

**Czech Republic – responses to the Questionnaire concerning the practical operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction**

**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,”<sup>1</sup> used by your Central Authority in order to expedite communications, bearing in mind the requirements of confidentiality?

*No, we have not had such difficulties. The fax and email communication is frequently used. We have never met such problems as mentioned in the Guide.*

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

*No.*

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](http://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”?*

*The web address is "[www.umpod.cz](http://www.umpod.cz)" but it does not contain all the information required yet.*

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.]

*See response to point 3 of 2001 Questionnaire.*

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?

*Yes, for instance with Israeli and Canadian Central Authority.*

### **Court proceedings**<sup>3</sup>

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

*No.*

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?

*There are no timetables. Only according a guideline issued by the Ministry of Justice Czech courts shall in the Hague abduction cases decide promptly.*

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?

*The Czech Central Authority can either represent the applicant in the court (including filing for a return order) or arrange for a lawyer. The representation by the Central Authority is free of costs.*

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?

*Children who are able to express themselves (older than 10 years) are as rule heard by social workers. The judges usually follow opinions of the social workers.*

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.*

### **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.

*There are no such procedures or principles.*

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 could you provide us with an electronic copy of relevant legislation if possible?

*Decision of the Supreme Court dated December 7, 2000 see INCADAT: HC/E/CZ 468 [07/12/2000; Ústavní soud České republiky (Constitutional Court of the Czech Republic); Superior Appellate Court], III. ÚS 440/2000 DAOUD / DAOUD*

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 (Articles 3 *a*) and 5 *a*));
- b) habitual residence (Articles 3 *a*) and 4);
- c) rights of access (Article 5 *b*)
  
- d) the actual exercise of rights of custody (Articles 3 *b*) and 13(1) *a*));
- e) the settlement of the child in his / her new environment (Article 12(2));
- f) the one year period for the purposes of Article 12;
- g) consent or acquiescence to the removal or retention of the child (Article 13(1) *a*));
- h) grave risk (Article 13(1) *b*));
- i) exposure to physical or psychological harm (Article 13(1) *b*));
- j) intolerable situation (Article 13(1) *b*));
- k) the child objects to being returned (Article 13(2)); (see also question 9)
- l) fundamental principles relating to the protection of human rights and fundamental freedoms (Article 20). (See also question 10).

*No important developments.*

#### **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](http://www.hcch.net) > ☎ Child Abduction Section ☎ Questionnaire & Responses).

*Not in the field of the Child Abduction Convention yet.*

#### **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 / or 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?

*We have not such experience yet.*

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?

*Not yet.*

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.

*We had one case with the mother who abducted children from Ontario to the Czech Republic. Then she traveled to Ontario and left her children behind with her parents (maternal grand parents). Immediately after her arrival to Toronto she was arrested. After a couple of months she agreed with the return of the children to Ontario.*

### **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 programmes yet.*

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

*If the abductor does not follow the invitation to secure voluntarily the return of the child the case shall be immediately brought before the court.*

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?

*We believe that the mediation is very important at the both stages. The parties should be more motivated to participate in mediation. Specialized mediators should be educated. Concerning the "preventive mediation", Czech consular workers abroad are informed about abduction issues in order to be able to inform potential abductors about consequences of a wrongful removal of a child.*

### **Training and education**

23. Do you have any comments relating to how judicial (or other) seminars or 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](http://www.hcch.net) > ☺🔗 Child Abduction Section), had an impact on the functioning of the 1980 Convention?

*We would appreciate more seminars at international or regional level giving opportunity to share experiences among representatives of the Central Authorities and judges.*

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

*There have not been any training sessions or conferences devoted only to the processing abduction cases. These matters were subject to the seminars organized by the Regional courts, by the Justice Academy, by the Ministry of Labour and Social Affairs, Ministry of Justice or in the framework of meetings of members of the Internal Judicial Network.*

### **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 often 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?

*Yes it is. The Czech courts often investigate the merits of a claim that such violence or abuse has occurred.*

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?

*No special procedures.*

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.

*We have not experienced such cases yet.*

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?

*They would assist them.*

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)?

*We have not experienced such cases yet.*

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?

*It is often very hard for the abducting parent to bring evidence on the domestic violence in the requesting state.*

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 carer, refuses or is otherwise not in a position to return with the child?

*Czech courts have never definitively expressed that the reason for the refusal was the above mentioned situation.*

#### **Standard questionnaire for newly acceding States**

33. If your State has acceded to the Convention have you filled out the standard questionnaire for newly acceding States? If so, have you any comments about the ease or otherwise of filling out this questionnaire? If not, can you explain why?

34. Has your State found the responses to the standard questionnaire for newly acceding States (available on the website of the Hague Conference at: < [www.hcch.net](http://www.hcch.net) >   Child Abduction Section   Standard questionnaire for newly acceding States) useful when considering whether or not to accept the accession of an acceding State? What additional information would be useful?

35. What measures, if any, do your authorities take, before deciding whether or not to accept a new accession (under Article 38), to satisfy themselves that the newly acceding State is in a position to comply with Convention obligations, and how do you ensure that this process does not result in undue delays?

#### **The Guide to Good Practice**

36. In what ways have you used the Guide to Good Practice – Part I on Central Authority Practice, Part II on Implementing Measures and Part III on Preventive Measures to assist in implementing for the first time, or improving the implementation or operation of, the Convention in your State?

*At the present time the Guide serves mainly to the Czech Central Authority. It is intended to have it translated into Czech and disseminated among judges and social workers.*

37. How has the Guide to Good Practice assisted your State in making policy or practical decisions relating to the implementation or operation of the Convention?

*See answer to the question 36.*

38. How have you ensured that relevant authorities in your State have been made aware of, and have had access to, the Guide to Good Practice?

*See answer to the question 36.*

39. Do you have any comments concerning the Guide to Good Practice – Part III on Preventive Measures including how best to publicise this Part of the Guide?

*See answer to the question 136.*

40. Please describe any developments in legislation, case law or practice relating to enforcement measures and transfrontier access / contact. If your country has responded to the Questionnaire on Enforcement Measures distributed in July 2004 or the Consultation Paper on Transfrontier Access / Contact distributed in January 2002 please describe any developments in legislation, case law or practice since your response was made. (The Questionnaire and Consultation Paper are available on the website of the Hague Conference at: < [www.hcch.net](http://www.hcch.net) >  [Child Abduction Section](#)  [Questionnaire & Responses](#)).

*No developments.*

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 William Duncan, Deputy Secretary General, Preliminary Document No 5 of July 2002 available at: < [www.hcch.net](http://www.hcch.net) >  [Conventions](#)  [Convention 28](#)  [Practical Operation Documents](#).)

*No.*

42. Are there any other topics that you would like to see form the basis of future parts of the Guide to Good Practice in addition to those which are already published or are under consideration (these are: Part I on Central Authority Practice; Part II on Implementing Measures; Part III on Preventive Measures as well as enforcement measures and access / contact)?

*No.*

43. Do you have any other comments about any Part of the Guide to Good Practice?

*No.*

44. Can you list any examples of good practice not included in the Guides?

*No.*

#### **Standardised consent form**

45. The Permanent Bureau is consulting with States and relevant authorities with regard to developing a standardised or harmonised form for obtaining consent from holders of parental responsibility when a child leaves a State (see the Guide to Good Practice – Part III on Preventive Measures). Do you have any comments about the development of such a form? Or any suggestions as to what information such a form should / should not include?

No.

**Statistics and case management**

46. Does your Central Authority maintain accurate statistics concerning the cases it deals with under the Convention, and does it submit annual returns of statistics to the Permanent Bureau in accordance with the forms established by the Permanent Bureau in consultation with Central Authorities? If not, please explain why.

*Yes, it does.*

47. Does your Central Authority use any special software for case management / statistical purposes? Would your Central Authority be interested in using the new iChild software which is currently being piloted in seven Central Authorities in six Contracting States?

*Yes it does but it is not very appropriate. That is why it would be very interested in using the iChild software.*

**Publicity / debate concerning the Convention**

48. Has the Convention given rise to (a) any publicity (positive or negative) in your country, or (b) any debate or discussion in your national Parliament or its equivalent?

*Yes, it has given rise to a very negative publicity in media. A proposal has recently been raised in the Parliament (unsuccessfully) for reconsidering the membership of the Czech Republic to the Hague Abduction Convention<sup>[ZM5]</sup>.*

49. Is the Convention having any negative effects which are causing concern?

No.

50. By what methods do you disseminate information about the Convention?

*By informing judges and social workers.*

51. Could you provide a list (including contact details and web site addresses) of non-governmental organisations in your State which are involved in matters covered by the 1980 and / or 1996 Conventions?

No.

**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:

1 a) INCADAT;

1 b) the Judges' Newsletter on International Child Protection;

1 c) the bibliography of the Convention;

1 d) the Child Abduction Section on the website of the Hague Conference;

1e) INCASTAT (the database for the electronic collection and analysis of statistics on the Convention, which is currently being developed);

1f) iChild (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).

1g) support for national / international judicial (and other) seminars / conferences concerning the Convention;

1h) support for communications among Central Authorities, including maintenance of updated contact details.

*We appreciate all of them very much.*

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?

*For instance by assisting in organizing more training sessions for judges, social workers and other persons involved at international and regional levels.*

#### **Compliance with the Convention**

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

*No.*

55. Are you aware of situations / circumstances in which there has been avoidance / evasion of the Convention?

*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?

*Yes, we are.*

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 certain developing States to attend?

*Yes, for example Ukraine.*

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.incadat.com](http://www.incadat.com) >.

*No comment.*

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

*We believe that the Council Regulation (EC) No 2201/2003 is a very useful instrument for the more effective application of the 1980 Hague 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*?

*In several cases the application of the 1980 Hague Convention was interpreted by the opposing parties, by media or by the Ministry of Labour and Social Affairs as opposing to the rule mentioned in Art. 3 of the Convention of the Rights of the Child, i.e. „the best interest of the child“.*

### **The Hague Convention of 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children**

62. If the 1996 Hague Convention is in force in your State, do you have any comments regarding (a) how it has been implemented; (b) how it is operating?

*In fact we have not experienced matters pursuant to the above Convention with relation to the child abduction.*

63. If the 1996 Hague Convention is not in force in your State, is your State considering implementing this Convention? What are viewed as (a) the main advantages and (b) the main difficulties in implementing this Convention?

64. Have you experienced any difficulties concerning interpretation of particular provisions?

*No.*

65. Would you find a Guide to Good Practice on implementation of this Convention useful?

*No comment.*

66. The Special Commission of 2001 recognised the potential advantages of the 1996 Hague Convention as an adjunct to the 1980 Hague Convention, and recommended that Contracting States should consider ratification or accession. How has your State responded to this recommendation?

*Czech Republic signed and ratified the 1996 Convention before the 2001 Special Commission met.*

**Any other matters and recommendations**

67. States are invited to comment on any other matters which they may wish to raise concerning the practical operation of the 1980 Convention or the implementation of the 1996 Convention.

*No comment.*

68. States are invited to make proposals concerning recommendations to be made by the Special Commission.