

**Hague Convention of 18 March 1970  
on the Taking of Evidence Abroad  
in Civil or Commercial Matters**

**QUESTIONNAIRE**

1. Do you have at your disposal recent precedents delivered pursuant to the 1970 Convention and which would be relevant for the Special Commission? If so, can you provide them to us? Insofar as the text of the ruling is drafted in a language other than English or French, a summary in the English or French language of the facts and grounds for the ruling would be very helpful.

**The Bulgarian judicial authorities receive or forward requests for execution under the Convention, but we do not consider that any of these precedents are of interest to be discussed by the Special Commission. Most of the requests are for hearing of persons, establishment of circumstances – birth, marriage, divorce, registration of companies, receiving copies of documents, taking of blood tests, etc.**

2. Do you have at your disposal statistics relating to the number of requests to obtain evidence addressed to your State from different States Party to the Convention ?

**The data is provided in Annex No 1 enclosed hereto.**

3. Have you encountered practical difficulties connected with application of the Convention?

**No difficulties have been encountered, except for particular cases connected with absence of strictly formulated questions for questioning and with specific requirements for the blood tests – to be taken, kept and transported in a certain manner, which requirements we cannot always fulfil strictly. These, however, are rather difficulties of practical and not of legal character.**

4. In light of the terminology used in the Practical Handbook for the Service Convention (see provisional version of the new Practical Handbook, Prel. Doc. No 1, (I. -5. -B)), do you have at your disposal precedents determining whether the Convention is considered as "mandatory" by your State? Do you have at your disposal case-law determining whether the Convention is considered as "exclusive" by your State?

**The Supreme Court of Cassation, whose interpretative decisions are mandatory for all Courts in Bulgaria, has not issued any interpretative decision for the "mandatory" or "exclusive" character of the Convention so far. Although this questionnaire was sent to 24 Courts in Bulgaria, which have the largest practice of applying the Convention, none of them has given a case that led to the necessity of interpretation of the character of the Convention in terms of the sense mentioned above.**

5. If your State has stated a reservation under Article 23 of the Convention, has that reservation been asserted to deny performance of requests to obtain evidence from abroad? If so, what was the procedure applied in such case?

**Bulgaria has stated a reservation under Article 23 of the Convention, but we have not had a practical case of a request filed by another party under the Convention. The question of what procedure would be applied, if such a precedent occurs, has not been discussed yet. The reservation stated does not mean that performance of the request for obtaining of evidence will be denied at all, but it will probably be performed by another procedure, permissible under the Bulgarian legislation. When applying the Convention, the Central Authority and the competent Bulgarian authorities follow the principle of rendering legal assistance to the Requesting Party to the maximum possible volume.**

6. At the Special Commission of 1989, it was recommended that priority be granted to the procedures provided for under the Convention for their requests to obtain evidence located abroad, and that States having made or proposing to make the reservation under Article 23 should limit its scope. Do you consider this recommendation to have been helpful? Has it been applied in practice?

**We consider that this recommendation is useful. Our arguments are expressed in the answer to the previous question.**

7. The Permanent Bureau has been faced on several occasions with the issue whether the Convention applies to arbitration proceedings. This issue was discussed at the Special Commission in May 1985, but the Commission had considered at the time that there was no need to adopt a Protocol in this respect. For its part, the 1989 Special Commission stated that the law of certain countries provided for legal assistance to obtain evidence in arbitration matters, in which case the Convention might be used in order to seek evidence abroad.

The position advised by the Permanent Bureau is that the benefit of the Convention may extend to arbitration proceedings insofar as the arbitration panel sends its request to obtain evidence abroad to a judicial authority of its State, which will then assume forwarding to the State addressed of the request to obtain evidence: as the arbitration panel cannot be treated as a judicial authority for the purposes of the Convention, it cannot itself forward the request to obtain evidence directly to the State addressed.

Have you had occasion to deal with such requests to obtain evidence in the course of arbitration proceedings?

Do you share the view of the Permanent Bureau?

**We fully share the agreed position of the Permanent Bureau that the benefit of the Convention has to be extended to arbitration proceedings as well. Regulation is necessary of the possibility for the Arbitration Authority to forward its request for obtaining evidence**

**abroad through a judicial authority from its own state. This possibility will also facilitate the decision of cases of commercial character with the presence of an arbitration clause, which, especially if they are of considerable property interest, are to be filed before arbitration.**

**We have not received requests for obtaining evidence in relation to arbitration proceedings.**

8. What is the average time elapsing between receipt of the request to obtain evidence and its performance?

**Depending on the nature of the action necessary for execution of the request, the obtaining of evidence lasts from 1 to 4 months.**

9. Do you allow the representatives of a requesting Court to take part in the execution pursuant to Article 8 of the Convention?

**We consider the participation of representatives of the requesting Court in the execution of the request for obtaining of evidence as completely permissible and even desirable. On the one hand, the requesting Court is assisted in a more entire way, for instance, when participating in a hearing of a person, the personal apperception of the representative of the requesting Court of the behaviour of the person, the manner the person gives the answers, the possibility to ask additional questions as a result of the given answers, etc. will be of importance for the more complete clarification of the circumstances and for the settlement of the dispute. On the other hand, the requested authority will also be facilitated in the obtaining of evidence, because additional questions or circumstances may occur in the process of the execution, which in direct cooperation with the present representative of the requesting Court will be clarified without any waste of time for receiving additional information. If we take the same case of obtaining evidence – hearing of a person, the representative of the requesting Court may clarify some facts with details to the executing magistrate, or to help in formulating the questions for the hearing more strictly and more thoroughly, etc.**

10. Do your central authorities accept to receive requests by electronic means to obtain evidence from abroad?

**The Bulgarian legislation still does not contain provisions that allow accepting and executing requests for obtaining of evidence, received by electronic means only.**

11. Have your authorities received or forwarded requests to obtain evidence requiring the use of new information technology? If so, were these requests fulfilled?

**There are no such cases. The new information technology has not been introduced for the authorities executing and forwarding requests for obtaining of evidence.**

12. Would you consider it useful to have a recommendation adopted for the promotion of the use of modern communication technologies? Do you consider that development of a new instrument ought to be considered in order to deal more specifically with these issues?

**We definitely consider that the adoption of a Recommendation for the use of modern communication technologies is useful, with a view of shortening the period for receiving the request for obtaining of evidence and for its execution, as well as for the returning of the execution. The introduce of such new instrument is to consider the specific character of these means.**

**Annex No 1  
To Question No 2**

**Requests in 2003 for the Obtaining of Evidence Abroad by Courts of States - Parties under the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters**

<b>State</b>	<b>Number</b>
GERMANY	2
FRANCE	3
POLAND	2
RUSSIA	8
TURKEY	7
<b>Total:</b>	<b>22</b>

**Requests by the Bulgarian Courts in 2003 for the Obtaining of Evidence Abroad under the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters**

<b>State</b>	<b>Number</b>
ITALY	1
NORDRHEIN-WESTFALLIEN	1
RHEINLAND-PFALZ	1
ROUMANIA	1
HUNGARY	1
FRANCE	5
HESSEN	1
THE NETHERLANDS	1
THE CZECH REPUBLIC	1
SWITZERLAND	1
<b>Total:</b>	<b>14</b>