



REPUBLIC OF POLAND
MINISTRY OF JUSTICE
Judicial Assistance and European Law Department
AL. UJAZDOWSKIE 11
00-950 WARSZAWA SKR. POCZT. 33
Tel./fax. +48 22 89 70 539

Warszawa, 10 July 2006

Mr. Hans van Loon
Hague Conference On Private International Law
Permanent Bureau
2517 KT The Hague
The Netherlands

Dear Mr. Hans van Loon,

In reference to the questionnaire drawn up by the Permanent Bureau of the Hague Conference on Private International Law attached to the letter from the Permanent Bureau of 13 April 2006 no L.c. ON No 12(06) the Ministry of Justice of the Republic of Poland would like to inform you about the following matters:

1/ We have not encountered any difficulties in achieving effective communication with other Central Authorities. It has been facilitated to a great extent by using modern means of communication, such as the Internet, Fax etc. Unfortunately in some cases using these means may be the reason for receiving the correspondence by an unauthorized person. Therefore, we undertake all the necessary actions to prevent such situations e.g. by bounding the addressee by obligation of providing us with the correct telephone and fax number, as well as the e-mail address. What is more, we require the addressee to confirm that the correspondence has reached him.

2/ We have experienced some difficulties regarding our co-operation with other Central Authorities, e.g. long periods of expecting responses. However, it has not been a common practice and refers only to individual cases of specific and complicated nature.

3/ The Ministry of Justice of the Republic of Poland does not maintain a separate website referring to the Hague Convention matters. However, the main website of the Ministry of Justice contains information regarding all the organizational units of the Ministry, where the Convention is available to everybody. No brochure or information pack with regard to wrongful removal or retention of a child has been published so far. Nevertheless, a number of articles on the Convention have appeared in legal magazines and daily newspapers. Moreover, a number of works on the proceedings in cases concerning wrongful removal or retention of a child, particularly on ways of obtaining legal aid and advice are widely accessible.

4/ The Polish Central Authority does not undertake to encourage voluntary returns or amicable resolutions between the parties to the proceedings as it has no possibility to take such actions. Any actions regarding such matters are undertaken solely by the Guardianship Court, before which the proceedings under the Hague Convention take place. Under the Article 223 § 1 of the Polish Code of Civil Procedure (k.p.c.) the judge is entitled to encourage amicable resolution between the parties. Moreover, the court may advise the parties to use mediation. Under no circumstances may the attempts to reach an amicable resolution lead to undue delay in return proceedings.

5/ Yes, it is a common practice of the Polish Central Authority as well as many other Central Authorities, with which the Polish Authority co-operates.

6/ It is within the competence of the Polish District Courts as the first instance courts to hear the applications for return of a wrongfully removed child to Poland under the Hague Convention. All the Polish District Court have jurisdiction over such cases. Concentrating the jurisdiction to hear the cases under the Hague Convention in a limited number of Polish District Courts has not been contemplated by the Polish Authorities so far.

7 a) - b)/ The provisions of Articles 7 and 11 of the Hague Convention are integrated into the Polish domestic law and are directly applied. Under these provisions the Polish authorities are obliged to act expeditiously in proceedings for the return of wrongfully removed children. Moreover, the obligation to undertake expeditious measures in such cases is imposed on the Polish authorities under the Article 11 par 3 of 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. No other special regulations specifying the period of time in which the proceedings under the Hague Convention shall be completed exist.

8/ An applicant residing abroad is entitled to appoint a legal counsel to represent him before the Polish court during the proceedings under the Hague Convention. Moreover, the applicant has the right to request the court to appoint a public defender for him. Such a request may be submitted by an applicant, who was beforehand exempted from the obligation of bearing the costs of the proceedings after he indicated that incurring such costs without the detriment to his and his family's financial situation is not possible. The court requests the competent regional legal council to appoint a public defender. This procedure does not lead to delays in proceedings for the return of a child under the Hague Convention. The Ministry of Justice acts as an intermediary in the transmission of the applications for legal aid and advice in the cases it handles as the Central Authority for the Hague Convention.

9/ In cases concerning determining child's rights Polish courts are obliged to hear the child and possibly take into consideration the child's views (Article 72 § 3 of the Constitution of the Republic of Poland). This obligation extends also to the cases under the Hague Convention heard before a Polish court. Polish law does not specify the age limit on which the hearing of the child depends. By virtue of the Article 576 § 2 of the Polish Code of Civil Procedure (k.p.c.) hearing of a minor shall take place outside the courtroom. The court may order the minor to appear personally at the hearing provided that the minor attained the age of 13. It is the judge or the person appointed by him, e.g. a probation officer that hears the minor.

The court shall take into account child's objection to return to the place of habitual residence on the condition that the child's opinion is independent and the child attained a sufficient degree of maturity to express such an opinion.

10/ The Ministry of Justice has no knowledge of any case, in which the court applied Article 20 of the Convention as a legal basis for refusing the return of a child.

11/ The Ministry of Justice takes a view that no provision of the Constitution of the Republic of Poland by any means hinders implementing the Hague Convention on the Civil Aspects of International Child Abduction fully.

12/ Under the Article 91 § 1 of the Constitution of the Republic of Poland an international agreement ratified and published in the Journal of Laws becomes legally binding and integrated into the domestic law and takes priority over the Polish law. Therefore, no separate procedure to implement the Convention was required. However, the law of 19 July 2001 (amending the Law on Court Costs in Civil Cases and the Law on Judicial Officers and Execution-the Polish Code of the Civil Procedure) published in the Journal of Laws of 2001 No. 96 Item 1169 introduced the new Polish regulations on execution of the court judgments on return of a child in the cases under The Hague Convention of 25 October 1980 as well as under the provisions of the Polish Family and Guardianship Code. The law took effect on 27 September 2001 as a part of the Polish Code of Civil Procedure (attached you will find an electronic copy of the legislation).

13/ There have not been any important developments regarding the issues of the Convention mentioned in the points a) to l) in the question 13 within the specified time. This is due to the fact that after the introduction of the amendment to the provisions of the Polish Code of Civil Procedure in 2001 the cases under the Convention are not subject to review in the cassation appeal with the Supreme Court. The ongoing interpretation of the Hague Convention is within the competence of District and Regional Courts.

14/ Poland supports the idea of further developments in the area of communication between the courts in different countries. The number of cases in Poland in which such contacts take place is constantly increasing not only for legal but also for factual reasons. It should be noted that the Council Regulations (EC) introduced direct communication between the courts in the EU member states regarding service of documents, hearing the evidence or performing any other actions in the proceedings for the return of a child. The development of the European Judicial Network in civil and commercial matters as well as the Polish internal network including judges constituting links for transmission of the information and court officers, who specialize in cases regarding the international conduct of legal transactions is here essential. Moreover, the constant development of the communication between the Polish courts is to a great extent facilitated by the wider and easier access to the modern means of communication such as the Internet, Fax, telephone or videoconference. An important factor is also the increasing number of Polish authorities officers who have a command of at least one foreign language, which is highly appreciated by the Polish authorities. It should also be noted that the Polish Central Authority in the Ministry of Justice, the duties of which are performed by the family judges, remains in a constant and direct contact with individual Polish courts and provides aid and advice in contacting the right institutions, transmitting, obtaining and exchanging all the necessary information.

It needs to be mentioned, however, that the constant development of the communication between the courts cannot infringe on the independence of judges.

15-18/ So far none of the cases handled in Poland under the Hague Convention has experienced the problems mentioned in questions 15 to 18. Generally, the cases regarding granting asylum or refugee status are handled in the course of administrative proceedings and remain within the competence of the Ministry of the Interior and Administration. Some decisions concerning minors might also be taken by the Guardianship Court under the Polish law in case of emergency. We have encountered such cases, where one of the parents (a Polish national) was not granted an entry visa although the reason for his visit to another country was seeing his child.

19/ According to the provisions of the Article 211 of the Polish Penal Code and the rulings of the Supreme Court a parent may be deemed to have committed a crime of wrongful removal of a child on the condition that his parental custody of the child had been limited, suspended or terminated prior to abduction or retention of the child. In the case when the person who abducted the child expresses the intention to return to Poland together with the child despite the criminal charges pending against him, he may apply to a competent court for a safe conduct as a guarantee of remaining at liberty until the end of the criminal proceedings. Moreover, he is entitled to use all the rights of the persons suspected and accused provided for in the Polish law.

20/ In practice family courts in Poland use mediation procedure in cases concerning the scope of parental custody or the child abduction. The most desirable outcome of the proceedings is of course achieving its main goal, namely the return of the child to the place deemed as his habitual residence before the abduction and a peaceful regulation of the access rights in the course of mediation procedure. Under Article 183¹ § 1 and 2 of the Polish Code of Civil Procedure (k.p.c.) the mediation procedure is voluntary and is undertaken either on the grounds of an agreement made by the parties in question or on the basis of a court decision. If the parties reach an agreement in the course of mediation, the content of the agreement is either included in the report or attached to it (Article 183¹¹ § 2 of the Polish Code of Civil Procedure). Further on, the agreement is approved by the court by virtue of a decision issued in a closed session. The agreement reached by the parties in the case of the return of a child to its place of habitual residence may be executed by ordering the compulsory taking away of the child by a probation officer and returning it to an authorized person. The agreement in the case of regulating the access rights may be executed through coercive measures under Article 1050 et seq. of the Polish Code of Civil Procedure.

21/ Under Article 183¹⁰ § 1 of the Polish Code of Civil Procedure the mediation cannot result in undue delay in the court proceedings as the court sets a time limit for mediation which does not exceed a month unless the parties unanimously apply for postponing the deadline.

22/ We have no further comments on that matter.

23-24/ It is the Presiding Judges of the Regional and Appellate Courts with the assistance of the Ministry of Justice as the Central Authority who organize the conferences on the effective functioning of the provisions of the Hague Convention in Poland. It is also possible for the Ministry of Justice to organize such conferences as a part of its professional training activity. Judging from the experience, the conferences have unarguably positive impact on broadening the knowledge of the judges who enter judgments in cases under the Hague Convention. Moreover, seminars are also organized for this purpose on regional and international level.

25/ Only the party refusing to return the child may raise the issue of domestic violence. In practice, raising the issue of domestic violence as the reason for refusing the return of a child is a frequent occurrence. From Polish courts' jurisdiction it follows that the return of a child is frequently refused due to the proven domestic violence. It is the party raising the issue of domestic violence that has the responsibility of providing the evidence in support of the issue and it is the party's choice what kind of evidence to present.

26/ According to the provisions of the Polish law (Article 109 of the Polish Family and Guardianship Code) and at the request of the party to the proceedings or ex officio the Guardianship Court may secure the return of a child despite the proven charge of domestic violence under the given circumstances. The Court may approve any measure, which it deems the safest to the child's interest. The ordered measure cannot, however, infringe on the applicant's parental custody.

27/ It seems that in the future the "undertakings" that an applicant is able to offer or his promise to carry out certain "undertakings" may be insufficient for the Polish Guardianship Court which hears cases for the return of the child under the Hague Convention in the future. However, a specific action or actions undertaken by an applicant in order to overcome obstacles to a safe return of a child may be of great importance to the court issuing a judgment in the case.

28/ Polish courts have no possibility to supervise implementing and applying the measures "offered" by the applicant before the court in another country. If such measures result from the judgment to return the child to Poland, implementing depends on the prior recognition of the enforceability of the judgment within the territory of Poland.

29/ It seems that there are no legal obstacles for a Polish Guardianship Court to request another court to issue a mirror order or a safe harbor order prior to making a judgment on the return of a child. It is at the discretion of the court whether the judgment of the requesting country is accepted.

30-31/ We have no comments on the issues.

32/ The Ministry of Justice has no knowledge of such cases.

33/ Since Poland acceded to the Hague Convention in 1992, we have not filled out the standard questionnaire for any newly acceding States.

34-35/ The question of accession did not give rise to any doubt or difficulties in Poland. Currently, the Polish Ministry of Foreign Affairs proceeds with accepting the declarations of newly acceding States. The final decision on accepting the declarations shall be made by the Council of Ministers of the Republic of Poland, about which the Secretariat of the Hague Convention on Private International Law shall be notified.

36/ The Guide of Good Practice has not exerted any influence on functioning of the Polish law. It is the common view that Polish law is effective in handling the issue of international child abduction.

37/ The Guide of Good Practice has not exerted any direct influence on making the policy of implementing the Convention in Poland. However, we consider the advice on the issue of

professional training of the judges in the area of implementing the Convention very useful, in particular in the area of taking measures to prevent child abduction. It should be noted that preventing child abduction is much more effective than restoring the situation from before the abduction of a child according to the provisions of the Hague Convention.

38-39/ The provisions of the Guide to Good Practice is discussed during the conferences organized by the Ministry of Justice or the Presiding Judges of Regional and Appellate Courts for the judges adjudicating in cases concerning family matters. Discussion on the provisions of Part II of the Guide to Good Practice by the judges, prosecutors and probation officers may lead to propagating implementation of the Convention on a much larger scale. Moreover, the Guide to Good Practice is available on the official website of the Ministry of Justice.

40/ A legally binding judgment of a Polish court regulating the applicant's access rights is subject to a compulsory execution under the Article 1050 et seq. of the Polish Code of Civil Procedure (k.p.c.). In case of a failure to execute the judgment the court shall set a deadline on an application of the creditor (the authorized person) for the debtor (the obliged person) to execute the judgment under the penalty of a fine. After the expiration of the deadline the court shall levy a fine on the debtor and set a new deadline under the penalty of a higher fine. At the same time the court shall order the fine to change into detention in case of the debtor's failure to pay the fine. Within one judgment the court may levy a fine on the debtor not higher than 1000 zlotys unless three successive fines do not bring any effect. The total amount of the fines levied on the debtor cannot exceed 100 000 zlotys.

41/ The Ministry of Justice finds it very useful to follow the provisions of the Guide to Good Practice on Transfrontier Access/Contact on a daily basis. The issue of Transfrontier Access/Contact is presented in the Guide in a very comprehensive way, thus, in our view, it requires no supplementing.

42-44/ The Ministry of Justice has no comments or suggestions on the issues to be included in the Guide to Good Practice.

45/ The Polish Central Authority is in favor of developing such a form. In such a case, though, it would be advisable to discuss the legal basis for such a form.

46-47/ We do not maintain any statistics due to the fact that cases under the Hague Convention may be heard in any Guardianship Court in Poland and there is no formal requirement for the Ministry of Justice to be an intermediary in the transmission of the applications to Polish courts. It is a common practice that the applications are submitted directly to Polish courts. This refers also to applications submitted to institutions abroad without participation of the Polish Ministry of Justice. Therefore, maintaining such statistics is not possible. There are no legal grounds which would oblige courts to notify us about receiving such applications or the course of the proceedings resulting from them.

48/ We have no knowledge of any case, where the Convention gave rise to any discussion in the Polish media. Neither has the Polish Parliament discussed the provisions of the Convention recently.

49/ We have no knowledge of such cases.

50/ The Ministry of Justice has encouraged the media to disseminate information about the provisions of the Convention on many occasions. We have provided the media with all the necessary information concerning the interpretation of the specific provisions of the Convention. It should be noted that it is a well-known fact that such a Convention is in effect in Poland.

51/ The foundation ITAKA is a Polish non-governmental organization which is involved in the matters of child abduction not only in Poland but also abroad. The address of ITAKA: ITAKA 00-959 Warszawa, skr. pocztowa 110, telephone number: 048 22 654 70 70; www.itaka.org.pl

52-53/ The Permanent Bureau of The Hague Conference on Private International Law provides not only people who are interested in institution of the proceeding but also lawyers, who deal with the cases under the Convention on a daily basis with comprehensive information about the Hague Convention itself as well as its implementation and operation. All the ways of disseminating information mentioned in the questions, such as creating databases or other publications are of use for the officers implementing the Convention. We strongly support and anticipate introduction of new means of disseminating information by the Permanent Bureau. We find it extremely important and useful that the Bureau offers a wide range of training courses (such as seminars and conferences) for the judges and other officers who operate under the Convention, therefore we strongly support the idea of such training courses in the future.

The Polish Central Authority would like to express its gratitude and recognition of the work and initiatives of the Permanent Bureau of the Hague Conference on Private International Law.

54-55/ We have encountered some difficulties in co-operation with some of the Contracting States, however, it refers to a small number of individual cases. It is not possible to specify the objections to any of the Contracting States on the basis of few individual examples. The burden of incurring the costs of legal advisor's assistance seems to cause difficulties for the Polish citizens, which is necessary when a case is heard by a court in one of the Contracting States, while some of those States have little possibility of appointing a public defender.

56/ We have no knowledge of such cases.

57/ We do not have any comments on that matter.

58/ The Republic of Poland has concluded a number of bilateral agreements, which provide for a possibility of executing a judgment concerning the return of a child. We concluded bilateral agreements with the following countries: Algeria, Egypt, Morocco, Russia and Syria.

59/ We have no suggestions concerning that matter.

60-61/ In our view, the Hague Convention along with the provisions of the Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000 as well as the Convention on the Rights of the Children, adopted by the General Assembly of the United Nations on 20 November 1989 indicate all the possible dangers connected with international child abduction and complement each other constituting an effective measure in dealing with the issue.

62-66/ Poland is not a State Party to the Convention of 1996, however, Poland signed the Convention on 22 November 2000. The works leading to implementing the Convention are in progress. Currently we anticipate the decision of the Council of the European Union on ratification of the Convention by the Member States of the European Union. Poland would appreciate creating such a guide.

67-68/ Poland has no comments or suggestions on the issues.

Yours sincerely,
Head of the Division of International Law
Katarzyna Biernacka

Section 5. ⁽³²⁰⁾ **Proceedings concerning the taking away of a person subject to parental authority or care**

Art. 598¹. § 1. In proceedings concerning the taking away of a person subject to parental authority or care, the prosecutor shall be served with a copy of the request and notified of the dates of the court hearing.

§ 2. In proceedings referred to in § 1, Article 472 shall be applied accordingly.

§ 3. In proceedings referred to in § 1, Article 570 shall not be applied.

Art. 598². § 1. During the proceedings concerning the taking away of a person subject to parental authority or care, conducted under the Convention on the Civil Aspects of International Child Abduction (Journal of Laws of 1995, No 108, item 528 and of 1999, No 93, item 1085), the issue of parental authority or care of that person may not be examined. The court shall ex officio suspend the proceeding concerning that issue at the moment the proceeding concerning the taking away of a person subject to parental authority or care is instituted.

§ 2. After the proceeding concerning the taking away of a person subject to parental authority or care has been concluded, the court shall resume the suspended proceeding.

§ 3. In the case other than that described in § 1, if for the purpose of taking the decision on the request for taking away a person subject to parental authority or care, it is necessary to examine the request and the case concerning the parental authority jointly, the proceeding shall be conducted with regard to Article 579.

Art. 598³. In the event that the whereabouts of the person subject to parental authority or care is not known, the court shall conduct a relevant proceeding to establish it. The court may in particular request the Police to establish the whereabouts of that person.

Art. 598⁴. The judgement concerning the essence of the matter may be only issued after the hearing has been conducted.

Art. 598⁵. In the proceeding concerning the taking away of a person subject to parental authority or care, the court shall determine the date for the person obliged to give back the person subject to parental authority or care to the eligible person.

Art. 598⁶. If the person obliged to give back the person subject to parental authority or care fails to comply with the decision referred to in Article 598⁵, the court, upon the motion from the eligible person, shall order the court probation and supervision officer to take that person away under compulsion.

Art. 598⁷. The court, if needed, shall request the person subject to parental authority or care to be taken away under compulsion by the probation and supervision officer acting in the court, in the area of which that person actually resides.

Art. 598⁸. The court probation and supervision officer has a power to take away a person subject to parental authority or care from anybody with whom that person is staying.

Art. 598⁹. Compulsory taking away of a person subject to parental authority or care and giving him/her back to the eligible person may only be effected in the presence of the eligible person or a representative of the institution authorised by him/her. If none of these

persons appears on the date determined by the court probation and supervision officer, the action shall not be effected.

Art. 598¹⁰. Upon the request from the court probation and supervision officer, the police are obliged to provide him with the assistance in performing actions concerning taking away under compulsion a person subject to parental authority or care.

Art. 598¹¹. § 1. Should compulsory taking away of a person subject to parental authority or care meet obstacles consisting in the concealment of that person or in another act undertaken for the purpose of frustrating the enforcement of the judgement, the court probation and supervision officer shall notify that fact to the prosecutor.

§ 2. If the person obliged does not reveal the whereabouts of the person subject to parental authority or care that is to be taken away, the court, upon the motion from the court probation and supervision officer, shall order bringing him/her under compulsion with a view to make a statement regarding that person's whereabouts. As for the criminal effects, that statement is equivalent to the sworn testimony, of which the person making a statement should be warned by the judge.

§ 3. If the person obliged or other persons obstruct the enforcement of the judgement in the place where the person subject to parental authority or care is staying, the police, on the demand of the court probation and supervision officer, shall remove these persons from the place of enforcement of the judgement.

Art. 598¹². § 1. While taking away a person subject to parental authority or care, the court probation and supervision officer should act with extreme caution and do his/her best not to infringe the good of that person, in particular not to cause a bodily or psychical harm to him/her. If needed, the court probation and supervision officer may request the assistance from the social care agency or other institution serving that purpose.

§ 2. If, in consequence of the enforcement of the judgement, the good of the person subject to parental authority or care would be seriously infringed, the court probation and supervision officer shall refrain from the enforcement of the judgement until the threat ceases to exist, unless the non-enforcement of the judgement would create even more serious a threat to that person.

Art. 598¹³. The provisions of Articles 598⁶ – 598¹² shall accordingly apply to the enforcement of judgements issued pursuant to Article 569 § 2, concerning the taking away of a person subject to parental authority or care, as well as to judgements concerning the placement of a minor in the children's care institution or with the foster family.