

QUESTIONNAIRE ON THE ENFORCEMENT OF RETURN ORDERS UNDER THE 1980 HAGUE CONVENTION AND OF ACCESS / CONTACT ORDERS

RESPONSE OF CYPRUS

I. LEGAL BASES FOR THE ENFORCEMENT OF HAGUE RETURN ORDERS

1. Please give details of any *specific* legislative provisions which exist in your State concerning the enforcement of return orders under the 1980 Hague Convention. Please specify the title of the instrument, its legal nature (law, decree, administrative regulation or rules of court etc.) and short description of content.

- (a) The law that ratifies the Convention
- (b) Procedural law.

2. Please give details of any *general* legislative provisions which exist in your State concerning the enforcement of court orders in the area of family law and govern the enforcement of return orders under the 1980 Hague Convention (either in the absence of specific provisions under question I.1 or in addition to any such specific provisions).

Please specify the title of the instrument, its legal nature (law, decree, administrative regulation or rules of court etc.) and the content of the relevant provisions.

In addition to the above the Courts of Justice Law contains provisions for contempt of court proceedings and also the Penal code contains provisions penalizing contempt of court orders like the Hague Convention orders.

3. Please give details of any judicial decisions, practice directives or guides concerning the enforcement of court orders in the area of family law that govern the enforcement of return orders under the 1980 Hague Convention (either in the absence of specific provisions under question I.1 or in addition to any such specific provisions).

In addition to the above and most important is the fact that Article 169 of our Constitution provides that conventions shall have as from their publication in the official Gazette, superior force to any municipal law.

4. Do you have any other comments relating to the law governing enforcement of Hague return orders, including any comments on the effectiveness of these rules?

No

II. ENFORCEABILITY AND LEGAL REMEDIES

1. a) Is a Hague return order subject to appeal or other forms of challenge? Please give details (number and character of legal remedies, possible time-limit for them, possible time-limit for appellate court or court of appeals to decide etc.).

Hague return orders are subject to appeal. The time limit is 14 days. There is a procedure for extending the time but it is a very difficult procedure and it is almost never approved.

b) Please specify whether any such challenge may only be made once, and which court or body has jurisdiction to hear the appeal.

The appeal against a return order can be made only once and the only Court that has jurisdiction to decide is the Supreme Court of Cyprus in its appellate jurisdiction.

2. a) Please give details of any authorisation or other decision required for the actual enforcement of the Hague return order (e.g. registration for enforcement, declaration of enforceability, order of a specific enforcement measure or other).

After a Hague return order is given by the Family Court the Court issues a drawn up order which is signed by the Registrar of the Family Court containing a clause with the consequences of non compliance and this order is enforceable unless if there is an appeal in which case there might be an interim order for the provisional non-return until final judgment.

b) Which is the competent organ for these decisions?

No further decision is needed.

3. Does the Hague return order have to be final and no longer subject to ordinary appeal before any authorisation for enforcement or other measure specified under II.2 may be ordered?

The Hague return order is immediately enforceable unless there is an order in the process of an appeal suspending the return until final judgment in the appeal proceedings.

4. a) Are any of the decisions specified under II.2.a) (authorisation to enforce or other decision) subject to appeal independent of any appeal against the merits of the return order? Please give details (number and character of legal remedies, possible timelimit to lodge them, possible time-limit for appellate court or court of appeals to decide etc.).

No. there can only be an appeal against the decision for the return order or the dismissal of the return application.

b) Please specify whether any such challenge may only be made once, whether it suspends the enforceability / enforcement of the order and which is the court or body to decide the appeal.

It has already been answered by the above.

5. If in your State both types of legal remedy as specified under II.1 and II.4 (i.e. against the order on the merits and against any decision taken at or required for the enforcement stage) exist, can they be lodged simultaneously? Is it the same court that deals with them if they are lodged (a) simultaneously, and (b) at different times?

It has already been answered by the above.

6. Do you have any other comments relating to legal remedies and the enforcement of Hague return orders?

No.

III. ENFORCEMENT PROCEDURE

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

1. If an application for return of a child under the 1980 Hague Convention is successful, what is normally ordered:

- 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")**
- b) the return of the child to State X**
- c) other?**

Normally the order is for the return of the child to its habitual residence or to mother/or father (left behind parent) for the purpose of returning the child to its habitual residence.

2. If such order has to be enforced, please specify which of the following is / are normally the aim of enforcing a return order:

- a) to remove the child from the abductor or any other person**
- b) to hand the child over to the applicant or a person designated by him or her in the State where enforcement takes place**
- c) to ensure the child's return to his or her State of habitual residence**
- d) other.**

It depends on the circumstances of the case. Usually the aim is to remove the child from the abductor and hand it over to the applicant if he or she is present to take it back to the habitual residence. If the parent is not available the Central Authority is responsible for this task.

3. Whose responsibility is it to organise the repatriation of the child?

It is the Central Authority's responsibility.

B. Actors involved in enforcement

1. Once a return order is made, is a specific request for enforcement necessary?

No need for specific request for enforcement.

2. Please specify who initiates enforcement of the court's return order:

- a) the applicant (in person or through his or her lawyer)**
- b) the Central Authority**
- c) the court**
- d) the enforcement organ itself**
- e) other.**

Where the law leaves choices or discretion, please give details concerning actual practice.

The Central Authority initiates enforcement of the return order.

3. a) Please give details of the persons, organs and institutions (e.g. enforcement organs, court, parties, psychologists, social workers, Central Authorities, other) involved in the enforcement of return orders under the 1980 Hague Convention
i) according to the law

According to the Law the organ which is responsible for the return is the Central Authority.

ii) in practice.

In practice this is effected with the help of the police or a social worker.

Please describe their respective roles and functions in enforcement, and whether their participation is mandatory. If this is not the case for some or all of the actors mentioned, please specify who decides about their respective participation and to what extent they are normally involved in Hague return cases (regularly or exceptionally and, in the latter case, depending on which conditions).

The role and participation of the police or a social worker is not mandatory unless this is specified in the court return order. In cases where there is suspicion that the enforcement proceeding will be difficult, there can be a petition for an additional order from the court specifying the role of the Police or Social Services.

b) In particular, are any social or psychological services available in order to prepare the child and / or the defendant for the return in order to de-escalate or even avoid enforcement by coercive measures?

The Social Services are always available to help the child or the abductor and also prepare them for the return.

c) Please specify also whether presence of the applicant (or a person designated by him or her) is required and, if this is the case, at which stage of the enforcement proceedings and for what purpose.

Presence of the applicant (left behind parent) is not necessary for the enforcement of the return. Of course this depends on the age of the child. If the child is very young the presence of the applicant might be desirable.

4. a) Is there any supervision / control of the enforcement procedure by a court, the Central Authority or any other State authority? If a court is supervising / controlling the enforcement procedure, which court is it? The court that made the order or other (e.g. a specific enforcement court)?

The Central Authority supervises the return. The only case that the court can become involved is in the case of contempt proceedings. The court that issued the order of return, has jurisdiction to try the contempt proceedings.

b) What if the court of first instance refused return, and the appellate court or court of appeals ordered return? Would the court of first instance, the appellate court or court of appeals which ordered return, or any other court be the court supervising / controlling enforcement in such a case?

In the case of an appeal decision, again the Central Authority is responsible for the return.

C. The enforcement procedure proper**1. Is there a timeline for enforcement?**

No there is no timeline for enforcement. It is effected immediately if possible.

2. Is it normal to allow a period of time for voluntary compliance with a return order or to allow appropriate practical arrangements for the return of the child to be made?

Two–three days I would say could be allowed for voluntary return. But because in most cases the applications are strongly apposed, the Central Authority does its best to effect the return immediately after final judgment.

3. Are any measures available in order to prevent the abductor from taking the child into hiding after the return order is made and before it can be enforced? In the affirmative, please give details.

No this is not possible and in practice we had cases where the abductor was hiding with the children.

4. What happens if the child is taken into hiding after the order was made and before it can be enforced? Which actors would be involved (e.g. Central Authority, police, public prosecutor, other) and which measures can they take to locate the child? What is the effect of the hiding on a possible timeline for enforcement?

In that case the next move is to file an application against the abductor for contempt of court order. The Central Authority with the police try to locate the child and the abductor. The hiding has no effect on the enforcement proceedings even if it lasts for a long time.

5. When enforcement is initiated, what are the required steps (e.g. measures by the applicant, the court or any other supervisory authority, and the enforcement organs)?

When enforcement is initiated the Central Authority is responsible for all the measures needed. The applicant might need to come and get the child.

6. Which coercive measures are available and under what conditions (e.g. pecuniary fines, physical force [against whom? the child? the defendant? others?], detention)? Which of these are normally used in practice?

Usually coercive measures are not needed. If the abductor apposes the return, there are contempt of court order proceedings that can be used. If it is indicated that the abductor will not hand the child to the Central Authority the Central Authority may cooperate with the police to get the child. Force has never been used up to now.

7. a) Do they have to be ordered specifically (i.e. either "fine", "physical force", "detention")? If so, when and by whom?

In case of contempt proceedings the Court may fine the abductor who is in contempt or may order his imprisonment until he complies with the court order and hands the child to the Central Authority.

b) If problems occur during enforcement, may the enforcement organs unilaterally "upgrade" the intensity of coercive measures, or do they have to obtain authorization from any particular higher authority (e.g. an enforcement court or other)? Please specify.

If there are problems, and the Central Authority cannot persuade the abductor to act according to the return order, the next move is to go to court with a contempt of court order application. The contempt of a court order is also a criminal offence under the penal code and there can also be a criminal investigation ending with criminal charges against the abductor.

8. Please give details of any court orders which can be obtained in emergency situations. Can these orders be obtained after hours and *ex parte*?

The contempt of court order can be obtained in emergency situations but not after hours. It cannot be obtained with *ex parte* application.

D. Costs

1. Are costs incurred for the enforcement? If so, are they part of the costs of the court proceedings as a whole? How are they calculated? For which services are they charged?

Yes there are costs incurred for the enforcement but they can be part of the court proceedings and the abductor might be ordered by the Court to pay them. There are formulas to calculate the costs and this is done by the Registrar of the Court. They are charged for all the costs of the court proceedings plus the costs of the return if this is ordered by the Court.

2. Who has to pay the costs for enforcement? To whom? Is a reduction or exemption possible, e.g. under a Legal Aid Scheme? Under which conditions? In particular, is advance payment required in order for the enforcement organs to act? If legal aid was granted for the proceedings leading to the return order, would it cover the enforcement stage or would the application for legal aid have to be renewed?

The costs of enforcement have to be paid by the abductor in most of the cases or if this cannot be done they will be paid by the Central Authority. Reduction or exemption is possible only if the Central authority consents or does not want to claim the costs by the losing party. Advance payment is not required for the enforcement organs to act. If legal aid is granted I believe it would cover the enforcement stage costs.

3. Are the costs of the actual repatriation of the child (e.g. airfare for child and possible accompanying person) considered as part of the enforcement costs? Who has to pay for the repatriation? Is advance payment a condition for enforcement?

Yes they are. Usually the abductor pays for the repatriation. Advance payment is not a condition for enforcement.

4. Please specify how foreign applicants are provided with information about enforcement costs to be borne by them.

They can get this information from the Central Authority.

5. Please provide details regarding the enforcement organs' specific duties as they relate to the enforcement of Hague return orders concerning children.

When there is a return order by the Court the Central Authority has the immediate responsibility to enforce it. First the child will be located and the abductor will be informed of the date of return. Then the Central Authority will inform the left-behind parent-applicant about the return order in case he or she wants to come and collect the child. If this is not desirable or possible the Central Authority will get the child and will make arrangements for his or her accompanied return home. In case of non compliance with the Court order, the Central Authority will file a contempt of court order application in order to compel the abductor to comply with the order.

6. Do you have any other comments relating to the enforcement procedure?

No

IV. STATISTICAL INFORMATION

1. How many Hague return orders that you are aware of were made per year in your country in 2001, 2002 and 2003? How many of them had to be enforced in each of these years because the abductor did not comply voluntarily with the order? Please give the figures for each year separately.

2001: apprx 20 Half of them had to be enforced as the abductor
 2002: apprx 18 did not comply voluntarily with the Order
 2003: apprx 20

2. How many Hague return proceedings were pending in your country that you are aware of for 2001, 2002 and 2003? Please give figures per year. In how many of these cases was a legal challenge made in order to avoid enforcement (by challenging either the order on the merits, the declaration of enforceability, a particular enforcement measure or other)?

If possible, please specify the type of challenge (on the merits or against an enforcement measure).

2001: apprx 20 as above No legal challenge was made in order
 2002: apprx 18 to avoid enforcement
 2003: apprx 20

3. How many of the legal challenges at the enforcement level (*i.e.* not on the merits) were ultimately successful (*i.e.* the order was not enforced)?

4. What is the average length of enforcement proceedings from the moment the order is made until the moment the child is (a) removed from the abductor and (b) repatriated?

Two or three months average (in normal cases).

V. CO-OPERATION

1. Please give details of any co-operative agreements existing between different agencies within your State, either formally or informally, with regard to the enforcement of Hague return orders. How did this co-operation develop?

No agencies exist concerning the matter of enforcement of return Orders.

2. Please give details of any co-operative agreements with other States, either formal or informal between different Central Authorities or agencies, or at the judicial level, with regard to the enforcement of Hague return orders. How did this co-operation develop?

No agreements exist regarding the matter of the enforcement of Hague return Orders.

3. Please provide details (including contact details, websites etc.) of all agencies in your State which have a role to play in the enforcement of Hague return orders.

The Welfare Department.
(Department of Social Welfare Services), Ministry of Labour and Social Insurance.

4. Do you have any other comments relating to co-operation, including any comments on the effectiveness of co-operative agreements?

VI. TRAINING AND EDUCATION FOR PROFESSIONALS

1. Please give details of any training or education that is available in your State for professionals (including, judges, Central Authority personnel, lawyers, mediators, enforcement organs [e.g. bailiffs], police officers, and social workers) as a means of preparing them to enforce Hague return orders or decisions in family law matters in general.

2. Who provides this training and education?

3. What form does this training take and how regularly does it occur? Does joint training of different professional groups which have to co-operate in the enforcement of Hague return orders (e.g. judges, bailiffs, police officers, social workers) also occur?

4. Do you have any other comments relating to training and education of professionals, including any comments on the effectiveness of this training and education as a means of facilitating the enforcement of Hague return orders?

VII. OTHER INFORMATION

1. Please give details of any web pages, and provide copies of any brochures, or information packs or similar materials which contain information or advice on the enforcement of Hague return orders in your State and which are available to parents, including applicants from abroad.

2. Who provides this information? When was it compiled? When was it last updated? How is the information made available and in which language(s)?

3. Do you have any other comments relating to information for parents, including any comments on whether such information is effective in assisting the left-behind parent in having his or her return order enforced?

4. Please provide any other information which may be relevant to the issue of the enforcement of Hague return orders.

5. Please provide details of any other bodies or authorities in your State who may have information useful to the research covered by this questionnaire.

6. Have you any general comments to make regarding the enforcement of Hague return orders?

7. Are there any changes envisaged in your legislation and / or practice? If this is the case, please give details in the answer to the respective question and indicate as of when such changes will take effect.

VIII. ORDERS GRANTING RIGHTS OF CONTACT / ACCESS / VISITATION

For each reply, please indicate whether the same applies to the enforcement of contact orders.

If this is not the case, please give details concerning the latter.

Where the contact order refers to a specific period of time (*e.g.* where the child is to spend "the first part of the 2004 summer holidays from 1 to 20 July 2004" with the applicant) and is not complied with, please explain also whether coercive measures can be applied only as long as the period mentioned in the order contact has not yet expired (*i.e.* in order to implement the order), or also afterwards (*i.e.* as a sort of punishment although contact during this particular period can no longer be implemented). Please indicate also whether the same rules apply to the enforcement of domestic and foreign contact orders. If this is not the case, please specify the differences.

There can be coercive measures when the court order is not complied with. To implement these measures it is not necessary for the period mentioned in the order to expire. They can also be implemented afterwards and the person in contempt of the order will be fined or imprisoned. The same rules apply for the enforcement of domestic and foreign contact orders.