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ORIGINAL ARTICLE

Civil liability for obstruction of parent-child communication in cross-border families

Responsabilidad civil por obstaculización de la comunicación paterno-filial en familias transfronterizas

Brenner F. Diaz-Rodríguez[1] **Luciana B. Scotti**[2]

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Abstract Cross-border families raise specific difficulties for the effective exercise of parental responsibility when parents reside in different States. In this context, obstruction of parent-child communication may produce autonomous harm that goes beyond the immediate issue of enforcement and opens the debate on civil liability. This study analyzes the legal requirements for civil liability arising from obstruction of parent-child communication in cross-border families and its interaction with the mechanisms of Private International Law applicable in Argentina. A qualitative, doctrinal, documentary, and case-law based legal methodology was used, focusing on the Argentine Civil and Commercial Code, Argentine scholarship on family-related damages, and relevant international instruments, especially the 1980 and 1996 Hague Conventions. The findings show that the reasonable measures provided for in article 557 of the Civil and Commercial Code primarily serve preventive and enforcement purposes, whereas a damages action addresses harm that has already occurred. The compatibility of both mechanisms requires proof of unlawfulness, certain damage, causation, and a subjective attribution factor, without converting every family-law breach into a compensable event. In cross-border cases, international cooperation may facilitate contact and access to evidence, but it does not replace the general rules governing civil compensation. The article concludes that both dimensions can be coordinated through proportionality, rigorous evidentiary standards, the best interests of the child, and effective judicial protection.

Keywords best interests of the child; civil liability; cross-border families; parent-child communication; private international law.

Resumen Las familias transfronterizas plantean dificultades específicas para el ejercicio efectivo de la responsabilidad parental cuando los progenitores residen en Estados distintos. En ese contexto, la obstaculización del régimen de comunicación paterno-filial puede producir daños autónomos que exceden el problema inmediato de cumplimiento y abren la discusión sobre la procedencia de la responsabilidad civil. El objetivo de este estudio es analizar los presupuestos jurídicos de la responsabilidad civil derivados de la obstaculización del régimen de comunicación en familias transfronterizas y su articulación con los mecanismos de Derecho Internacional Privado aplicables en Argentina. Se desarrolló una investigación cualitativa, jurídico-dogmática, documental y jurisprudencial, centrada en el Código Civil y Comercial de la Nación, la doctrina argentina sobre daños en las relaciones familiares y los instrumentos internacionales relevantes, especialmente los Convenios de La Haya de 1980 y 1996. Los resultados muestran que las medidas razonables previstas por el artículo 557 del Código Civil y Comercial cumplen una función principalmente preventiva y de aseguramiento del contacto, mientras que la acción resarcitoria responde a daños ya producidos. Su compatibilidad exige acreditar antijuridicidad, daño cierto, nexo causal y un factor de atribución subjetivo, sin convertir todo incumplimiento familiar en un supuesto indemnizable. En los casos transfronterizos, la cooperación internacional puede facilitar el ejercicio del contacto y la obtención de prueba, pero no sustituye las reglas generales aplicables a la reparación civil. Se concluye que ambos planos pueden articularse mediante criterios de proporcionalidad, prueba rigurosa, interés superior del niño y tutela judicial efectiva.

Palabras clave comunicación paterno-filial; familias transfronterizas; responsabilidad civil; Derecho Internacional Privado; interés superior del niño.

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Brenner F. Diaz-Rodríguez[1] (corresponding author)
bfdiaz@sangregorio.edu.ec

[1] Universidad San Gregorio de Portoviejo, Ecuador
[2] Universidad de Buenos Aires, Argentina

PUBLIS EDITORIAL

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Introduction

Contemporary changes in family relationships and increasing international mobility have multiplied situations in which a child's parents live in different States. Geographical distance does not extinguish parental responsibility or make communication a secondary entitlement. Rather, it requires a legal reorganization of the daily exercise of family bonds, decisions concerning care, information sharing, and the preservation of meaningful family relationships.

Under Argentine law, contact arrangements form part of parental responsibility and must be interpreted in light of the best interests of the child, progressive autonomy, and the right to maintain personal relationships with both parents. Article 652 of the Civil and Commercial Code of the Nation (CCyC) recognizes the non-resident parent's right and duty to maintain fluid communication with the child, while Article 557 empowers judges to impose reasonable measures in response to repeated non-compliance with arrangements established by a judgment or court-approved agreement.

The issue takes on a different dimension when non-compliance is not confined to an isolated episode but persists over time, unjustifiably prevents communication, and causes psychological, emotional, or economic consequences. In such circumstances, a question arises that measures designed to secure contact do not resolve: whether the conduct may trigger the general rules of civil liability and justify compensation for harm already caused.

Argentine legal scholarship has moved from positions associated with family immunity toward a qualified acceptance of civil liability within family relationships. Medina (2002), Legnani (2016), Torres Maldonado (2016), and Molina de Juan (2022, 2023), with differing nuances, agree that the special nature of family law does not in itself preclude application of the general law of damages. Nevertheless, the availability of compensation cannot become an automatic response to every parental conflict, since this could increase litigation and displace the protective function of family law (Ferrer Riba, 2001; Hernández Paulsen, 2016).

In cross-border families, these difficulties intensify. In addition to substantive questions of unlawfulness, damage, causation, and attribution, there are issues of international jurisdiction, applicable law, cooperation between authorities, locating the child, gathering evidence in another State, and recognition or enforcement of decisions. The 1980 Hague Convention and, particularly since 2026, the 1996 Hague Convention provide relevant cooperation mechanisms to secure contact and protect children, although neither establishes a specific regime of civil liability between parents.

Accordingly, this article examines how civil liability may arise from obstruction of parent-child contact in cross-border families and how it interacts with the Private International Law instruments applicable in Argentina. The working hypothesis is that the measures under Article 557 CCyC and civil compensation serve distinct functions and may coexist when the requirements of liability are established without disregarding the child's best interests or the demands of international litigation.

Methodology

A qualitative study was conducted using doctrinal, documentary, and case-law legal methods. The doctrinal analysis identified the scope of parent-child contact arrangements, the legal character of the measures provided for in Article 557 of the Argentine Civil and Commercial Code (CCyC), and the general prerequisites for civil liability in family disputes.

The principal legal corpus comprised Articles 555–557, 638, 648, 650, 652, 710, and 1708 et seq. of the CCyC; the National Civil and Commercial Procedure Code regarding evidence and recognition of judgments; the 1980 Hague Convention on the Civil Aspects of International Child Abduction; the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children; and applicable regional instruments on judicial cooperation.

Case-law analysis served an exploratory and systematizing purpose. Argentine decisions cited in the research plan concerning damages claims arising from obstruction of contact were considered, including judgments of Chambers K, I, H, and B of the National Civil Court of Appeals. The analytical categories were unlawfulness, attribution, proof of damage, causation, and the types of harm accepted or rejected.

The cross-border dimension was examined through a systematic analysis of the functions of international cooperation instruments. The study deliberately distinguishes two levels: (a) mechanisms intended to secure, restore, or protect parent-child contact; and (b) compensation claims intended to redress harm already caused. It does not seek to statistically measure the frequency of litigation or generalize from a closed corpus, but rather to develop legally consistent interpretive criteria.

Results and discussion

Parent-child contact in cross-border families

The concept of a cross-border family describes family relationships that retain legal and emotional unity despite being distributed across two or more States. The international residence of one parent does not eliminate duties arising from parental responsibility. Instead, it requires adapting their exercise to circumstances in which in-person contact may alternate with virtual communication, international travel, holiday periods, and coordinated decisions concerning education, health, and care.

From this perspective, migration does not in itself constitute obstruction. Legally relevant conduct arises when a parent unjustifiably prevents, hinders, or frustrates the maintenance of a relationship recognized by a court or agreed between the parties. Geographical distance inherent in cross-border life must therefore be distinguished from obstructive conduct attributable to an individual.

The best interests of the child prevent contact from being treated as an absolute adult prerogative. Courts must consider the child's age and maturity, views, history of violence, practical possibilities of travel, and the particular family environment. Protection of the relationship is legally enforceable only when compatible with the child's safety and well-being.

From obstruction of contact to compensable harm

Under the CCyC, Article 557 allows judges to adopt reasonable measures to ensure the effectiveness of contact arrangements. The provision is primarily preventive, coercive, and enforcement-oriented: it seeks to remove obstacles and promote future compliance. Civil liability, by contrast, addresses harm already suffered and seeks reparation. The two mechanisms can therefore coexist without being conflated.

Non-compliance with contact arrangements and civil liability are not equivalent legal categories. The former refers to a breach of a family-law obligation; the latter requires independent evidence of legally compensable harm. Accordingly, a damages claim must not be treated as an automatic consequence of a breach of a judicially established contact regime.

Moving from breach to liability requires examination of at least four elements: unlawfulness, certain damage, causation, and a factor of attribution. Obstructive conduct must go beyond ordinary family conflict and constitute a legally relevant infringement. There must also be proof of actual harm and a demonstration that the harm was causally produced by the conduct attributed to the parent.

Unlawfulness and attribution

Unlawfulness cannot be inferred solely from the existence of parental conflict. Conduct inconsistent with the duty to facilitate reasonable communication and with existing court decisions or agreements must be established, unless a legitimate reason for restriction exists. Violence, abuse, risk to the child, or professional contraindications may justify temporary limitations or supervised arrangements.

Preliminary analysis of the case law included in the research plan shows that courts do not uniformly require manifest intent as the exclusive basis for liability. In decisions of Chambers K and I of the National Civil Court of Appeals, liability was admitted in connection with a subjective factor of fault or negligence and proof of damage. Conversely, Chambers H and B dismissed claims where unlawful conduct or negligent or intentional wrongdoing attributable to the defendant had not been sufficiently established.

This difference confirms that the focus should not be the mere existence of disagreement but whether specific conduct can be legally attributed to an individual. The subjective attribution requirement acts as a safeguard against indiscriminate expansion of civil liability in family matters.

Damage, causation, and evidentiary challenges

Prolonged obstruction may cause various kinds of harm. The non-resident parent may allege psychological injury, lost opportunities for family life, wasted travel expenses, psychological treatment costs, or expenses arising from judicial and international proceedings. The child may experience emotional consequences from the rupture or deterioration of the relationship, although identifying legally compensable harm requires particular caution.

It is useful to distinguish autonomous non-pecuniary harm suffered directly by a parent from consequential or reflected harm, the availability of which depends on the relationship with the direct victim and proof of the specific repercussions of the injury. Scholarship cautions that family closeness alone does not

Evidence in these disputes presents a twofold challenge. First, the obstructive act must be established: repeated breaches, interference with communications, unjustified refusals, failure to hand over the child, or systematic exclusion. Second, the resulting harm must be proved through appropriate means, including psychological expert reports, clinical documentation, witness testimony, and evidence of expenses. Confusing these two evidentiary objects may lead to inconsistent decisions.

Article 710 CCyC incorporates principles of breadth, flexibility, and dynamic allocation of the burden of proof in family proceedings and may help address information asymmetries. Its application should not, however, eliminate the requirement to prove damage or automatically reverse

Table 1. Functional differences between measures to secure parent-child communication and civil liability

Dimension	Enforcement measures	Civil liability	Temporal purpose	Key evidence	Outcome
Object	Ensure or restore communication	Compensate for harm caused	Primarily prospective / preventive	Non-compliance and need for the measure	Effective contact
Legal basis	Article 557 CCyC and parental responsibility provisions	General rules of civil liability	Retrospective / compensatory	Unlawfulness, harm, causation and attribution	Damages or other reparation
Standard	Reasonableness and proportionality	Full establishment of all requirements for liability	Differentiated according to purpose	Proof of the act and the harm	Compensatory remedy
Foreign element	Cooperation, location, recognition and enforcement of measures	Jurisdiction, applicable law, evidence and enforcement against assets	May involve several States	International cooperation in gathering evidence	Enforceable compensation

Source: Authors' own elaboration. CCyC: Argentine Civil and Commercial Code.

the burden of proof. Dynamic allocation should concern facts that one party is reasonably better placed to establish.

Distinct functions of enforcement measures and civil compensation

The international dimension of the dispute

When parents live in different States, the effectiveness of contact arrangements depends on tools beyond domestic law. International child abduction, wrongful retention, difficulty locating a child, the need to obtain reports or expert evidence abroad, and recognition of protective measures ordered by foreign authorities are examples of issues requiring international cooperation.

The 1980 Hague Convention addresses international return following wrongful removal or retention and seeks the prompt restoration of the situation preceding displacement. The 1996 Hague Convention, in force for Argentina since 2026 according to the research plan, broadens cooperation concerning parental responsibility and protective measures through rules on jurisdiction, recognition, enforcement, and cooperation between Central Authorities.

These instruments support effective contact but must not be mistaken for an international civil liability regime between parents. The 1996 Convention may facilitate access to information, evidentiary cooperation, and enforcement of protective measures; however, a monetary damages claim requires determination of jurisdiction, applicable law, and the conditions for recognition and enforcement of the judgment under the relevant rules.

This functional separation has practical importance. A decision to restore contact may coexist with a subsequent damages action, provided that the second proceeding does not automatically treat breach as sufficient proof of liability. The assessment must consider the specific conduct, the international circumstances of the case, and the causal contribution of the conduct to the alleged harm.

The best interests of the child and limits of compensation

Unrestricted access to claims could intensify parental conflict, encourage strategic litigation, and place the child at the center of financial disputes. Compensation should therefore be reserved for cases in which harm is certain, legally relevant, and sufficiently linked to attributable unlawful conduct.

Civil liability within family relationships must remain subordinated to a rights-protection framework centered on the child. It is essential to prevent monetary compensation from becoming a mechanism of pressure in parental conflict or displacing the overriding objective of safeguarding the child’s well-being.

At the same time, categorically denying liability because the relationship is familial would reproduce an immunity incompatible with effective rights protection. A balanced solution is required: compensation should be available where the general requirements are met, interpreted in light of the special nature of family law, proportionality, child protection, and the need to prevent excessive litigation.

Interpretive criteria for cross-border cases

The analysis supports five interpretive criteria for assessing civil liability claims arising from obstruction of contact in cross-border families:

First, conceptually separate breach of contact arrangements from civil liability. A family-law violation is relevant background but does not replace proof of the elements required for compensation.

Second, distinguish the function of measures under Article 557 CCyC from a damages action. The former secure compliance; the latter redresses harm already caused.

Third, assess unlawfulness contextually. Restrictions justified by violence, risk, or child protection must not be characterized as unlawful obstruction.

Fourth, require separate proof of the conduct and the harm. Dynamic allocation of the burden of proof may facilitate access to information held by the other party, but does not remove the need to prove causation and injury.

Fifth, integrate Private International Law without conflating cooperation instruments with the rules governing monetary claims. International cooperation should secure child protection and facilitate evidence, while compensation claims retain their independent character.

Conclusions

Cross-border families do not alter the legal nature of parental responsibility, but they complicate its exercise. Distance between parents calls for communication, cooperation, and coordination mechanisms capable of preserving meaningful family relationships while respecting the best interests of the child.

Obstruction of contact may give rise to civil liability when it goes beyond mere non-compliance and satisfies the general requirements of the law of damages. Unlawfulness, certain damage, causation, and attribution must each be established. Liability cannot properly be presumed from breach alone.

Article 557 CCyC and damages actions perform distinct functions. Reasonable measures seek to secure or restore contact; civil compensation addresses harm already caused. Both avenues

In cross-border settings, the 1980 and 1996 Hague Conventions provide tools for return, cooperation, and child protection, and facilitate the practical operation of decisions on parental responsibility. They do not, however, establish a specific civil liability regime for obstruction of contact. Compensation claims still require determination of jurisdiction, applicable law, evidence, and enforcement under the relevant legal system.

The approach most consistent with effective judicial protection avoids two extremes: absolute family immunity and unrestricted expansion of the law of damages. Compensation should be available in sufficiently proven cases, with particular attention to the seriousness and persistence of the conduct, the extent of harm, the evidentiary difficulties of international settings, and the need to shield the child from unnecessary escalation of parental conflict.

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Conflicts of interest

The authors declare that they have no conflicts of interest.

Author contributions

Brenner F. Diaz-Rodríguez: Conceptualization, legal analysis, investigation, methodology, data curation, writing—original draft, and writing—review and editing.

Luciana B. Scotti: Conceptualization, supervision, legal analysis, methodology, validation, and writing—review and editing.

Data availability statement

No datasets were generated for this study. The legal, jurisprudential, and bibliographic sources analyzed are publicly available or identified in the references.

Statement on the use of AI

Generative AI and AI-assisted technologies were used for language refinement, structural editing, and bibliographic consistency checking. The authors remain responsible for the legal analysis, source verification, interpretation, and final manuscript.

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