wrongfully removed from any State to a State Party or who, having been lawfully removed, have been wrongfully retained. This Convention further seeks to secure enforcement of visitation and custody rights of parties entitled to them.

Article 11. A judicial or administrative authority of the requested State is not required to order the child's return if the party raising objections to the return establishes that:

- a. The party seeking the child's return was not actually exercising its rights at the time of the removal or retention, or had consented to or subsequently acquiesced in such removal or retention; or
- b. There is a grave risk that the child's return would expose the child to physical or psychological danger.

The requested authority may also refuse to order the child's return if it finds that the child is opposed to it and if, in the judgment of the requested authority, the child's age and maturity warrant taking its views into account.

Article 12. (...) The judicial or administrative authority shall issue its decision within sixty calendar days after receipt of the objection.

99. According to the Guide to Good Practice under the Hague Convention,¹⁰² "Both the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention are based on the idea that, in a child abduction situation, the authorities in the State to which the child was abducted (requested State) shall have the competency to decide on the return of the child but not on the merits of custody.' Therefore, according to the above-mentioned Guide, "The court seized with the Hague return proceedings in the requested State will therefore have difficulties turning a mediated agreement into a court order if this agreement also covers, besides the question of return, matters of custody or other matters on which the court seized with the Hague proceedings lacks (international) jurisdiction"¹⁰³. According to the Guide, "the involvement of different authorities, possibly in different States, might become necessary to render the full agreement legally binding and enforceable in the legal systems concerned. Specialist legal advice on which steps to take and in which of the States involved may be needed in such cases."¹⁰⁴

100. As regards international jurisdiction in cases of international child abduction, the above-mentioned Guide states that "It is the wrongful removal or retention itself which creates a special jurisdictional situation in international child abduction cases falling within the scope of the 1980 Hague Child Abduction Convention and / or the 1996 Hague Child Protection Convention. According to a widely applied principle of international jurisdiction it is the court of the child's habitual residence which has jurisdiction to take long-term decisions concerning custody of and contact with a child, as well as decisions on cross-border family relocation. This principle is supported by the 1996 Convention, which works hand in hand with

¹⁰¹ Inter-American Convention on the International Return of Children, ratified by Ecuador, which deposited its instrument of ratification on August 3, 2002.

¹⁰² Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Mediation.

¹⁰³ Par. 299.

¹⁰⁴ Par. 300.

the 1980 Convention"¹⁰⁵. " Central Authorities should support the parties and the courts as much as possible with information and support their efforts to overcome jurisdictional obstacles to rendering the mediated agreement legally binding and enforceable in both the requested and requesting States"¹⁰⁶.

101. The Guide to Good Practice under the Hague Convention of 25 October 1980¹⁰⁷ includes a number of measures regarding the State requested to effect the return. In that regard, it establishes that it should have rapid and effective mechanisms for locating an abducted child, which should be available at every stage of the proceedings, including the enforcement stage. In particular, it establishes that: it should have rapid and effective mechanisms for protecting an abducted child while return proceedings are pending, with a view to preventing the abducting parent from taking the child into hiding; at all stages of the proceedings, the court should consider whether a need for protective measures exists to prevent the concealment or removal of the child from the jurisdiction of the court; and effective mechanisms should be available for preparing an abducted child for return. These measures should be available at every stage of the proceedings, including the enforcement stage.

102. In accordance with said Guide, if necessary, co-operation with the authorities of the State of habitual residence to ensure continuing protection of the child after the return should also be considered; rapid and effective mechanisms should be available for enforcing a return order, including a range of effective coercive measures; additional conditions or requirements for enforcing a return order through the use of coercive measures should be avoided or limited; additional administrative burdens placed on the applicant with regard to the enforcement of a return order (such as the need for a formal application for enforcement or for any additional requirements or authorizations, the need for a new application for legal aid, etc.) should be avoided or limited; where the return order needs to be served upon the respondent before coercive measures may be applied, consideration should be given to the possibility, in appropriate cases, of serving it at the moment that the enforcement officer proceeds to enforcement; no legalization or similar formality may be required in the context of the Convention, including for a power of attorney or other similar document authorizing a person designated by the applicant to take the child.

103. Finally, Article 11 of the Convention on the Rights of the Child¹⁰⁸ provides:

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad. (...).
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

104. In addition, Article 9.3 of the Convention on the Rights of the Child provides:

9.3 States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

b) Special protection of the rights of children and adolescents in connection with procedures affecting them. The right to be heard, the right to participation, and the best interests of children and adolescents

105. The Inter-American Court has considered that children are beneficiaries of the rights enshrined in the American Convention, as well as enjoying special protective measures set out in Article 19 thereof.¹⁰⁹ It has likewise held that that adoption of special measures to protect children is "a responsibility both of the State and

¹⁰⁵ Par. 307.

¹⁰⁶ Par. 314.

¹⁰⁷ Guide to Good Practice under the Hague Convention on the Civil Aspects of International Child Abduction – Part IV - Enforcement.

¹⁰⁸ Convention on the Rights of the Child, Adopted and opened for signature and ratification by the General Assembly in its resolution 44/25 of 20 November 1989.

¹⁰⁹ I/A Court H.R. Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparation, and Costs Judgment of March 9, 2018. Series C No. 351, paragraph 150.

of the family, community, and society to which they belong."¹¹⁰ And that "the effects of this provision extend to the interpretation of all the other rights when the case has to do with minors, because of their nature as such. The Court is of the view that due protection of the rights of children, as holders of rights, must take the characteristics proper to children into account and the need to foster their development, by providing them with the conditions they need to live and develop their skills and make the most of their potential. Children themselves exercise their rights progressively, as they develop higher levels of personal autonomy. For that reason, the Convention provides that appropriate protection measures for children are special or more specific than those declared for adults. The protection measures to be adopted under Article 19 of the Convention must, in each concrete case, be defined in accordance with the particular circumstances."¹¹¹

106. The I/A Court of H.R. has held that in any situation involving children certain guiding principles must be applied and observed across the board, notably: i) nondiscrimination; ii) the best interests of the child; iii) the right to be heard and to participate; and iv) the right to life, survival, and development. Any state, social, or family decision curtailing the exercise of any right of a child must take into account the best interests of the child and abide strictly by the provisions in force in that regard.¹¹² For its part, the IACHR has referred to a broad spectrum of guiding principles, including notably the principles of exceptional diligence and speed,¹¹³ which will be examined in the following sections.

i) **The best interests of the child or adolescent**

107. The right of children or adolescents to protection of their best interests is enshrined in the Convention on the Rights of the Child,¹¹⁴ Article 3 of which establishes that:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

108. For its part, in General Comment No. 14 on the on "the right of the child to have his or her best interests taken as a primary consideration,"¹¹⁵ the United Nations Committee on the Rights of the Child considered that the best interests of the child is a triple notion: a substantive right, an interpretative legal principle, and a rule of procedure. It also considered that, under Article 3 of the Convention on the Rights of Child, three types of obligation arise for States parties,¹¹⁶ and that among the measures that States must adopt to guarantee

¹¹⁰ I/A Court H.R. Case of Fornerón and daughter v. Argentina. Merits, Reparation, and Costs Judgment of April 27, 2012. Series C No. 242, par. 45.

¹¹¹ I/A Court H.R. Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparation, and Costs Judgment of March 9, 2018. Series C No. 351, paragraph 150.

¹¹² I/A Court H.R. Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparation, and Costs Judgment of March 9, 2018. Series C No. 351, paragraph 152; I/A Court H.R., Case of V.R.P., V.P.C. et al v. Nicaragua. Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 350, par. 155; I/A Court H.R. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21, paragraph 69.

¹¹³ The Right of Boys and Girls to a Family. Alternative care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13. October 17, 2013

¹¹⁴ Convention on the Rights of the Child, Adopted and opened for signature and ratification by the General Assembly in its resolution 44/25 of 20 November 1989.

¹¹⁵ General Observation No. 14 of the Committee on the Rights of the Child on "the right of the child to have his or her best interests taken as a primary consideration." May 29, 2013.

¹¹⁶ Article 3, paragraph 1, establishes a framework with three different types of obligations for States parties: (a) The obligation to ensure that the child's best interests are appropriately integrated and consistently applied in every action taken by a public institution, especially in all implementation measures, administrative and judicial proceedings which directly or indirectly impact on children; (b) The obligation to ensure that all judicial and administrative decisions as well as policies and legislation concerning children demonstrate that the child's best interests have been a primary consideration. This includes describing how the best interests have been examined and assessed, and what weight has been ascribed to them in the decision. (c) The obligation to ensure that the interests of the child have been assessed and taken as a primary consideration in decisions and actions taken by the private sector, including those providing services, or any other

[continues ...]

compliance with those obligations, is the duty to adopt a series of measures related to the best interests of the child, such as reviewing and, where necessary, amending domestic legislation and other sources of law so as to incorporate article 3, paragraph 1, and ensure that the requirement to consider the child's best interests is reflected and implemented in all national laws and regulations, provincial or territorial legislation, rules governing the operation of private or public institutions providing services or impacting on children, and judicial and administrative proceedings at any level, both as a substantive right and as a rule of procedure.¹¹⁷

109. In addition, pursuant to General Comment No. 14, the courts must provide for the best interests of the child to be considered in all such situations and decisions, whether of a procedural or substantive nature, and must demonstrate that they have effectively done so. The Committee has held that "The evolving capacities of the child (...) must be taken into consideration when the child's best interests and right to be heard are at stake. (...) As the child matures, his or her views shall have increasing weight in the assessment of his or her best interests."¹¹⁸ Finally, the fact that the child is very young or in a vulnerable situation (...) does not deprive him or her of the right to express his or her views, nor reduces the weight given to the child's views in determining his or her best interests.¹¹⁹

110. Concerning this principle, the I/A Court of H.R. has held that the best interests of the child are rooted in the very dignity of human beings, in the characteristics proper to children, and in the need to foster their development. making the most of their potential.¹²⁰ It has also considered that "Any state, social, or family decision curtailing the exercise of any right of a child must take into account the best interests of the child and abide strictly by the provisions in force in that regard."¹²¹ It has further asserted that the best interests principle "entails both its priority consideration in the design of public policies and the drafting of laws and regulations concerning childhood, and in its implementation in all the spheres that related to the life of the child."¹²²

111. The European Court of Human Rights has considered, in connection with an international abduction procedure under the Hague Convention, that Article 8 of the European Convention was violated with regard to the right to private and family life when domestic courts failed to conduct an in-depth analysis in order to evaluate the best interests of the child.¹²³

ii) **Right of the child or adolescent to be heard and to take part in decisions affecting them**

112. In the report on the Right of Boys and Girls to a Family,¹²⁴ the Commission observes that Article 8.1 of the American Convention and Article XXVI of the American Declaration uphold everyone's, including children's, right to be heard, in proceedings determining their rights: a right that, in its view, must be interpreted in light of Article 12 of the Convention on the Rights of the Child. It adds that, the provision of Articles 8 and XXVI, including the right to be heard, are applicable to judicial proceedings and to administrative proceedings establishing people's rights, and involve taking timely steps in connection with the proceeding to facilitate adequate participation by the child. so that it has a real opportunity to present his or her views in such a way as to be able to influence any decision taken.

private entity or institution making decisions that concern or impact on a child. General Observation No. 14 of the Committee on the Rights of the Child on "the right of the child to have his or her best interests taken as a primary consideration." May 29, 2013, par. 13)

¹¹⁷ Par. 15.

¹¹⁸ General Observation No. 14 of the Committee on the Rights of the Child on "the right of the child to have his or her best interests taken as a primary consideration." Wednesday, May 29, 2013, par. 44.

¹¹⁹ General Observation No. 14 of the Committee on the Rights of the Child on "the right of the child to have his or her best interests taken as a primary consideration." May 29, 2013, par. 54.

¹²⁰ I/A Court H.R. Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparation, and Costs Judgment of March 9, 2018. Series C No. 351, paragraph 152.

¹²¹ I/A Court H.R. Case of Furlan and Family v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2012, Series C No. 246, par. 126.

¹²² I/A Court H.R. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21, paragraph 70; I/A Court H.R. Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03 of September 17, 2003, Series A No. 18, second decisive point.

¹²³ European Court of Human Rights. Case of Kärner v. Romania, (Application no. 35853/04). Judgment of June 12, 2006. February 21, 2012.

¹²⁴ The Right of Boys and Girls to a Family. Alternative care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13. October 17, 2013, par. 247.

113. The right of the child or adolescent to be heard is upheld in Article 12 on the Rights of the [Convention] on the Rights of the Child,¹²⁵ which establishes that:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

114. As indicated in General Comment No. 12 of the Committee on the Rights of the Child regarding "The Right of the Child to be Heard,"¹²⁶ "The purpose of article 3 is to ensure that in all actions undertaken concerning children, by a public or private welfare institution, courts, administrative authorities or legislative bodies, the best interests of the child are a primary consideration." That Comment likewise establishes that "The best interests of the child is similar to a procedural right that obliges States parties to introduce steps into the action process to ensure that the best interests of the child are taken into consideration. The Convention obliges States parties to assure that those responsible for these actions hear the child as stipulated in 12."¹²⁷

115. Accordingly, the Committee on the Rights of the Child encouraged States to introduce legislative measures requiring decision makers in judicial or administrative proceedings to explain the extent of the consideration given to the views of the child and the consequences for the child.¹²⁸ Likewise, the Committee has considered that "A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child-appropriate. Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff, design of court rooms, clothing of judges and lawyers, sight screens, and separate waiting rooms."¹²⁹

116. The I/A Court of H.R. has recognized the existence of this principle, mentioning that Article 19 of the Convention, "in addition to granting special protection to the rights recognized therein, establishes a State obligation to respect and ensure the rights recognized to children in other applicable international instruments. It is relevant to refer to Articles 12 and (...) of the Convention on the Rights of the Child, which recognize, respectively, the right of the child to be heard in any judicial and administrative proceedings affecting the child."¹³⁰

117. It has also maintained that children exercise their rights progressively as they develop a greater level of personal autonomy. Consequently, those responsible for application of the law, whether in the administrative or judiciary sphere, "must take into account the specific conditions of the minor and his or her best interests to decide on the child's participation, as appropriate, in establishing his or her rights. This consideration will seek as much access as possible by the minor to examination of his or her own case (...). Simply listening to the child is insufficient; the views of the child have to be seriously considered when the child is capable of forming her or his own views, for which the views of the child have to be assessed on a case-by-case basis."¹³¹

¹²⁵ Convention on the Rights of the Child, Adopted and opened for signature and ratification by the General Assembly in its resolution 44/25 of 20 November 1989.

¹²⁶ General Comment No. 12 of the Committee on the Rights of the Child on "The right of the child to be heard." CRC/C/GC/12. July 20, 2009

¹²⁷ General Comment No. 12 of the Committee on the Rights of the Child on "The right of the child to be heard." CRC/C/GC/12. 20 July 2009, para. 70.

¹²⁸ Para. 33.

¹²⁹ Para. 34.

¹³⁰ I/A Court H.R. Case of the Pacheco Tineo Family v. Bolivia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 25, 2013. Series C No. 272, par. 219.

¹³¹ I/A Court H.R. Case of Furlan and Family v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2012. Series C No. 246, paragraph 230.

118. The IACHR has maintained that, derived from Article 8.1 of the American Convention in conjunction with the special duty to protect upheld in Article 19 thereof and in relation to Article 12 of the Convention on the Rights of the Child, States have additional obligations to regulate the proceedings so as to guarantee the children's effective participation, such as adapting the communication methodologies used to facilitate the expression of opinions of all children, especially to meet the requirements of children who have greater difficulties or barriers to express themselves, because of their young age and consequent limits on verbalization of opinions, or because of the existence of any disabilities.¹³²

2. Rights not to be victims of interference in family life and to protection of the family¹³³

119. Article 11 of the Convention protects everyone from interference in their private life. The Inter-American Court has considered that interferences with the right to family life are particularly serious when they impair the rights of children,¹³⁴ and it has held that "the child must stay with her or his nuclear family, unless there are paramount reasons based on the best interests of the child to opt for separation from the family. In any event, the separation must be exceptional and, preferably, temporary."¹³⁵ According to the Court, the direst interference the State can engage in against a family is when its actions cause separation or a break-up. That situation is especially serious when, in that separation, the rights of children and adolescents are impaired.¹³⁶

120. At the same time, under Article 17 of the American Convention, the family is the natural and fundamental group unit of society and is entitled to protection by society and the state. The I/A Court of H.R. has established that the State is obliged to promote the development and strengthening of the family unit and that implies the right of every person to receive protection against arbitrary or illegal interferences in their family, which means that States have positive obligations to ensure effective respect for family life. In particular, it has recognized that "the mutual enjoyment of coexistence between parents and children constitutes a fundamental element of family life, and that, in certain circumstances, separating children from their families constitutes a violation of their right to a family recognized in Article 17 of the American Convention."¹³⁷

121. The IACHR has taken the view that the right to a family is closely related to the effective exercise of all rights of the child, due to the position held by the family in the child's life and its role in the provision of protection, care, and upbringing. During the first few years of a child's life, when he or she is most dependent on adults for the realization of rights, the relationship between the right to a family and the rights to life, integral development, and personal integrity, is a particularly strong one.¹³⁸

122. The IACHR has maintained that "One of the contents of the right to a family is the possibility of defense from any unlawful or arbitrary interference with family life. Article 11(2) of the American Convention and Article V of the American Declaration establish that no one may be the object of arbitrary or abusive interference with his or her private family life. The principles of necessity, exceptionality, and temporal determination in relation to special measures of protection that involve the separation of a child from his or her parents, for the purpose of protection, are derived from a necessary balance between the rights contained in Articles 17(1) and 11(2), and

¹³² The Right of Boys and Girls to a Family. Alternative care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13. October 17, 2013, par. 252.

¹³³ In its admissibility report, the Commission did not pronounce on the alleged violation of Article 11 of the Convention. However, the facts underlying its analysis stem from information and documents provided by the parties during the processing of the instant case, in respect of which the State had an opportunity to defend itself and present arguments.

¹³⁴ I/A Court H.R. Case of López et al. v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 25, 2019. Series C No. 396, par. 171

¹³⁵ I/A Court H.R. Case of López et al. v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 25, 2019. Series C No. 396, par. 173.

¹³⁶ I/A Court H.R. Case of López et al. v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of Monday, November 25, 2019. Series C No. 396, par. 99.

¹³⁷ I/A Court H.R. Case of Vélez Restrepo and Family v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012, Series C No. 248, par. 225; I/A Court H.R. Case of V.R.P., V.P.C. et al v. Nicaragua. Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 8, 2018. Series C No. 350, par. 311.

¹³⁸ The Right of Boys and Girls to a Family. Alternative care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13. October 17, 2013, par. 57.

Article 19 of the Convention, and V and VI of the American Declaration with VII of the same instrument."¹³⁹ The Inter-American Court has considered that given the importance of the right to a family, "the State has the obligation to favor the development and strength of the family unit. Thus, it is obliged to take positive and negative actions to protect people against arbitrary or illegal interference in their family and to promote effective respect family life".¹⁴⁰

123. The IACHR has determined that mutual enjoyment of harmonious relations between parents and children is a fundamental component of family life and that the essential content of this precept is protection of the individual in face of arbitrary action by public authorities. One of the gravest interferences is that which leads to division of a family.¹⁴¹ Thus it has regarded separation of children from their parents as exceptional,¹⁴² and that for the interference to be in accord with American Convention parameters, separation is admissible only under exceptional circumstances, when there are paramount reasons for it, based on the best interests of the child.¹⁴³ In addition, the IACHR "uses the term family as established by the jurisprudence of the inter-American system, i.e., in the broad sense described".¹⁴⁴

124. The Court has considered that the family to which every child is entitled is, principally, his or her biological family, including the closest family members. Thus, it has maintained that that family must provide protection to the child and, in turn, be the main object of protection measures by the State. It has likewise pointed out that "there is no single definition of family, so that it must not be restricted to the traditional notion of a couple and their children, because other relatives may be entitled to family life, such as uncles, cousins, and grandparents, to name just some of the members of an extended family, provided they have close personal ties."¹⁴⁵ The Court has established that "the term "family members or next of kin" should be understood in its broadest sense, including all those persons connected by a close relationship".¹⁴⁶

125. The Court has also pointed out, with respect to family life, that "children have a right to live with their family, which is called upon to satisfy their material, emotional, and psychological needs. This Court has also held that the mutual enjoyment of the cohabitation of parents and children is a fundamental element of family life. Accordingly, children should stay with their nuclear family, unless there are paramount reasons, based on their best interests, to opt for separating them from their family. In any event, the separation must be exceptional and, preferably, temporary."¹⁴⁷

126. Regarding the right to protection of the child's family, recognized in Article 17 of the American Convention, the Court has also underscored that "this means that the State is obliged not only to establish and directly execute measures for the protection of children, in accordance with Article 19 of the Convention, but also to encourage, in the broadest possible way, the development and strength of the family unit. Consequently, the separation of children from their family may constitute, in certain circumstances, a violation of said right to protection of the family, as even the legal separation of a child from his or her biological family is only applicable when duly justified in the best interest of the child, and is exceptional and, insofar as possible, temporary. In addition, given that during early childhood children exercise their rights through their next of kin, and that the family plays an essential role in their development, the separation of a minor from his biological parents may affect his right to personal integrity, contained in Article 5(1) of the Convention, insofar as it may jeopardize his

¹³⁹ The Right of Boys and Girls to a Family. Alternative care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13. October 17, 2013, par. 66.

¹⁴⁰ I/A Court H.R., Case of López Soto et al. v. Venezuela. Interpretation of the Judgment on Merits, Reparations and Costs. Judgment of May 14, 2019. Series C No. 379, par. 98.

¹⁴¹ Report No. 83/10. Case 12,584 Merits. Milagros Forneron and Leonardo Aníbal Javier Fornerón. Argentina. July 13, 2010, par. 106.

¹⁴² Report No. 83/10. Case 12,584 Merits. Milagros Forneron and Leonardo Aníbal Javier Fornerón. Argentina. July 13, 2010, par. 107.

¹⁴³ Report No. 83/10. Case 12,584 Merits. Milagros Forneron and Leonardo Aníbal Javier Fornerón. Argentina. July 13, 2010, par. 110.

¹⁴⁴ The Right of Boys and Girls to a Family. Alternative care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13. October 17, 2013, foot note number 34.

¹⁴⁵ I/A Court H.R. Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparation, and Costs Judgment of March 9, 2018. Series C No. 351, par. 163.

¹⁴⁶ Juridical Status and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 62, and Case of Gelman v. Uruguay, supra note 49, para. 70; I/A Court H.R., Case of Fornerón and daughter v. Argentina. Merits, Reparations and Costs. Judgment of April 27, 2012. Series C No. 242, par. 98.

¹⁴⁷ I/A Court H.R. Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparation, and Costs Judgment of March 9, 2018. Series C No. 351, par. 151.

or her development."¹⁴⁸

127. For its part, the IACHR has considered that the American Convention recognizes rights associated to family and family life free from unlawful interference in two provisions in its text, from different perspectives. On one hand, the American Convention in its Article 17(1) recognizes the right to protection of the family and in Article 11(2) it recognizes the right to a family life free from unlawful interference, which, it considers, "gives rise to an obligation to respect the right by prohibiting arbitrary or unlawful interference with the right to family life."¹⁴⁹

128. In particular, regarding visits, the IACHR has held that "When restrictions are placed on the visitation system, an explicit reason should be provided for doing so, and a record of it should be made in the child's file."¹⁵⁰ Additionally, in a related matter, and in the context of the precautionary measure proceedings, the IACHR has requested that the State "in keeping with the children's interests and the protection they are due, immediately implement a system of visits under appropriate conditions, one that would guarantee the children's access to their mother and extended family in an atmosphere that ensured that they could interact as normally as possible," without unnecessary restrictions. The Commission also asked the State "to take measures to ensure that this system was implemented effectively throughout the international restitution process"; with specialized and independent support to ensure the children's well-being and the least possible intrusion in the relationship.¹⁵¹

129. For its part, the Committee on the Rights of the Child has concluded that the State party has violated articles 3, 9 (3) and 10 (2) of the Convention on the Rights of the Child, considering that its failure to take effective steps to guarantee the right of the author's daughter to maintain personal relations and direct contact with her father on a regular basis deprived the girl of the enjoyment of her rights under the Convention. In particular, the Committee is of the view that the authorities did not take the necessary steps to enforce those orders so as to ensure contact between the author and his daughter.¹⁵²

3. Right to judicial guarantees and judicial protection, and the duty of exceptional diligence and speed, in relation to the duty to adopt domestic legal provisions with respect to international return proceedings.

130. Of all the principles for determining and applying the special protection measures involved in separating children from family, the IACHR has established exceptional diligence as a guiding principle. Thus, it has maintained that "Considering the importance international human rights law assigns to the family and given the seriousness, due to its being both irreversible and irreparable, of the harm that can be caused to the child in the relationship with his or her parents, especially in early childhood, the Commission and the Court have set a standard of exceptional diligence with respect to matters of adoption, guardianship, and custody of children."¹⁵³ Accordingly, the I/A Court of H.R. has held that the above corresponds to the need to safeguard and protect the best interest of the child, as well as to guarantee rights that may be at risk until the dispute on the merits is resolved and to ensure that any decision reached has a useful impact.¹⁵⁴ The Court has further established that administrative and judicial procedures concerning protection of the human rights of minors, especially procedures relating to the adoption, guardianship, and custody of very young children, must be pursued by the authorities with exceptional diligence and speed.¹⁵⁵ Therefore, the nature and intensity of this impact on the rights of the child "warrant a duty of particularly reinforced diligence on the part of public

¹⁴⁸ Order of the Inter-American Court of Human Rights of July 1, 2011. Provisional Measures with Regard to Paraguay, Matter of L.M., par. 14.

¹⁴⁹ The Right of Boys and Girls to a Family. Alternative care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13. October 17, 2013, par. 49.

¹⁵⁰ The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13. October 17, 2013, par. 447.

¹⁵¹ IACHR, PM 314/13- X, Y and Z, Mexico. Resoluton of March 6, 2015.

¹⁵² Committee on the Rights of the Child, CRC/C/83/D/30/2017, C.R. v. Paraguay, CRC/C/83/D/30/2017, of March 12, 2020, par. 8.8.

¹⁵³ The Right of Boys and Girls to a Family. Alternative care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13. October 17, 2013, par. 199.

¹⁵⁴ Matter of L.M. Provisional Measures regarding Paraguay. Order of the Inter-American Court of Human Rights of July 1, 2011, Preambular (Considering) par. 16.

¹⁵⁵ I/A Court H.R. Case of Fornerón and daughter v. Argentina. Merits, Reparation, and Costs Judgment of April 27, 2012, Series C No. 242, par. 51.

authorities in all actions they take, especially with respect to any decision that entails separating a child from his or her parents or family of origin."¹⁵⁶ The IACHR considers that, given the characteristics of the international return procedure, and the potential impacts of a delay in making a decision on return of a child, the aforementioned principles apply fully to these kinds of procedure.

131. Article 2 of the Convention, regarding the general duty of States parties to adjust their domestic law to bring it into line with the provisions of the Convention in order to safeguard the rights upheld therein, implies that two types of measure need to be adopted: deletion of any rules and practices of any kind that contravene the guarantees provided for in the Convention; and the issuing of rules and development of practices conducive to effective observance of those guarantees. Regarding the adoption of such measures, the Court has recognized "that all the authorities in a State party to the Convention have an obligation to monitor consistency with the Convention (*control de convencionalidad*) to ensure that the interpretation and application of domestic law is compatible with the State's international human rights obligations."¹⁵⁷

132. Pursuant to Article 8.1 of the American Convention "for the determination of every person's rights and obligations of a civil, labor, fiscal, or any other nature, "due guarantees" must be observed to safeguard, in the procedure in question, the right to due process. "Failure to comply with any of those guarantees amounts to a violation of that provision in the Convention."¹⁵⁸

133. The I/A Court of H.R. has pointed out that "Article 8.1 of the Convention upholds every person's, including children's, right to be heard in proceedings determining their rights."¹⁵⁹ Thus, it has considered that "This right must be interpreted in light of Article 12 of the Convention on the Rights of the Child, which contains appropriate stipulations on the child's right to be heard, for the purpose of facilitating the child's intervention according to his age and maturity and ensuring that it does not harm his genuine interest."¹⁶⁰ According to the I/A Court of H.R., there is a direct relationship between the right to be heard and the best interests of the child. There can be no correct application of the best interest of the child without his or her right to be heard being respected. That right encompasses each child's right to express his or her opinion on all matters affecting him or her and the consequent right to have those opinion taken into account, in accordance with the child's age and maturity.¹⁶¹

134. In the same vein, the Court has considered that "The guarantees set forth in Articles 8 and 25 of the Convention are equally recognized for all persons, and must be correlated with the specific rights established in Article 19, in such a way that they are reflected in any administrative or judicial proceedings where the rights of a child are discussed,"¹⁶² and that "while procedural rights and their corollary guarantees apply to all persons, in the case of children exercise of those rights requires, due to the special conditions of minors, that certain specific measures be adopted for them to effectively enjoy those rights and guarantees."¹⁶³

135. At the same time, regarding the duration of the process, the case law of the I/A Court of H.R. has consistently held that a prolonged delay in the process may come to constitute, in itself, a violation of judicial

¹⁵⁶ The Right of Boys and Girls to a Family. Alternative care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II. Doc. 54/13. October 17, 2013, par. 199.

¹⁵⁷ I/A Court H.R. Case of the National Association of Former Employees and Retirees of the National Superintendency of Tax Administration (ANCEJUB-SUNAT) v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2019. Series C No. 394, par. 200.

¹⁵⁸ I/A Court H.R. Case of Colindres Schonenberg v. El Salvador. Merits, Reparation, and Costs Judgment of February 4, 2019, par. 64.

¹⁵⁹ I/A Court H.R. Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparation, and Costs Judgment of March 9, 2018. Series C No. 351, paragraph 170; I/A Court H.R. Case of Atala Riffo and Girls. v. Chile, Merits, Reparation, and Costs Judgment of February 24, 2012. Series C No. 239, par. 196.

¹⁶⁰ I/A Court H.R. Case of Atala Riffo and Girls. v. Chile, Merits, Reparation, and Costs Judgment of February 24, 2012. Series C No. 239, par. 196.

¹⁶¹ I/A Court H.R. Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparation, and Costs Judgment of March 9, 2018. Series C No. 351, paragraph 170.

¹⁶² I/A Court H.R. Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraph 95.

¹⁶³ I/A Court H.R. Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraph 98.

guarantees.¹⁶⁴ Thus, it has established that assessment of whether a given length of time is reasonable needs to be analyzed in each concrete case, in relation to the total duration of the process, which might also include execution of the final judgment. Thus, "it has considered four factors to analyze whether the reasonable time guarantee was met, namely: (i) the complexity of the case,¹⁶⁵ (ii) the procedural activity of the interested party,¹⁶⁶ (iii) the conduct of the judicial authorities,¹⁶⁷ and (iv) the impact on the legal situation of the alleged victim.¹⁶⁸ The Court points out that it is up to the State to justify, based on the above criteria, why it took a given length of time to process cases and, if it does not do so, the Court has ample powers to make its own estimates of the time needed. The Court reiterates, moreover, that the reasonableness of the time taken needs to be assessed with regard to the entire duration of proceedings, from the first procedural act through to the handing down of a final judgment, including any appeals that may be filed."¹⁶⁹

136. In particular, the I/A Court of H/R has considered "that observance of legal provisions and diligence in judicial proceedings are fundamental for protecting the best interests of the child. On the other hand, the best interests of the child may not be invoked to justify failure to comply with legal requirements, delays, or errors in judicial procedures."¹⁷⁰

137. The European Court of Human Rights had occasion to pronounce on reasonable time issues relating to custody and abduction procedures. Thus, it mentioned that such procedures need to be handled as a matter of urgency since the passage of time can have irreparable consequences for relations between the child and the parent he or she was separated from.¹⁷¹ In particular, the Court has held that Article 8 of the European Convention is violated when a State's procedural arrangements do not facilitate expeditious decision-making with respect to return procedures.¹⁷² It has also considered that Article 8 of the European Convention is violated when a State's legal framework did not properly adapt in such a way as to afford the protection needed to provide the guarantees protected by that Convention, thereby preventing execution of a custody ruling.¹⁷³ It has also maintained that, in an international abduction procedure under the Hague Convention,, a procedure lasting 11 months violates Article 8 of the European Convention.¹⁷⁴

138. The Court has considered that the right of all persons to simple and prompt recourse or any other effective remedy before a competent judge or tribunal for protection against acts that violate their fundamental rights "constitutes one of the basic pillars, not only of the American Convention, but also of the rule of law itself

¹⁶⁴ I/A Court H.R. Case of Noguera et al. v. Paraguay. Merits, Reparation, and Costs Judgment of March 9, 2020. Series C No. 401, par. 83; Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparation, and Costs Judgment of June 21, 2002. Series C No. 94, par. 145.

¹⁶⁵ Regarding determination of the complexity of the case, the Court has taken various criteria into account. They include the complexity of the evidence, the number of litigants or of victims, the time elapsed since the fact to be investigated became known, the characteristics of the recourse provided for under domestic law, and the context in which the violation occurred. Cf. *Genie Lacayo Case v. Nicaragua*. Preliminary Objections. Judgment of January 27, 1995. Series C No. 21, par. 78, and *Case of Jenkins v. Argentina*, par. 110.

¹⁶⁶ To determine whether or not the time taken is reasonable, the Court has considered whether the procedural conduct of the party interested in seeing justice served contributed to some extent to unwarranted delays in the process. Cf. *Cantos Case v. Argentina. Merits, Reparations and Costs*, Judgment of November 28, 2002. Series C No. 97, par. 57; and *Case of Montesinos Mejía v. Ecuador*, par. 184.

¹⁶⁷ The Court has taken the view that, for a judgment to be fully effective, judicial authorities must act expeditiously and without delay, given that the principle of effective judicial protection requires that execution procedures be undertaken without hindrance or unwarranted delays, in order to enable it to achieve its objective in a quick, simple, and comprehensive manner. Cf. *Case of Mejía Idrovo v. Ecuador*, par. 106, and *Case of Jenkins v. Argentina*, par. 119.

¹⁶⁸ Finally, with regard to the impact on the legal situation of the alleged victim, the Court has asserted that in order to determine whether a period of time is reasonable account must be taken of the impact of the duration of the proceedings on the legal situation of the person involved, bearing in mind, inter alia, the subject matter in dispute; Cf. *Case of the National Association of Former Employees and Retirees of the National Superintendency of Tax Administration (ANCEJUB-SUNAT) v. Peru*, Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2019. Series C No. 394, par. 148.

¹⁶⁹ I/A Court H.R. Case of Noguera et al. v. Paraguay. Merits, Reparation, and Costs Judgment of March 9, 2020. Series C No. 401, par. [83] Cf. *Case of Suárez Rosero v. Ecuador. Reparations and Costs*. Judgment of January 20, 1999. Series C No. 44, par. 71, and *Case of Jenkins v. Argentina*, par. 106.

¹⁷⁰ I/A Court H.R. Case of Fornerón and daughter v. Argentina. Merits, Reparation, and Costs Judgment of April 27, 2012. Series C No. 242, par. 105.

¹⁷¹ European Court of Human Rights. Case of Marie v. Portugal (Application no. 48206/99). Judgment of June 26, 2003.

¹⁷² European Court of Human Rights. Case of M. A v. Austria. (Application no. 4097/13). Judgment of July 21, 2015.

¹⁷³ European Court of Human Rights. Case of Bajrami v. Albania (Application no. 35853/04). Judgment of June 12, 2006.

¹⁷⁴ European Court of Human Rights. Case of Karrer v. Romania, (Application no. 35853/04). Judgment of Monday, June 12, 2006. February 21, 2012.

in a democratic society, within the meaning of the Convention.”¹⁷⁵ Judicial remedies needs to be effective, in the sense of being capable of leading to an analysis by a competent court in order to ascertain whether or not a human rights violation took place and, if so, to provide reparation.¹⁷⁶ In extremely serious cases in which the violation of fundamental rights is evident, the court’s invocation of merely procedural arguments to refuse to consider such violations constitutes a denial of justice and of due process.¹⁷⁷

139. Additionally, the Court has held that the right to identity “is a fundamental right” that “can be conceptualized, in general, as the series of attributes and characteristics that allow the individualization of a person in society and, in this regard, it comprises several other rights included in the Convention, according to the subject of rights in question and the circumstances of this case.” “Thus, with regard to boys, girls, and adolescents, based on the provisions of Article 8 of the Convention, the right to identity comprises, among other matters, the right to family relationships.”¹⁷⁸ It has also indicated that, in view of the importance of the interests at stake, the right to physical integrity, the right to identity, and the right to protection of the family, in “the administrative and judicial proceedings relating to the protection of the human rights of the child, particularly those judicial proceedings concerning the adoption, guardianship and custody of boys and girls in early childhood, must be handled by the authorities with exceptional diligence and celerity. The foregoing reveals a need to defend and to protect the best interest of the child, as well as to guarantee the rights that are potentially at risk until the dispute on merits has been resolved, and to ensure the practical effects of the decision eventually adopted.”¹⁷⁹ It has further held that “the passage of time would inevitably constitute a defining element of ties of affection that would be hard to revert without causing damage to the child.”¹⁸⁰

140. Lastly, the IACHR has requested that “the State adopt the necessary measures to ensure that international restitution procedures are resolved with exceptional diligence and as soon as possible.”¹⁸¹

141. Likewise, according to the Guide to Good Practice under the Hague Convention on Civil Aspects of International Child Abduction, “[a]t all stages of the proceedings, the court should consider whether a need for protective measures exists to prevent the concealment or removal of the child from the jurisdiction of the court.” “Rapid and effective mechanisms should be available for protecting an abducted child while return proceedings are pending, in particular with a view to preventing the abducting parent from taking the child into hiding. (...) Once a return order has been made, it is important to be able to quickly protect the child against any further danger, including the risk of being taken into hiding.”¹⁸² According to said Guide, “[r]apid and effective mechanisms should be available for enforcing a return order, including a range of effective coercive measures.” Such protective measures might include “[t]he imposition of a requirement that the abducting parent report regularly to a particular authority perhaps coupled with a restriction on the abducting parent’s freedom of movement such as an obligation to reside in a certain place” or “the temporary placement of the child under the protection of the child protection authorities, e.g., in an institution or a foster family, with the applicant or with a relative of one of the parents”, among others.¹⁸³

142. According to said Guide, “[a] court, when making a return order, should carefully choose the appropriate option for returning the child. In all but exceptional circumstances the order should require the immediate return of the child as delays can further harm and cause confusion for the child and can provide an opportunity for the abducting parent to re-abduct the child.”¹⁸⁴

¹⁷⁵ I/A Court H.R. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, par. 262.

¹⁷⁶ I/A Court H.R. Case of Ruano Torres et al. v. El Salvador. Merits, Reparation, and Costs Judgment of October 05, 2015. Series C No. 303, par. 136.

¹⁷⁷ IACHR. Report No. 24/17. Case 12,254 Merits. Víctor Hugo Saldaño. United States. March 18, 2017, par. 215.

¹⁷⁸ Order of the Inter-American Court of Human Rights of July 1, 2011. Provisional Measures with Regard to Paraguay, Matter of L.M., par. 15.

¹⁷⁹ *Ibid.*, par. 16.

¹⁸⁰ *Ibid.*, par. 18.

¹⁸¹ IACHR, PM 314/13- X, Y and Z, Mexico. Resolusion of March 6, 2015.

¹⁸² Guide to Good Practice under the Hague Convention on the Civil Aspects of International Child Abduction – Part IV - Enforcement, p. 4.

¹⁸³ *Ibid.*, pp. 5 and 7.

¹⁸⁴ *Ibid.*, p. 24.

4. Analysis of the instant case

143. To analyze the instant case, the Commission recapitulates that, as indicated above regarding Articles 11 (family life), 17 (protection of the family), 19 (rights of the child), 8 (judicial guarantees), and 25 (judicial protection), when a boy or girl has been wrongfully removed in the terms recognized by international law, States, to protect the rights of the child, and of the parent from whom the child was wrongfully removed, have an obligation to proceed to the child's return within a reasonable time and with the due celerity, taking into account the roots or uprooting that the greater distancing or closeness with one of his or her parents may produce, and the integration of the boy or girl in the country to which he or she was abducted. As indicated above, when determining the best interests of the child in accordance with the Hague Convention, there is a presumption that he or she is to be returned so that the substantive aspects related to, for example, his or her guardianship or custody can be analyzed in the forum of his or her habitual residence. States may proceed not to return a boy or girl only when it is noted, in analyzing their rights at stake, that there would disproportionate impact on their rights, as reflected in the very exceptions for which the Hague Convention provides. Nonetheless, if it is decided to return the child, the Commission reiterates that, to that end and to safeguard the aforesaid rights, States should proceed to adopt measures of a positive nature with a reinforced duty to effect the return.

144. In fact, the Commission notes that, in resolving these types of case, the European Court has held that States have a number of positive measures to adopt regarding the reunification of parents with their children that should be interpreted in the light of the Hague Convention. Thus, it has determined that it must be analyzed whether national authorities have taken all steps necessary to facilitate reunification and that may reasonably be required in the special circumstances of each case.¹⁸⁵

145. In the instant case, there is no disagreement as to whether in the domestic forum itself it was determined that the child D was wrongfully removed by his mother. By resolution upheld by the Supreme Court of Paraguay on September 18, 2006, it was decided to approve his return. On that basis, the Commission will now proceed to examine the question as to whether the State took the steps required to fulfill the obligations set forth above. To that end, the Commission will analyze whether the State fulfilled its duty of exceptional diligence and with the required celerity.

- ***Failure to discover the whereabouts of D. and the measures taken to find him***

146. The Commission notes that following the return hearing on September 28, 2006, M.R.G.A disappeared with the child D. The record shows that the authorities discovered the whereabouts of the child only in 2015, that is, nine years after his return was ordered.

147. In order to analyze the current situation, as indicated by the European Court of Human Rights in the case of *Shaw v. Hungary*,¹⁸⁶ the Commission considers it relevant to establish whether, given the need to locate a boy or girl following his or her disappearance, the authorities took adequate and effective steps to effect the return. In that case, the Court noted that for nearly eleven months from the issuing of the judgment that ordered the return and the disappearance of mother and daughter, the only measures taken were unsuccessful requests by the bailiff for voluntary return of the girl and the imposition of a relatively small fine on one occasion. The European Court considered that other measures available to the authorities were not used, including the possibility of police assistance and the repeated imposition of fines, and that, although the mother was subsequently arrested, the authorities did not take steps to enforce the return order, despite the final order for this to be done.

148. In the instant case, in analyzing the actions of the Paraguayan State, the IACHR notes that although D's mother indicated that she did not agree to the return, no immediate special steps were taken to prevent her from taking the child into hiding, which ultimately did occur. In this regard, the IACHR considers that, according to the standards governing this area, the court had a duty to determine whether it was necessary for protective measures to be adopted to prevent the concealment or removal of the child, and to expedite his return, a matter

¹⁸⁵ European Court of Human Rights, Case of Adžić v. Croatia (Application No. 22643/14), 12 March 2015.

¹⁸⁶ European Court of Human Rights, Case of Shaw v. Hungary (Application No. 6457/09), 26 July 2011.

that it is not shown took place in this case. In that regard, the Commission considers that it was important, after the return order was issued, for the child as soon as possible to be protected from any other danger, including the risk of concealment. The IACHR does not note that steps were taken to that end.

149. Moreover, the information provided in the framework of the instant case shows that the following steps were taken by the State with a view to implementing the return decision: (i) when M.R.G.A. failed to appear on the day of the hearing, an order was issued to verify that situation at the mother's home, a procedure carried out by the court's court report accompanied by the forensic psychologist, with assistance from the police, and the court then issued an official letter to the Command of the National Police; (ii) a raid on the home of D's extended family; (iii) following Mr. Córdoba's request in October 2006, a court ordered the case file to be forwarded to the Office of the Criminal Prosecutor for it to open an investigation for an "act punishable with the public administration—resistance," given the impossibility of implementing the return order and the subsequent international arrest warrant ordered by the prosecutor's office; (iv) on January 10, 2007, the Court reiterated the search warrant; (v) the Secretariat for Children and Adolescents requested the court to forward a search warrant to INTERPOL in Itapua Department; (v) on April 17, 2008, the First Guarantees Court of Asunción issued an arrest warrant for M.R.G.A. "for purposes of extradition"; (vi) in May of that year, a raid of the Atyrá residence was ordered and the Court reiterated the order to search for and locate the child D at the national and international levels; (vii) in November 2008, "in view of [D's] medical history," the Court requested the Secretariat for Children and Adolescents to order an interdisciplinary team to visit the maternal residence of the child to provide guidance to the family member regarding M.R.G.A.'s recalcitrant behavior; (viii) INTERPOL allegedly made searches for the child and his mother in both the aunt's and the maternal grandparents' home between 2006 and 2009, without success.

150. The IACHR notes that the State did not provide detailed information on other steps taken for implementation of the return order that might reasonably have been expected during the period that D was in hiding. There are also time periods for which it is not known whether the State took any type of step to discover his whereabouts. In addition, and in accordance with the standards reviewed, the IACHR does not note that the State took all necessary steps to facilitate the reunification that might reasonably have been called for in this case. For example, it is apparent that once D. was located, he indicated to the court that he was attending school in the city of Atyrá, as well as catechism classes, that he lived with his mother, his brother and his "daddy," and that in the past he had lived elsewhere in the same city and that he had also lived in his maternal grandmother's home. In that regard, the case file does not contain, for example, evidence of letters to the local schools to determine whether D. attended any of them. Neither does it show that steps were taken to determine whether D. was receiving care in any health center, especially since on the date of the abduction, he had epilepsy. Moreover, although at some time a raid of the extended family's home was ordered, the child himself indicated that at that time he was living with his grandmother and attended a catechism class. Evidently, therefore, the step taken was ineffective, or only one search was made.

151. In view of all of the foregoing, the Commission notes that the steps taken by the State do not show due diligence that would justify the inability to discover the whereabouts of the child for nine years.

- ***The steps taken by the State once D was located***

152. The Commission notes that the delay in implementing the return order led to a change of circumstances, which made it necessary for the authorities to prepare an evaluation of the impact that implementation of the return order could have on D's rights, given the time that had gone by. In that regard, after D's appearance, a precautionary measure was issued for guardianship by his maternal aunt. Additionally, on July 8, 2015, the Court for Children and Adolescents of Caacupé ordered as a preeminently precautionary measure a plan for progressive restoration of ties between Mr. Córdoba and D., including the extended paternal family. It also ordered that D undergo psychotherapy.

153. The Commission acknowledges, regarding the implementation of return decisions, as the European Court has indicated in the case of *Ignaccolo-Zenide v. Rumania*,¹⁸⁷ the authorities have an obligation to take

¹⁸⁷ European Court of Human Rights, Case of Ignaccolo- Zenide v. Romania. (Application No. 31679/96), 25 January 2000.

measures to facilitate reunion in cases of return. Taking into account especially that reunion of a parent with children who have lived for some time with the other parent may not be able to take place immediately and may require preparatory measures to be taken, depending on the circumstances of each case. That Court has considered that therefore there is an obligation to create the necessary conditions for executing the order in question, whether coercive measures against the parent who retained them or steps to prepare for the return of the children.

154. In particular, regarding restoration of ties, the IACHR notes, as referred to in the section above (par. 128), that in these types of matters, the States, in keeping with the interests of boys, girls, or adolescents and the protection they are due, should immediately implement a system of visits that would guarantee the children's access to their mother or father and extended family, in appropriate conditions, without unnecessary restrictions, in an atmosphere that ensured that they could interact as normally as possible. The Commission also asked the State to take measures to ensure that this system was implemented effectively throughout the international restitution process; with specialized and independent support to ensure the well-being of boys, girls, or adolescents and the least possible intrusion in the relationship.

155. In the instant case, the Commission notes that once D's whereabouts had been discovered, responsibility for his temporary care was assigned to his maternal aunt, but it does not have detailed information on expert advice or other steps taken to determine whether she was in the best position to exercise that role and that her guardianship would be the best option, taking account of D's best interests.

156. The IACHR notes that the domestic courts took a number of steps to provide support and arranged for psychological evaluations initially intended to lead to interaction between father and son. Moreover, at D's age, his views and opinions were taken into account by the court, and a psychologists board was formed to determine the feasibility of return. The Commission appreciates those actions. However, taking into account the precautionary nature of the order for that interaction, subsequent to locating D, it was necessary for the State to take steps that would achieve his interaction with his father to determine whether his return would be possible, especially considering the existing delay and the unlawful removal that the child had undergone.

157. Upon comprehensive analysis of the information contained in the file, the Commission notes that interaction was ordered for very few dates, and it does not show that it took place on all of them: July 2015 (taking place on July 15, 17, and 20 to 23), August 2015, October 2016 (October 20 to 31, 2016, although the record does not show that these took place), November 2016, January 2017 (it was requested that they take place from January 16 to 20, but the file does not show that this took place), February 25 and 26, 2017 (the record does not show that this took place); July 15 to 19, 2017; on November 7, 2017, the Court issued an order for the restoration of ties and established a plan for interaction between D. and his father by agreement with the guardian (the record does not show that this was carried out).

158. Moreover, although the record shows that a social worker noted the importance, for effective interaction, of also providing the father with tools, it being a notorious difficulty that the child lived in another country, the record does not show that steps were taken to that end, seeking gradually to build a relationship with D. In fact, the Commission notes that several of the psychological evaluations prepared were designed to evaluate D's readiness for return. The record does not, however, show that the necessary supports were effectively provided for him to interact with his father and so that he could be returned.

159. In that regard, the IACHR considers that it was necessary for certain aspects to be ensured so that the interaction was effective, such as meetings to prepare D and his father prior to the meetings, regular and ongoing psychological support for D., and that the environment in which the meetings took place was one of trust, ensuring an environment that would allow for effective interaction between father and son.

160. In view of the foregoing, the Commission concludes that the State did not make the necessary efforts effectively to develop a plan for interaction that could assist in implementing the judgment for international return of the child. In this scenario of lack of effective measures to achieve interaction with a view to return, the Commission notes that on March 31, 2017, an order was issued as a precautionary measure for D to remain in Paraguay, a matter ultimately heard by the Supreme Court in May 2019. In particular, the Court for Children and

Adolescents of Caacupé admitted the precautionary measure for D to remain in Paraguay, deciding that he would continue living “in his habitual domicile” of the city of Atyrá, Paraguay.

- ***The child D remaining in Paraguay***

161. The Commission notes that the precautionary measure decision issued on March 31, 2017, took into consideration Law 1.680/2001, Article 3, regarding the child’s best interests, Articles 3, 5, and 12 of the Convention on the Rights of the Child, and Articles 12 and 13 of the 1980 Hague Convention (emphasizing especially Article 13.b on grave risk of physical or psychological harm or if the [“]child[”] objects to being returned). The court reasoned that the place of habitual residence was at present Atyrá, and considered that since over 11 years had gone by without it having been possible to implement the August 14, 2006 judgment, “[events have] given rise to other rights as the result of the child remaining in our country since the age of two, because he is now fully rooted in Paraguayan society,” taking into account the report of the psychologists board and the child’s statements to the judiciary expressing his wish to remain in Paraguay. The Court noted that it had made efforts for D. and his father to interact, using different methods of bringing them together, and that after the nearly two years of the restoration of ties ordered, they had not met with success.

162. According to the standards previously reviewed, the State must take the positive steps required to safeguard the rights of the boy or girl themselves, and of the parent impacted by the abduction, and of return is ordered, it must be handled with exceptional diligence and celerity. Without prejudice thereto, in order to consider whether to admit the application of an exception, it would be required to determine whether return would disproportionately impact the rights of the boy or girl according to the exceptions for which the Convention provides. For such analysis, the authorities must review different aspects. Among them, for example, settlement in the receiving country, the adolescent’s best interest and well-being, the severity of the difficulties he or she might experience in the country of destination, the solidity of the social, cultural, and family ties in the two countries, and the family situation, considering different factors, including the possible emotional and psychological impact. The Commission considers that that examination must also take account of the situation of the parents and the rights involved in such a decision.

163. In fact, the Commission notes that, when deciding these types of case, the European Court has recognized, for example, in the case of *Shaw v. Hungary*,¹⁸⁸ that the passage of time may change the circumstances – which may call for an eventual reassessment of her ties to her parents and their environments respectively. In that regard, it held that “[g]uidance on this point may be found, *mutatis mutandis*, in the Court’s case-law on the expulsion of aliens ..., according to which, in order to assess the proportionality of an expulsion measure concerning a child who has settled in the host country, it is necessary to take into account the child’s best interests and well-being, and in particular the seriousness of the difficulties which he or she is likely to encounter in the country of destination ...”¹⁸⁹ In said case, the Court held that the situation was aggravated by the fact that more than three and a half years passed without the father being able to exercise his access rights due to the fact that the Hungarian authorities established lack of jurisdiction in the matter. In that connection, in the case of *Fornérón and daughter*, the Court indicated “that the determination of the best interests of the child, in cases concerning the care and custody of minors, must be made based on an evaluation of the specific conduct of the parents and its negative impact on the well-being and development of the child, if applicable, or on the real and proved, not speculative or imaginary, harm or risk to the well-being of the child. Thus, speculations, presumptions, stereotypes, generalized considerations on the personal characteristics of the parents, or cultural preferences regarding traditional concepts of the family are inadmissible.”¹⁹⁰

164. Likewise, in the case of *Karrer v. Romania*, the European Court held that was important to determine whether a fair balance between the competing interests at stake – those of the child, of the two parents, and of public order – was struck.¹⁹¹ In this specific case, it had to “ascertain whether the domestic courts had conducted an in-depth examination of the entire family situation and of a whole series of factors, in particular of a factual,

¹⁸⁸ European Court of Human Rights. Case of *Shaw v. Hungary* (Application no. 6457/09), 26 July 2011.

¹⁸⁹ Par. 75.

¹⁹⁰ I/A Court H.R. Case of *Fornérón and daughter v. Argentina*. Merits, Reparation, and Costs. Judgment of April 27, 2012. Series C No. 242, par. 50.

¹⁹¹ European Court of Human Rights. Case of *Karrer v. Rumania* (Application no. 16965/10), 21 February 2012.

emotional, psychological, material and medical nature. Secondly, it must decide whether the domestic courts had made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what the best solution would be for abducted child in the context of a return application.”¹⁹²

165. In the instant case, as indicated above, in order to determine whether the Paraguayan State had fulfilled its obligations, it is necessary to determine whether the court has conducted an in-depth examination of the impact that return would have on the rights at stake. And also of the impact on those rights of not returning the child. From the information contained in the file, the Commission notes that the court took account essentially of the psychological report, D’s opinion, the time he had spent and his roots in Paraguay, and the failure of the interaction D had had with his father as the basis for deciding not to return him. The record does not show that the court had ascertained the impact that decision would have on the rights of the father, nor the reasons why it was better for the child’s interests to remain where he was living with an aunt and not even with his mother.

166. Nonetheless, as the very denomination of the decision not to approve the return indicates, this was a precautionary measure in the framework of the decision whether to return him. As mentioned by the State, in the juvenile area, precautionary measure judgments are not final, since the “principle of the possibility of modification” of such judgments governs. That is, D’s situation even now would not be final and could be changed in time with the possible impacts that that might have on him.

167. The Commission notes that the passage of time could be especially serious and lead to the alteration of some situations so that they became permanent. In the instant case, the existing legal situation is of concern since, on the one hand, it notes that to date, there is no final judgment determining D’s guardianship based on a comprehensive analysis of his situation and that of his parents that would provide certainty regarding his future. This creates a high degree of uncertainty for the parties and, in particular, for D. On the other, neither does the Commission note that steps have been taken effectively to establish a plan for effective interaction between D. and his father, taking into account that the adolescent has now reached full development and maturity, and that would tend to strengthen family ties.

168. In that scenario, the Commission notes that the mere passage of time attributable to the Paraguayan State generates impacts on the rights of the child D and of his father. The Commission notes that it was the court itself that emphasized the failure of the interaction. In particular, the effectiveness of ties has not been fully achieved by the authorities, although the IACHR itself in the framework of the precautionary measures ordered in this area noted that there were few meetings between the two and that they lacked sufficient guarantees, which is why it granted the precautionary measure precisely to address this aspect. Moreover, in this area, the IACHR notes with concern that thus far, no specific and effective plan for interaction has been adopted for the restoration of family ties, taking into consideration the specificities of the instant case, since the adolescent D is about to reach his majority and over a decade has passed since he was abducted.

- ***Conclusion***

169. In view of the foregoing, although the Paraguayan authorities approved the return at a time close to when D was unlawfully removed from one country to another, the steps required to implement that decision were not taken. This began with the failure to take steps to ensure his return, since D was in hiding, as well as the lack of due diligence to discover his whereabouts. Moreover, although D was found nine years later, the record does not show that the State took steps to restore interaction with his father prior to proceeding to return D. In fact, the Commission notes that in 2017, a precautionary measure issued at a national level was ordered in which it was decided not to return him. However, that order was problematic, since although it should have been a decision wherein an in-depth analysis was prepared of the entire impact on the rights at stake, it did not clearly generate certainty regarding the future of the adolescent D., nor was an effective plan or roadmap established for generating interaction with his father.

¹⁹² Par. 40.

170. As has been shown, the State did not act with the diligence or celerity required to guarantee the rights of the child D. and of his father. This not only constituted a failure to provide judicial protection of their rights not to suffer arbitrary interference in their right to family life and the consequent protection of the rights to a family, in keeping with the best interest deriving from the rights of the child D. In accordance with the standards reviewed and understanding that implementation of the return is part of said proceedings, in view of D's current age, for the Commission it is striking that the process has been unreasonably drawn out, this also constituting impact on the right to identity of the child D., who has developed and grown up without ties to his father.

171. In view of all of the foregoing, the Commission concludes that the Paraguayan State is responsible for violation of the rights to judicial guarantees, private life, protection of the family, rights of the child, and judicial protection enshrined in Articles 8, 11, 17, 19, and 25 of the American Convention, read in conjunction with the obligations established in Articles 1.1 and 2 of that instrument, to the detriment of D. It further considers that the State is responsible for violation of the rights enshrined in Articles 8, 11, 17, and 25 of the American Convention, read in conjunction with the obligations established in Articles 1.1 and 2 of that instrument, with regard to Arnaldo Javier Córdoba, D's father.

B. Right to personal integrity,¹⁹³ read in conjunction with Article 1.1 of the American Convention

172. The Inter-American Court of Human Rights has considered that "the suffering generated by unwarranted and permanent separation of a family is such that it must be examined as a possible violation of the right to personal integrity of each member of that family. This Court has held that separation of girls and boys from their families may have especially serious specific impacts on their personal integrity, which may have lasting impact."¹⁹⁴ [unofficial translation. Original available only in Spanish]

173. In this regard, and taking account of the concept of family as defined in the standards established by the inter-American system, the Commission takes note of the impact that the facts denounced had not only in relation to D., but also to his family, in this case, his father. In particular, the Commission considers that the omissions and delays attributed to the Paraguayan State have created a state of permanent anguish and dislocation, given the lack of protection against the abduction of the child D.

174. The Commission considers that the facts implied a violation of the right to personal integrity enshrined in Article 5 of the American Convention, read in conjunction with Article 1.1 thereof, to the detriment of D. and his father.

V. CONCLUSIONS AND RECOMMENDATIONS

175. The Commission concludes that the Paraguayan State is responsible for the violation of the rights to integrity, judicial guarantees, private life, protection of the family, the rights of the child, and judicial protection upheld in Articles 5, 8, 11, 17, 19, and 25 of the American Convention, read in conjunction with the obligations established in Articles 1.1 and 2 of that instrument, to the detriment of D. and Arnaldo Javier Córdoba.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF PARAGUAY

1. Provide comprehensive reparation for the violations of human rights set forth in this report, both material and immaterial. The State should adopt measures for economic compensation and satisfaction. Specifically, the State should pay for measures for reparation of the violations set forth in this report.

2. Urgently adopt, among other measures, a plan for interaction between D and his father, with a timetable

¹⁹³ The relevant text of Article 5 of the American Convention establishes that: "1. Every person has the right to have his physical, mental, and moral integrity respected."

¹⁹⁴ I/A Court H.R. Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparation, and Costs. Judgment of March 9, 2018. Series C No. 351, par. 365.

and specific measures that include specialized support and the resources necessary for the relevant travel.

3. Order the measures necessary to ensure that the procedure regarding international abduction of girls, boys, or adolescents complies with the standards referenced in this report. To that end, the competent authority should adopt a protocol for the implementation of the international return procedure that safeguards the rights of girls, boys, and adolescents, bringing domestic norms into line with the inter-American standards. In particular, such regulation should ensure respect for the guiding principles in this area of the rights of girls, boys, and adolescents, with special attention to the principle of safeguarding their best interest, as well as the principle of exceptional diligence and celerity, as guiding principles of the procedure, including at the stage of implementation of the return.

4. Adopt measures to provide training for the authorities with jurisdiction in the area of international abduction so that they respect and guarantee the rights of girls, boys, and adolescents, and of their fathers and mothers or, if applicable, family members, in these types of procedure, and within a reasonable time period, including the aspects regarding implementation of an order for return. Also to provide training in keeping with the standards contained in this report for personnel or professionals participating in support in the area of building relationships.