

**Questionnaire concerning the practical operation of the Hague
Convention of 25 October 1980 on the Civil Aspects of International
Child Abduction**

*(Including questions on implementation of the Hague 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)*

LATVIA'S RESPONSES

The role and functions of Central Authorities

1. For communication with other Central Authorities the Ministry as the Central Authority under Convention with taking into consideration principles of confidentiality mainly uses regular mail and fax messages. In situations when there is need to act promptly we use an e-mail and/or communication by phone directly. Considerable difficulties in communication with Central Authorities in other countries are not observed.

2. We would like to notice that as in Convention are settled questions about necessity in the scope of Convention to act/operate promptly, in communication with other Central Authorities there is sometimes observed situations in which arrangement and culture of document's circulation differ if compare such arrangement in Latvia's Central Authority and other Central Authorities abroad. For example, when central Authorities uses modern communication technologies as an e-mail for example which nowadays is the fastest way of communication, frequently we meet with difficulties when some Central Authorities doesn't replay, replay with delay or replay incompletely. For example in our system of document's circulation, document can be issued out of the institution only when all questions are prepared and answered completely.

As another problem we would like to notice situations when some request-receiving countries requests documents in their national/official language assertively. Although in Article 24 of the Convention is stated that any application, communication or other document sent to the Central Authority of—the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English. Central Authority of Latvia within limits tries to provide documents in the official language of the request-receiving country but if it isn't possible documents in English is provided.

3. On the web site of the Ministry for Children and Family Affairs there is inserted information section related to the Convention -

http://www.bm.gov.lv/lat/informacija/informacija_vecakiem/?doc=191

In this section presently is information only in Latvian provided, in the nearest future we are planning to provide version of this section in Russian as well as in English in the same time with improvements in its content with taking into consideration recommendations of the Special Commission 2001.

In the mentioned section is included the following information: aims of the Convention; rules for implementation of the Convention; accession status between countries; also link from the website of the Hague Conference on international private law is provided, where interested persons can follow to whom Convention is in effect; there is

information provided regarding Central Authorities, link from Hague Conference provided where interested persons can get information about contact information of the Central Authorities in all member states; in this section also is given main functions of the Central Authority; there is provided information about available forms of the request as well as information about requirements for applicants – necessary information and additional documents; there is provided information also about general procedure in request-receiving country as well as information about the main circumstances which the Court can take into consideration when it decide about return of child to country from what child was abducted or retained; in the same way there is provided information regarding costs which are related to the process under Convention as well as provided information regarding contact information of Central Authority of Latvia and contact information of the contact person.

4. Situation in which is possible to facilitate voluntary return and amicable solution mainly is dependent from fact is or not known any contact information of the person who abducted or retained child. In our experience and practice were cases where this information was both known and not known. Situations in which was known address, phone number or an e-mail of the person who abducted/retained child, employees of the Ministry tries to contact with this person in order to ascertain circumstances of established situation from his/her point of view and positions, simultaneously the Ministry is trying to facilitate amicable solution. In our practice there was only one case in which person who abducted child has voluntary returned to country from what child was abducted. In other cases there was not known contact information of this person or what is the most frequently person who abducted child is negative minded in relation to applicant and doesn't want to resolve situation in amicable way.

5. Central Authority of Latvia with comparatively little experience in terms of Convention, from Central Authorities in other member states acquires readily practice and experience about questions of implementation and interpretation of the Conventions.

Court proceedings

6. Presently, cases under Convention are heard at the Courts based on the place of residence of plaintiff or respondent. However we would like to notice that in the practice of our Courts there is only one case which presently (July, 2006) is in the process at the Court of Appeal.

We would like to notice that in Latvia there is law draft prepared “Amendments in the Civil Process Law” (Article 644.⁷ and 644.¹⁴) what is accepted at the parliament (Saeima) in 2nd reading. This law draft prescribes that applications in the cases regarding child abduction or detention to/in the foreign country will be submitted to the district (city) Courts on the basis of place of residence of applicant or on the basis of child’s place of residence before abduction or detention. Applications in the cases regarding child abduction or detention to/in the Latvia will be submitted to the district (city) Courts on the basis of places of residence of a child before abduction or detention or on the basis of place of residence or location of a person who abducted/retained child. If there is not known place of residence or location of person who abducted/retained child than application would be submitted to the Riga Centre District Court.

7. The law draft “Amendments in the Civil Process Law” (Article 644.¹⁹) prescribes that the Court uses appropriated process facilities as well as uses the fastest methods for

acquisition of the evidences in order to take a decision within six weeks after receiving of application.

Due to the limited practice there isn't arranged specific time-table in order to ensure prompt hearing of the application. As well as in terms of Convention there aren't specific measures/rules which restrict and control addition to the case of different kind of evidences.

8. In Latvia State ensured legal aid is provided in accordance with State Ensured Legal Aid Law. In accordance with Article 3 of the State Ensured Legal Aid Law, the following persons have the right to legal aid: a citizen of Latvia; a non-citizen of Latvia; a stateless person; a European Union citizen who is not a citizen of the Republic of Latvia, but resides legally in the Republic of Latvia; a citizen of a state that is not a Member State of the European Union if he or she legally resides in the Republic of Latvia and has received a permanent residence permit; a person who has the right to legal aid ensured by the Republic of Latvia in accordance with the international agreement entered into by the Republic of Latvia; and an asylum seeker, a refugee and a person who has been granted the alternative status in the Republic of Latvia.

The persons referred to in first part of this Article have the right to legal aid if such persons, taking into account their special situation, state of property and income level, are unable to provide partly or fully for the protection of their rights.

About providing of legal aid in Republic of Latvia responsible is Legal Aid Administration of the Ministry of Justice (Riga, Raiņa boulevard 15, LV-1050, phone (+371) 7036963).

For persons who doesn't comply with requirements and conditions regarding receipt of state ensured legal aid, the Ministry as central Authority in the scope of its facilities can to ensure consultations with legal advisor as well as to provide contact information of sworn advocates.

9. In the practice of the Courts in Latvia there weren't cases regarding Convention in which children were heard.

In accordance with Article 20 of the Protection of the Rights of the Child Law a child shall be given the opportunity to be heard in any adjudicative or administrative proceedings related to the child, either directly or through a lawful representative of the child or through a relevant institution.

10. In the only case what is heard in the Latvia's Court under Convention, return of the child was refused with invoked Article 20 of the Convention where is stated that the return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms. These principles the Court has interpreted in interconnection with Article 10 of the Protection of the Rights of the Child Law that a child has the right to such living conditions and benevolent social environment as will ensure his or her full physical and intellectual development. In its turn in accordance with part 5 of Article 24 of the above mentioned Law limitations may be provided on expression of the wishes of the parents in relation to a child, irrespective of their opinions and religious convictions, if it is determined that they could be physically or mentally harmful to future development of the child.

In concrete case the Article 20 of the Convention was invoked side by side with Article 13 b) of the Convention.

Legal issues and interpretation of key concepts

11. Up to now difficulties for complete implementation of the Convention are made by insufficient legal ground. See answer on question No.12.

12. At the Parliament (Saeima) in the 2nd reading there is accepted law draft “Amendments in the Civil Process Law”. This law with amendments in direct way will regulate questions related to the Convention regarding to the Courts. In relation to the role of the Central Authority, the Ministry for Children and Family Affairs has submitted proposal to the parliament as law draft - “Amendments in Protection of the Rights of the Child Law”, what is accepted in 1st reading at the parliament already. This law draft prescribes rights for Cabinet of Ministers to develop rules which will establish order in which Central Authority of Latvia acts and collaborates with other state institutions and local governments.

Electronic versions of above mentioned law drafts will be available as soon as they will come into force. The Ministry will send these to the Permanent Bureau.

13. Since 1st January, 2003 when amendments in Civil Law of the Republic of Latvia have come in force in our legislation are the following improvements which are related to the key concepts of the Convention. The Convention related key concepts are stated in the 3rd sub-chapter called “Custody”.

- Custody

In accordance with Article 177 of the Civil Law until reaching legal age (Section 219), a child is under the custody of his or her parents.

Custody is the rights and duties of parents to care for the child and his or her property and to represent the child in his or her personal and property relations.

Care for a child means his or her care, supervision and the right to determine his or her place of residence.

Care of the child shall mean his or her maintenance, i.e., ensuring food, clothes, dwelling and health care, tending of the child and his or her education and rearing (ensuring mental and physical development, as far as possible taking into account his or her individuality, abilities and interests and preparing the child for socially useful work).

Supervision of the child means care for the safety of the child and the prevention of endangerment from third persons.

By the right to determine the place of residence of the child is understood the choice of the geographic place of residence and choice of dwelling.

Care for the property of the child means care for the maintenance and utilisation of the property of the child by preserving and increasing it.

In the Article 178 of the Civil Law is stated that parents living together shall exercise custody jointly. If any differences of opinion arise between the parents, such differences shall be adjudicated by an Orphan's court unless otherwise provided for by law.

In Article 178.¹ of the Civil Law is stated that if the parents are living separately, the joint custody of the parents continues. Daily custody shall be implemented by the parent with whom the child is living. In respect of issues, which shall significantly affect the development of the child the parents shall take a joint decision. Differences of opinion shall be resolved according to the procedures specified in Section 178 of this Law.

The joint custody of the parents shall terminate upon the establishment on the basis of an agreement between the parents or a court adjudication of the separate custody of one

parent.

The parent with whom the child is located in separate custody has all the rights and duties, which arise from custody. The other parent has access rights in conformity with the provisions of Sections 181 and 182 of this Law.

Disputes between parents regarding custody rights shall be decided taking into account the interests of the child and ascertaining the views of the child if only he or she is able to formulate such.

If the parent in whose custody the child is located dies, as well as if it is not possible for him or her to implement custody, the child shall pass to the custody of the other parent, except in the case, where an Orphan's court has recognised in the interests of the child the need to appoint a guardian for him or her.

- Rights of Access

In the Article of 181 of the Civil Law is stated that a child has the right to maintain personal relations and direct contact with any of the parents (access rights).

Each of the parents has a duty and the right to maintain personal relations and direct contact with the child. This provision shall be applicable also if the child is separated from one of the parents or both of the parents. The parent who does not live with the child has the right to receive information regarding him or her, especially information regarding his or her development, health, educational progress, interests and domestic circumstances.

A child has the right to maintain personal relations and direct contact with brothers, sisters and grandparents, as well as with other persons with which the child has lived with for a long time in an undivided household if such conforms to the interests of the child.

Parents and persons who have access rights in relation to the child or in whose care the child is located, have a duty to refrain from such activities as may negatively influence the relationship of the child with one of the parents.

In the Article 182 of the Civil Law is stated that in case of dispute, the procedures by which access rights may be utilised shall be determined by a court, requesting an opinion from the Orphan's court. As soon as the opinion of the Orphan's court has been received, the court shall without delay invite the parties to submit an explanation and shall determine temporary access rights utilisation procedures.

A court may specify that the child spend a certain period of time (weekends, school holidays, parents leave periods and similar) with such parent who has not been granted custody rights, or also his or her meeting times.

Access rights in relation to a child may be restricted, moreover, if necessary, it may be specified that it is allowed to meet with the child only in the presence of third persons or at a specific place insofar as this conforms to the interests of the child. A court may temporarily revoke access rights if the access is harmful to the interests of the child and the harm cannot be otherwise prevented.

Translation in English of the Civil Law is available at the website of The State Agency "Translation and Terminology Centre" –

<http://www.ttc.lv/index.php?sqquery=civil+law&srchtype=trans&id=2&l=EN&seid=search>.

Direct international judicial communication

14. At the Latvia's Court there was (is) heard only one case under Convention, wherewith direct international judicial communication isn't developed at present.

Immigration/asylum/refugee matters

15. We do not have such experience.

16. We do not have such experience.

17. We do not have such experience.

18. We do not have such experience.

Criminal proceedings

19. In the exclusive case where child's mother abducted child to Latvia, in the country from which she did it child's father has submitted application to the police, however it was refused on the basis of assumption that there is no ground for criminal proceedings.

Mediation

20. In order to appraise the possibilities of implementation of the conciliation institute in Latvia in June 2006, in the framework of the National Program for the Improvement of the State of the Child and Family, the ministry has started to carry out conciliation (mediation) pilot project. During the pilot project, conciliation (mediation) services are provided free of charge for the families who have come to a conflict situation (int.al. situations of divorce or disputes related to extra-familial childcare). The services are offered by qualified teams of specialists – psychologists and lawyers. Connection of the pilot projects content to the project implemented in the framework of PHARE Transition Facility financial instrument is being ensured.

According to the Civil Law of Latvia if the court considers that it is possible to retain the marriage, it may in order to reconcile the spouses suspend the adjudication of the case for a period up to six months. In Latvia, as compared to many other countries, conciliation is currently being left to the couple's discretion. Yet it should be noted that the courts are weighted with cases which could be settled out of court. Therefore one of the pilot project's aims is to relieve the judiciary system.

On the grounds of the pilot projects results and conclusions and the results and conclusions of the project implemented in the framework of PHARE Transition Facility financial instrument it is envisaged to draft a further model of conciliation in family matters in Latvia, where the possible versions of the conciliation (mediation) services could be out of court (at the Orphan's court (Parish court), at the centre for family support etc.) or at court (mediators could be judges or other court employees). In case of a dispute, for the spouses with children the conciliation (mediation) services could be obligatory.

Training of mediators was guided by the specialist of integrated mediation Mr A.Trosen from Germany.

Unfortunately till this time nobody from the parties involved in the cases of the Convention has entered for receiving of mediation services.

21. Up to now in our practice there were not used mediation measures in the cases under the Convention.

22. We do not have additional comments.

Training and education

23. If we take into consideration that up to now judges haven't attended both regional nor international seminars and conferences, we do not have comments on this matter.

24. On 2004 in collaboration with Deutsche Stiftung fur Internationale rechtliche Zusammenarbeit was organized seminar „Family rights. International aspects”, where the issues of child abduction have also been discussed as well issues related to the protection of children, parental responsibility, adoption, custody, etc. In seminar 95 judges took a part.

Other seminars in 2004, 2005, 2006 regarding family rights were organized for judges from district/city Courts, for candidates of the place of judge, etc. Topics at these seminars usually are “Actual issues in the family rights, adoption, custody, annulment of a marriage, property relations between spouses, etc.”

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

25. In the exclusive case of the Latvia's Court in terms of the Convention, Court of First Instance refused return of a child on the basis of Article 13 b) of the Convention. As evidences there were statements from Orphan's Court and from qualified psychologist.

26. In respect of this question Latvia needs to implement relevant legislation.

27. We do not have such experience

28. We do not have such practice and experience.

29. We do not have such experience

30. We do not have additional comments.

31. We do not have additional comments.

32. Up to now cases like this never happened.

Standard questionnaire for newly acceding States

33. When Latvia has acceded to the Convention, we have fulfilled standard questionnaire for newly acceding States. Additional comments about it we do not have.

34. We consider that standard questionnaire for newly acceding States is significant aspect what to take into account when member states approve this accession.

35. In Latvia there are no special measures in order to decide about accession of the new member states to the Convention. Up to now Latvia has approved accession of all member states.

The Guide to Good Practice

36. Three parts of The Guide to Good Practice are as significant material or source of information what helps to understand different questions related to the Convention both regarding practice of the Central Authorities and regarding implementation and prevention measures. In conditions when in Latvia legislation regarding Convention gradually develops as significant source of information are II and III part of Guide to Good Practice about implementation and preventive measures.

37. Please, see answer to the previous question.

38. In collaboration with the Centre of the Translation and Terminology, up to now in Latvian there are translated I and II part of the Guide to Good Practice. In the nearest future there is planned to translate III part as well. Both these translations are available at the website of the Centre of the Translation and Terminology
<http://www.ttc.lv/index.php?id=10&l=LV&seid=down&itid=15528>,
<http://www.ttc.lv/index.php?id=10&l=LV&seid=down&itid=15529>.

Within limits we have informed relevant institutions about the Guide to Good Practice, e.g., we have sent informative letter to the Administration of the Courts which coordinates work of Courts in Latvia with request to distribute information to Courts both about mentioned and available parts of the Guide as well as about other questions regarding implementation of the Convention.

39. We do not have additional comments.

40. There were not improvements since questionnaire 2004.

41. We do not have additional comments.

42. In order to develop principled concept of the Guide to Good Practice as support in development of the comprehension, there would be useful to work out Guides which discuss methodologically atypical exceptions related to the Convention. For example, implementation of the Convention in respect of occasions when there are involved diplomatic persons or their families.

43. We do not have additional comments.

44. We do not have additional comments.

Standardized consent form

45. Such a standardized consent forma would be significant aspect with what questions regarding implementation of the Convention could be preferential. However we would like to notice that in development of it there is important to draw special attention with taking into consideration opinion of the all member states – about comprehensive and detailed principles and adjustments which to include in this form.

Statistics and case management

46. In accordance with forms developed by Permanent Bureau, Central Authority of Latvia provides annual statistical reports regarding Convention.

47. Presently Central Authority of Latvia doesn't uses specific software for statistics and case management. In relation to the program iChild the Central Authority of Latvia is interested in it – to get acquainted with it and to reflect on possibility to use this program in its work.

Publicity/debate concerning the Convention

48. Up to now in our experience a publicity related to the Convention was not so big. However, about Convention and facilities what it provides there was particular subject at the broadcast of the Latvian National Radio regarding issues of family. At the national parliament (Saeima) there was not particular debate.

49. Up to now we do not observed such influence.

50. Information related to the Convention is fit in the website of the Central Authority of Latvia as well as with information are provided relevant/involved parties of Convention's cases or just an interested persons from the lawyers. With informative letter we have informed also Courts as well as in the scope of concrete case we have informed Legal Aid Administration of the Ministry of Justice.

51. Presently, in Latvia there are no such NGOs.

Services provided by the Permanent Bureau

52. The Central Authority of Latvia through Administration of the Courts has informed Latvia's Courts about INCADAT data base, about its provided facilities to get acquainted with experience and practice in Courts in other member states in terms of implementation of Convention. In several situations, several Courts are provided with The Judge's Newsletter. Section „Child Abduction” at the website of The Hague Conference also is highly valued.

53. We do not have additional comments or suggestions.

Compliance with the Convention

54. As an example for difficulties which we have experienced we would like to notice unwillingness from the Central Authorities abroad to take into account Latvia's reservation in accordance with Article 24 of the Convention that Latvia doesn't accept documents in French. Recently, however situation has changed to the positive way.

55. Up to now we have not observed such situations/ circumstances.

Non-Convention cases and non-Convention States

56. Latvia has experienced several cases related to the child abduction which are outside the scope of the Convention. In such cases usually one of the parents is from the country what isn't member state of the Convention or from the country which doesn't accepted accession of the Latvia (e.g. Russian federation and United States of the America).

57. Insomuch as that one of the Latvia's neighbours is Russian Federation as well as that in Latvia large proportion is Russians, there is need to examine suggestion to invite Russian Federation to accede and ratify the Convention. There is useful also to invite Russian Federation to take a part at the meetings of the Special Commission.

58. We do not have additional comments.

59. We do not have additional comments.

Relationship with other instruments

60. We do not have additional comments.

61. We do not have comments or concrete observations.

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. Convention of 1996 in Latvia is in force since 1st April, 2003. We do not have additional comments about its operation.

63. -----

64. There were no difficulties related to interpretation of special rules.

65. Latvia expresses readiness to propose its opinion regarding concrete suggestions which are significant for inclusion in the Guide both in terms of methodological guidelines and implementation issues.

66. Latvia esteems this relevant recommendation what promotes development of common sense with combining both Conventions toward to the common goal – protection of the rights of children and protection of common or separated rights of parents.

Any other matters and recommendations

67. -----

68. -----