

M.J.P.O. 12.03.002.161(5)

**QUESTIONNAIRE
CONCERNING THE PRACTICAL OPERATION
OF THE HAGUE CONVENTION OF 25 OCTOBER 1980
ON THE CIVIL ASPECTS OF CHILD ABDUCTION**

REPLIES OF THE REPUBLIC OF CYPRUS

The role and functions of Central Authorities

1. **Have any difficulties arisen in practice in achieving effective communication with other Central Authorities? In particular, how are "modern rapid means of communication", used by your Central Authority in order to expedite communications, bearing in mind the requirements of confidentiality?**

So far no serious difficulties have been experienced in achieving effective communication with other Central Authorities. Good cooperation and personal contacts through the telephone are often the solution to the problems arising from delays. In order to expedite communications the use of fax and e-mail is in everyday practice. Nevertheless, all the necessary measures are taken in order to secure the confidential nature of the cases.

2. **Are there any other problems of co-operation with other Central Authorities to which you wish to draw attention?**

The major problems encountered, are related to the delays in procedures especially in regard to the fixing of the date for examination of the case by the Judge, the adjournments noted for no serious reason and the delays occurred until the issue of a final judgment.

These delays are, of course, related to the organization of the Court system but nevertheless have a negative impact on the effectiveness of the role of the Central Authorities, which are often incapable to offer any assistance.

3. Does your Central Authority maintain a website and / or a brochure / information pack? (Please provide the web address or check if the information on the Hague Conference website is accurate, see <www.hcch.net> → Child Abduction Section → Links to related websites). If so, does the website and / or brochure / information pack contain the following information as recommended by the Special Commission of 2001:

- "a) the other Contracting States in relation to whom the Convention is in effect;**
- b) the means by which a missing child may be located;**
- c) the designation and contact details for the Central Authority;**
- d) application procedures (for return and access), documentary requirements, any standard forms employed and any language requirements;**
- e) details, where applicable, of how to apply for legal aid or otherwise for the provision of legal service;**
- f) the judicial procedures, including appeals procedures, which apply to return applications;**
- g) enforcement options and procedures for return and access orders;**
- h) any special requirements which may arise in the course of the proceedings (e.g. with regard to matters of evidence);**
- i) information concerning the services applicable for the protection of a returning child (and accompanying parent, where relevant), and concerning applications for legal aid for, or the provision of legal services to, the accompanying parent on return;**
- j) information, if applicable, concerning liaison judges"?**

Our Central Authority maintains a website (www.mjpo.gov.cy) which provides basic information on Child Abduction matters. We are currently in the process of enriching the relevant page, in an effort to include all the information suggested in question 3 (a-j).

In the meantime, anyone who is interested in having more information or advice may have a direct telephone contact with the staff of the competent Unit.

4. What measures does your Central Authority undertake to encourage voluntary returns and amicable resolutions, and how do you seek to ensure that these negotiations do not lead to undue delay in return proceedings? [Note: Questions 20-22 deal with the subject of mediation]

Due to the great urgency of child abduction cases and the increase in numbers it is not easy to proceed to negotiations with the abductor parent. The under-staffing of the Unit dealing with these issues, is also a major.

- 5. In accordance with the Guide to Good Practice - Part I on Central Authority Practice, has your Central Authority shared its expertise with another Central Authority or benefited from another Central Authority sharing its expertise with your Central Authority?**

Obstacle for undertaking any kind of mediation. In the light of the above difficulties we focus on the need to proceed immediately to the preparation of the relevant return/communication applications.

However, in a limited number of cases, amicable resolutions were reached as a result of our interference.

Court proceedings

- 6. Do you have any special arrangements whereby jurisdiction to hear return applications is concentrated in a limited number of courts or judges?**

These cases are heard by judges of the Family Courts depending in which district the abductor or the child reside. So these cases are concentrated in a limited number of courts or judges.

- 7. What measures exist to ensure that Hague applications are dealt with promptly (Article 7) and expeditiously (Article 11) ? In particular:**

- (a) Are there set timetables at both trial and appellate level to ensure the speedy determination of return applications?
- (b) What special measures / rules exist to control or limit the evidence (particularly oral evidence) which may be admitted in Hague proceedings?

In Cyprus there is a procedural law enacted in 2002 governing cases of abduction. These rules concern the time limit of trial (6 weeks), the time of filing of the opposition (7 days), the time of filing an appeal (14 days) and the proceedings at trial. According to these rules, oral evidence is not permitted. But cross examination is of course permitted to persons who filed an affidavit.

- 8. What measures exist to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers? Do such measures lead to delays?**

Legal aid is provided in these kinds of cases. There is some delay when legal aid is applied for us for the legal aid application to be approved by the court, the views of the welfare office must be taken into account.

- 9. In what circumstances and by what procedures / methods are children heard in Hague proceedings? In particular how will a determination be made as to whether a child objects to return, and in what circumstances might judges refuse to return a child based on his or her objections?**

In the case where the opposition is based on article 13 (b), the views of the children might be heard if the judge requires it and of course the judge will decide if the children are mature enough to be heard. Children's views are heard in the chamber of the judge and no one else is present except the judge and the children. Only in rare cases the views are heard only if this is absolutely necessary for the purpose of article 13(b).

- 10. How has Article 20 of the Convention been applied in your State? Are you aware of an increase in the use of this Article, bearing in mind that the Statistical Survey of all cases in 1999 found no case in which this exception to return was successfully invoked?**

No application has ever been dismissed because of this article. No I am not aware of such an increase in the use of this Article.

Legal issues and interpretation of key concepts

- 11. Please comment on any Constitutional procedures or principles which make it difficult to implement the Hague Convention fully.**

No comment.

- 12. Are there any important developments in legislation, case law or procedural law relevant to the operation of the 1980 Convention to which you wish to draw attention? Please would you provide us with an electronic copy of relevant legislation if possible?**

The important development in our legislation is the procedural law mentioned above which was enacted in 2002. Unfortunately it is in Greek so we have to translate it and send it to you electronically (See question 7).

13. Please indicate any important developments since the Special Commission of 2001 in your jurisdiction in the interpretation of Convention concepts, in particular the following:

- (a) rights of custody (Article 3 a) and 5 a));
- (b) habitual residence (Article 3 a) and 4);
- (c) rights of access (Article 5 b));

There is case law on habitual residence, rights of custody, consent or acquiescence to the removal or retention of the child, grave risk, exposure to physical or psychological harm and intolerable situation. Also another important development is the procedural law enactment of 2002 mentioned above.

Direct international judicial communication

14. Please describe any developments in the area of direct international judicial communication. If your country has responded to the 2002. Questionnaire on direct international judicial communication please describe any developments in this area since your response was made. (The Questionnaire is available on the website of the Hague Conference at: <www.hcch.net> → Child Abduction Section → Questionnaire & Responses).

Cyprus is one of the first three countries who appointed a liaison judge in terms of direct international judicial communication.

Immigration / asylum / refugee matters

15. Have you any experience of cases in which immigration / visa questions have arisen as to the right of the child and / to the abducting parent to re-enter the country from which the child was abducted or unlawfully retained? If so, how have such issues been resolved?

No such experience.

16. Have you any experience of cases involving links between asylum or refugee applications and the 1980 Convention? In particular, please comment on any cases in which the respondent in proceedings for the return of a child has applied for asylum or refugee status (including for the child) in the country in which the application for return is to be considered. How have such cases been resolved?

No.

17. Have you any experience of cases in which immigration / visa questions have affected a finding of habitual residence in the State from which the child was removed or retained?

No.

18. Have you any experience of cases in which immigration / visa questions have inhibited the exercise of rights of access?

No.

Criminal proceedings

19. Please comment on any issues that arise and how these are resolved, when criminal charges are pending against the abducting parent in the country to which the child is to be returned.

This factor is not taken into account by the judge who decides the return or non return.

Mediation

20. Are there any programmes of mediation available in your State for parents or other persons involved in Hague convention cases? Please describe these, indicating inter alia the methods employed to ensure that mediated agreements are enforceable and respected by the parties, as well as the availability of, and training opportunities for, international mediators.

No such mediation programmes are available apart from the general mediation duties of the Central Authority described in Article 7. But there is a Bill in the Parliament on mediation dealing with every case of family law.

21. How do you ensure that mediation procedures do not unduly delay proceedings for the return of the child?

When a request comes from a foreign central authority it is forwarded immediately to the Office of the Attorney General for the filing of the return application. In the meantime the Central Authority will try to see if there is a possibility of an amicable solution in the scope of Article 7 but only if this will not of course alert the abductor. So in most cases the filing of the application is almost imminent.

22. Do you have any other comments relating to mediation in the context of the 1980 Convention either at a preventive stage or when a removal or retention has occurred?

No.

Training and education

23. Do you have any comments relating to how judicial (or other) seminars of conferences at the national, regional and international levels have supported the effective functioning of the Convention? In particular, how have the conclusions and recommendations of these seminars or conferences, (some of which are available on the website of the Hague Conference at: <www.hcch.net> → Child Abduction Section), had an impact on the functioning of the 1980 Convention?

I have affirmative comments.

24. Can you give details of any training sessions / conferences organized in your country, and the influence that such sessions have had?

No.

Ensuring the safe return of children where issues such as domestic violence and abuse are raised.

25. Is the issue of domestic violence or abuse raised as an exception to return in child abduction cases? What is the general approach of your courts to such cases and, in particular, how far do they investigate the merits of a claim that such violence or abuse has occurred?

See question 9.

26. **What procedures and measures are in place in your State to secure the safe return of the child (and the accompanying parent, where relevant) where issues of (alleged) domestic violence or abuse are raised?**

There is coordination between the Central Authority and the Police or the Welfare Department.

27. **To what extent are your courts entitled and prepared to employ "undertakings" (i.e. promises offered by, or required of the applicant) as a means of overcoming obstacles to the safe return of the child? Please describe the subject matter of undertakings required / requested.**

They are prepared to employ undertakings.

28. **Will your courts / authorities enforce or assist in implementing such undertakings in respect of a child returned to your jurisdiction? Is a differentiation made between undertakings by agreement between the parties and those made at the request of the court?**

Yes.

29. **To what extent are your courts entitled or prepared to seek or require, or as the case may be to grant, safe harbour orders or mirror orders (advance protective orders made in the country to which the child is to be returned)?**

To a great extent.

30. **Do you have any comments on the use of undertakings, mirror orders or safe harbour orders?**

No.

31. **Do you have any other comments relating to domestic violence or abuse in the context of the 1980 Convention?**

No.

32. **Are you aware of cases in which your authorities have refused to make or enforce an order in respect of a young child on the basis that an abducting parent who is the child's primary caregiver, refuses or is otherwise not in a position to return with the child?**

No.

The Guide to Good Practice

41. Are there any particular matters which you would like to see included in a Guide to Good Practice on Transfrontier Access / Contact? (See "Transfrontier Access / Contact and the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction – Final Report" drawn up by Willian Duncan, Deputy Secretary General, Preliminary Document No 5 of July 2002 available at: www.hcch.net → Conventions → Convention 28 → Practical Operation Documents).

More information on access rights and the interpretation of article 21.

Services provided by the Permanent Bureau

52. Please comment or state your reflections on services provided by the Permanent Bureau to assist the implementation and operation of the Convention, such as:
- a) INCADAT;
 - b) the judges' Newsletter on International Child Protection;
 - c) the bibliography of the Convention;
 - d) the Child Abduction Section on the website of the Hague Conference;
 - e) INCASTAT (the database for the electronic collection and analysis of statistics on the Convention, which is currently being developed);
 - f) Child (the electronic case management system designed by the Canadian software company WorldReach, which is currently being piloted by seven Central Authorities in six Contracting States).
 - g) support for national / international judicial (and other) seminars / conferences concerning the Convention;
 - h) Support for communications among Central Authorities, including maintenance of updated contact details.
53. Have you any comments or suggestions concerning the activities in which the Permanent Bureau engages to assist in the effective functioning of the Convention?

More seminars to be held on a national level.

Compliance with the Convention

54. Are there any Contracting States with whom you are having particular difficulties in achieving successful cooperation? Please specify these difficulties.

No.

Non/Convention cases and non/Convention States

56. Are you aware of any troubling cases of international abduction which fall outside the scope of the Convention?

No.

57. Are there any States that you would particularly like to see become a State Party to the Convention? Are there any States (which are not Parties to the Convention or Members of the Hague Conference) that you would like to see invited to the Special Commission meeting in October / November 2006. Would you be willing to contribute to a fund to enable developing States to attend?

No.

58. Do you have any comments on bilateral or other agreements between your State and a non/Contracting State?

No.

59. What additional information would you find useful on the non/Hague Convention page on INCADAT available at <www.incatad.com>.

More access to case law and statute law of the non Hague Convention countries.

Relationship with other instruments

60. Do you have any comments or observations on the impact of regional instruments on the operation of the 1980 Hague Convention, for example, Council Regulation (EC) No 2201 / 2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental

11

responsibility, repealing Regulation (EC) No 1347/2000 and the 1989 Inter/American Convention on the International Return of Children?

Positive Convention.

- 61. Do you have any comments or observations on the impact of international instruments on the operation of the 1980 Hague Convention, in particular, the 1989 United Nations Convention on the Rights of the Child?**

Positive comments.