

**Bosnia and Herzegovina**  
**MINISTRY OF JUSTICE**

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**Answers to the Questionnaire on the Enforcement of Return Orders under the 1980 Hague Convention and of Access / Contact Orders following the numbers indicated in the Questionnaire:**

**I. LEGAL BASES FOR THE ENFORCEMENT OF HAGUE RETURN ORDERS**

1. In Bosnia and Herzegovina, no specific legislative provisions have been passed concerning the application of the 1980 Hague Convention.
2. In Bosnia and Herzegovina as a State composed of two entities, in force are the Family Law of the Republika Srpska of 2002 (Official Gazette of the Republika Srpska, No. 54/02) and the Family Law of the Federation of Bosnia and Herzegovina of 2005 (Official Gazette of the Federation of Bosnia and Herzegovina, No. 35/05), which govern in Chapter IX - Articles 361 to 369 "Enforcement of court orders to return the child to the parent he / she will live with" and "Enforcement of court orders concerning access / contact of the child with the parent".

The content of the relevant provisions is the following:

Based on the judicial decision concerning which parent the child will live with, the return of a child may be ordered and enforced, whether the decision ordered the child return or not.

When the party that is ordered the return fails to return the child on a voluntary basis, the court shall order the return by a decision on enforcement and order the return of the child within 24 hours.

A proposal for return enforcement may be made by the parent the child will live with and the guardianship organ.

During the enforcement procedure the court shall protect the child to the highest possible extent.

Having estimated the circumstances of the case, the court will order return by removing the child or pronouncing and enforcing a punishment (which may be a pecuniary fine or imprisonment) against the person that, contrary to the judicial order, refuses to return the child or hinders the enforcement by hiding the child.

Enforcement measures (punishment) may be taken against the person the child is with and against the person on whose will the child's return depends.

Decision on enforcement shall be handed in to the party the child is being removed from at the first enforcement action.



The court shall advise the parent the child is to be returned to about the time and place of the return enforcement, and may also invite the guardianship organ to be present at the enforcement. In practice, the guardianship organ is regularly invited although it is not mandatory for the sake of the child's safety.

3. In Bosnia and Herzegovina, there are no specific provisions, directives, guides concerning the enforcement of court orders, nor do courts rely on court practice.
4. The application of the aforementioned rules is generally effective.

## II. ENFORCEABILITY AND LEGAL REMEDIES

1. a) When in extrajudicial proceedings the court passes a decision on the merits, i.e. on return, depending on the case, it usually orders immediate return, or at the latest within the time-limit set by the court in agreement with the person the child is being returned to. This judicial decision is subject to appeal, but the appeal does not suspend the enforcement.

If the parent ordered to return or surrender the child does not act so on a voluntary basis, the court will issue an enforcement order in the form of a decision, at the proposal of the parent the child will live with or at the proposal of the guardianship organ.

Enforcement order is not subject to appeal. Only a challenge may be made against the order within 8 days, but the challenge does not suspend the enforcement of the return order.

- b) Such challenge may be made only once to the court which issued the enforcement order.
2. a) As mentioned above, the court may order enforcement by removing the child or pronouncing punishment which may be a pecuniary fine or imprisonment; such a measure is in the form of a decision.
- b) The court.
3. Decision on return is subject to appeal, but the appeal does not suspend enforcement.
4. a) It has already been stated that enforcement order is not subject to appeal but only to challenge.
- b) Challenge may be made just once to the same court which made the return enforcement order, which does not, as stated above, suspend the order enforcement.



5. In our State, both types of legal remedy can be lodged simultaneously, but it is not the same court which deals with both legal remedies.
6. No.

### III. ENFORCEMENT PROCEDURE

#### A. The order to be enforced and the aims of enforcement

1. a) The surrender of the child to the applicant (if necessary, "for the purposes of returning the child to his/her State of habitual residence").
2. b) The child is handed over to the applicant or a person designated by him or her in the State where enforcement takes place.
3. The repatriation of the child in our past practice has been organised by the applicant or a person authorised by the applicant.

#### B. Actors involved in enforcement

1. It has already been mentioned that, once the decision to hand over, or return, the child has been made, an enforcement order is made if the parent who is ordered a hand over - return does not act according to the decision.
2. In accordance with Law, enforcement of the court's return order is initiated by a) the applicant in person or through his or her lawyer, and b) guardianship organ.
3. a) The Ministry of Justice of Bosnia and Herzegovina as the Central Authority receives from Central Authorities of other States all applications under the 1980 Hague Convention. As a rule, applications towards persons in the territory of the Federation of Bosnia and Herzegovina are forwarded for further procedure to the Ministry of Justice of the Federation of Bosnia and Herzegovina, and in the territory of the Republika Srpska to the Ministry of Justice of the Republika Srpska, and in the territory of the Brčko District to the Judicial Commission of the Brčko District. In their respective territories, these institutions further include courts competent to decide on a child's return, centres for social work protecting the interests of the child, and, depending on the circumstances, also the competent organs of the Interior Affairs – Police.
- b) When the child is returned or surrendered, for the purposes of protection of his / her interests, centres for social work are always included in co-operation with the court deciding on the application and they can engage in each concrete case, depending on the circumstance, social workers, pedagogues,



psychologists, neuro-psychiatrists, and others in order to facilitate the handover of the child and protect the child's interests.

- c) The presence of the applicant (or of the person designated by him / her) is required at the stage of enforcement of the handover – return order.
- 4. a) Supervision of the enforcement procedure is done by the court which passed the enforcement order, centres for social work, and the police as required.
- b) A first instance court always supervises enforcement and it shall act according to the decision of a higher instance court even if it is different from the first instance court's decision.

### **C. The enforcement procedure proper**

- 1. There is a timeline for enforcement, but the practical time of return is determined by the court, depending on the circumstances.
- 2. When deciding on surrender or return of the child, the court estimates in the proceedings which time period is necessary to allow appropriate practical arrangements for the return of the child to be made.
- 3. The applicable criminal codes in Bosnia and Herzegovina stipulate that child abduction is a criminal offence and the abductor may be sentenced to a term of imprisonment of up to three years, or if he or she leaves with the child the territory of the State, he / she may be given a prison sentence from three months to five years.
- 4. If the child is taken into hiding after the return order was made, then the competent prosecutor's office and police are included, and the Central Authority shall be informed about it and, if required, it is included if it can help with locating the child.
- 5. When enforcement is initiated, the parties are advised about the place and time of the enforcement; supervision is done by the court in the presence of organs of social welfare and, if required, of police.
- 6. The regulations in force in Bosnia and Herzegovina, which have already been mentioned (the family laws and criminal codes), stipulate pecuniary fines and imprisonment for the person refusing to hand over or return the child under the court order.
- 7. a) In its order, the court usually refers to the specific law article stipulating the measure of enforcement.



- b) If the purpose of enforcement could not be achieved by one of the measures stipulated by law, the court may order another enforcement measure provided.
8. Only bigger courts have permanent duty (after working hours and on holidays); therefore, court orders normally cannot be obtained in the period referred to in the question.

#### **D. Costs**

1. Enforcement procedure does incur costs and they are part of the costs of the court proceedings.
2. The court decides in its own estimate on the costs of proceedings in the matters related to a party's personal and family standing, taking account of the case circumstances and the outcome of the proceedings; as regards the costs of the proceedings incurred by the guardianship organ's participation in the extrajudicial proceedings, the provisions of the Law on legal proceedings are applied. Indigent party in the proceedings that did not cause an increase in the costs of proceedings may be fully exempted from the payment of any costs of the proceedings. No advance payment is required in the enforcement procedure in these legal matters. Underway is a procedure for passing a law on free legal aid according to which it will be possible to engage a lawyer at the expense of budget organs in order to protect the child. Under the law, the legal aid will cover all the proceeding stages.
3. In its decision on return of the child, the court decides who is to pay the child's repatriation costs.
4. Foreign applicants are provided with the decision specifying also the costs of the proceedings.
5. Enforcement organs have an executive role, but their decisions are implemented by other organs.
6. None.

#### **IV. STATISTICAL INFORMATION**

1.	2001	2
	2002	-
	2003	2
2.	2001	2
	2002	-
	2003	2



It was not a challenge against enforcement since no enforcement was carried out. Actually, in all the cases mentioned above, the court accepted the arguments of the parent who the child was with not to acknowledge the applicant's request for return.

3. None. When it comes to enforcement, the challenge does not suspend the enforcement of court's decision on return of the child.
4. The court determines the proceedings time by enforcement order, depending on the circumstances of the case.

## **V. CO-OPERATION**

1. There are no co-operative agreements. Co-operation is informal.
2. There are no co-operative agreements. Co-operation takes place under the Hague Convention.
3. Department for International Legal Aid which, inter alia, deals with the Hague Convention applications, does not have a website.
4. No.

## **VI. TRAINING AND EDUCATION FOR PROFESSIONALS**

1, 2, 3 and 4.

Training and education in this field is generally done spontaneously and implementers in the Central Authority are not included, nor are specialised judges dealing with these proceedings.

## **VII. OTHER INFORMATION**

1, 2, 3, 4, 5, 6 and 7.

On the date of this report, the Sector for International Aid and Co-operation should be staffed and technically equipped. The Sector will have a contact person in charge of Hague Convention procedures.

We would like to kindly ask you to have these facts in mind as we ourselves think that this report has some deficiencies and shortcomings. We believe that in the future work we will have better relations and contact with Central Authorities of other States, as well as with Authorities in a State included in such proceedings.



## VIII. ORDERS GRANTING RIGHTS OF CONTACT / ACCESS / VISITATION

Article 369 of the Family Law in force stipulates that "In the enforcement procedure for the purpose of maintaining personal relations and contact of the child with the parent he / she does not live with, the provisions of the same Law in Articles 364 to 368 shall apply", related to the return enforcement.

Sarajevo, 6 October, 2006

