

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

Here are the replies from the Norwegian Central Authority:

The role and functions of Central Authorities

1.

In general we feel that the communication with other Central Authorities works quite well. We have, however, had some experience with Central Authorities that take quite long before initiating proceedings before the competent authorities in their country, and do not keep us informed about the internal procedures in their country.

We send the original documents by ordinary mail, but we also correspond to a great deal by telefax, e-mail or telephone.

2.

No.

3.

There is information available on www.odin.dep.no. The easiest way to find the information on this website is to search for *barnebortføring*, which is Norwegian for *child abduction*. The website gives a short summary of the Convention, some practical information, and a link to the Hague Conference website. The Norwegian Central Authority, in cooperation with the Ministry of Foreign Affairs and Interpol Norway, are planning to update the information on the Internet regarding child abduction, and making it easier to access.

There is no link from the Child Abduction Section of the Hague Conference to the Norwegian website.

a) There is a link from the Norwegian website to the Hague Conference website.

b) No

c) Yes

d) Not all. There is a reference to the Central Authority for further information.

e) Some information about legal aid, and a reference to the office responsible to deal with applications for legal aid

f) No

g) No

h) No

i) No

j) Not applicable

4.

The Royal Ministry of Justice and the Police does not actively provide any measures in order to encourage voluntary returns and amicable resolutions. However, if any of the parties involved contact us, we try in a neutral and impartial way to inform them about the Hague process including the time and costs involved. If the parties seem to be open for voluntary returns and amicable resolutions, the Central Authority is pleased to encourage and facilitate this, given the right circumstances.

5.

A closer cooperation between the Central Authorities of the Nordic Countries is in progress. The Central Authorities of the Nordic Countries had a meeting in Sweden in 2005, and in Norway in September 2006. We have been informed that the Central Authority of Iceland will invite the Nordic Countries for a follow-up meeting in 2007.

Court proceedings

6.

No, the applications are forwarded to the local courts where the child or children are assumed to stay. There is no tradition in Norway for centralizing judicial competence to certain courts with particular jurisdiction in any judicial matter.

7.

The Hague Convention has been implemented into Norwegian law by an act of July 8th 1988 no. 72 (Child Abduction Act).

a) None other than implementing the Hague Convention.

b) A case under the Hague Convention is heard in the same manner as all other civil trials in Norway. The procedures are according to the Norwegian Dispute Act (act no. 6 of August 13th 1915). There are few limitations as to what evidence can be admitted.

8.

According to the Norwegian Legal Aid Act (act no. 35 of June 13th 1980), all foreigners are entitled to legal aid on the same conditions as Norwegians, irrespective of whether they live in Norway or not. The Central Authority provides information regarding the Legal Aid Act, and how to apply for legal aid. The Central Authority refers to the Norwegian Bar Association for information regarding local attorneys willing to take child abduction cases.

We have not experienced that these procedures have delayed the procedures before the court.

9.

The judge decides whether to hear the child or not, depending on the child's age and maturity. The judge (or a psychologist) will have a conversation with the child outside of the courtroom. As a main rule, children that are 12 or older will always be heard.

10.

The Central Authority of Norway is not aware that Article 20 has ever been invoked in a case in Norway.

Legal issues and interpretation of key concepts

11.

The Hague Convention has been implemented in Norwegian law.

12.

None.

13.

None that we are aware of. For your information, there are relatively few cases to Norway each year, and the jurisdiction is with the local courts throughout the country. Consequently, it would be difficult to establish developments in the interpretation of Convention concepts.

Direct international judicial communication

14.

None.

Immigration / asylum / refugee matters

15.

No such experience with convention cases. No knowledge of whether this might be a problem in non-convention cases, as these cases are handled by the Ministry of Foreign Affairs.

16 - 18.

No such experience.

Criminal proceedings

19.

Child abduction might be considered a criminal offence in Norway (depending on the circumstances of the abduction). Especially applicable is section 216, paragraph 1, of The General Civil Penal Code (act no. 10 of May 25th 1902);

“Any person who causes a minor to be unlawfully deprived of or kept deprived of his parents’ or other authorized persons’ care, or who aids and abets thereto, shall be liable to imprisonment for a term not exceeding three years.”

A public prosecution will only be instituted when requested by an aggrieved person. This will in most cases be the left-behind parent, but we have also experienced grandparents being very actively involved in such a process.

When criminal proceedings are initiated, there have been cases where the abducting parent has not been willing to return to Norway with the child, because he/she then runs the risk of being arrested by the police and prosecuted under the Norwegian Penal Code. In some cases, this has been resolved by a withdrawal of the complaint to the police, and thus the criminal proceedings have been stopped. If the abducting parent still does not return with the child, the criminal proceedings will be resumed.

Obviously, a criminal charge might not impose a voluntary solution or a mediation process.

A criminal charge of the abducting parent might be efficient in order to get help and assistance from Interpol and the local police, in order to locate the parent and children in hiding (reference is made to the Schengen treaty Articles 95 and 91, and the Interpol cooperation where criminal charges might increase the pressure and priority of the police). In some cases the Norwegian Central Authority has experienced that it has been necessary with a criminal charge in order to start the process of returning a child, when it is uncertain which country the child is residing in, and consequently where the application is to be forwarded.

Mediation

20.

The designated judge will consider to seek a voluntary return of the child, or to bring about an amicable solution. Especially in cases involving children it is a strong judicial tradition in Norway to try to seek amicable solutions. A mediation agreement will have the same legal effect as a judgment.

21.

According to guidelines set out in a circular letter (G-136/91), the abducting parent may be granted a short time limit in order to return voluntarily with the child, because it is in the best interest of the child that the situation be resolved by an amicable solution, rather than an enforcement order. If the child is not returned within the deadline, the case must be tried before the court immediately, so that the procedure is not further delayed.

22.

No comments.

Training and education

23.

No comments.

24.

The Central Authority of Norway attends seminars and gives lectures on the Child Abduction Convention upon requests.

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

25.

In some cases accusations of violence and abuse have been raised in order to make use of the exception clauses. However, we have no knowledge of cases where a return has actually been refused because of domestic violence.

The courts follow normal procedures in these cases, i.e. the procedures set forth in the Norwegian Civil Dispute Act. If the hearing or the investigation raises reasonable grounds for suspicion, the case will be further investigated by the police and according to the Norwegian Criminal Procedure Act (act no. 25 of May 22nd 1981) and the General Civil Penal Code.

26.

If issues of alleged domestic violence or abuse are raised, and the investigation leads to a positive conclusion, the Norwegian Social Welfare Authorities, hereunder the Child Welfare Authorities, will be contacted.

27-31.

The Norwegian courts have a wide range of measures and opportunities to employ “undertakings”, in order to provide a safe return of the child. The consideration is left to the discretion of the court in each case.

In general, a foreign court ruling is not enforceable in Norway without an applicable convention bringing it into force in Norway.

Norway will participate in the upcoming negotiations regarding 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, and a possible signature and enforcement of the convention is currently under work.

32.

No such experience.

Standard questionnaire for newly acceding States

33-35.

The Guide to Good Practice

36-44.

The Norwegian Central Authority has used the Guides to Good Practice as reference books.

Standardized consent form

45.

No comments.

Statistics and case management

46.

The Norwegian Central Authority maintains statistics concerning all return and access cases under the 1980 Convention on Child Abduction. The statistics have been forwarded to the Permanent Bureau.

47.

We do not use any special software for case management/statistical purposes. We manage well by using our normal case management system.

Publicity / debate concerning the Convention

48.

The Convention itself has not raised any debate or publicity of such. However, some return cases have given rise to debates relating to the Convention and the Central Authority's measures to assist the children and the parents of which the children have been abducted. Among the cases is one case that has made very slow progress and of which the Hague Secretary has been informed.

Other cases that have raised some debate and publicity are cases where the children's parents have abducted the children abroad in order to escape the resolutions of assumed responsibility by the Public Social and Child Welfare Authorities. Up to this date, these cases are solved, and the Convention together with co-operative local social workers and police contributed to a discrete handling of these cases.

49.

To our knowledge, the Convention does not have any negative effect causing concern.

50.

Mainly by our web site (www.odin.dep.no) and information by telephone, telefax, e-mails etc. The Convention is also among the topics we treat when seminars for judges and prosecutors etc are held. Furthermore, the Convention and its practical significance is dealt with in a circular letter G-136/91, distributed by the Central Authority.

51.

The Central Authority does not cooperate with any organizations working especially with subjects concerning the Convention. However, we are currently working together with a scholar doing research for a PhD on the subject.

Services provided by the Permanent Bureau

52.

The Child Abduction Section of the Hague Conference is in use on a daily basis and it is a very practical instrument in order to get updated contact-details on the Member States and the Central Authorities. We also find the INCADAT to be a very good instrument. The INCASTAT and iChild projects seem very promising.

53.

No comments.

Compliance with the Convention

54.

In general the Norwegian Central Authority find the communication between the Central Authorities efficient and working. In some cases/states we experience a different way of interpreting the Convention, a slow response to start Convention proceedings and problems in order to retrieve information regarding the ongoing process.

55

No comments.

Non-Convention cases and non-Convention States

56-59.

These cases are dealt with by the Norwegian Ministry of Foreign Affairs. We are not aware of any particularly troubling cases in this respect. We are aware that Norway has a bilateral agreement with Tunisia.

Relationship with other instruments

60-61.

No comments.

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

62-66.

The 1996 Hague Convention is not in force in Norway. Norway will, however, participate in the upcoming negotiations regarding the 1996 Hague Convention, and a possible signature and enforcement of the convention is currently under work.

A Guide to Good Practice in implementation of the Convention would be useful.

Any other matters and recommendation**67-68.**

Please be informed that there was an inter-Nordic seminar on child abduction held in Oslo on September 22nd 2006. The following points were discussed during the meeting, and identified as topics of special interest for the 5th Special Commission Meeting in The Hague:

- Ratification must imply implementation.
- Priority. It is important to abide by the provisions in the 1980 Convention stipulating the time within which a case must be decided. All proceedings for the return of a child, including any appeals, must be given adequate priority.
- Efficiency at the Central Authorities. It is of vital importance that all Central Authorities know their duties, have well-trained and educated staff, and are adequately resourced.
- Accessibility to the national court systems. It is important that no monetary obstacles exist regarding the applicant's right of accessibility to the national courts.
- Enforcement measures. When the court orders the return of a child, it is important that the return order is clear and enforceable, and when applicable, includes provisions on how the child shall be returned.
- Encouraging non-convention states to sign the Convention. The Nordic countries welcome the efforts made by the HCCH to encourage non-convention states to sign the Child Abduction Convention.