

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

## CZECH REPUBLIC

### 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.

*Art. 176 of the Code on Civil Procedure. In matters of court care for minor children, including return of a child the court has to decide by a judgement. The enforcement of return orders is governed by the same provisions of the Code on Civil procedure as enforcement of custody orders (Art. 272 – 273 a). So the court has first to invite the person refusing to follow the order to follow it voluntarily. The court also may ask the competent social authority to convince the person retaining the child to remove him or her voluntarily. If this fails the court shall make the offender guilty to pay a fine not exceeding 50.000,-crowns. If also this fails the court orders a forced surrender of the child to the applicant. The court is not obliged to make the two above steps if they obviously would be vain.*

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.

*See 1. Some specific provisions are in the Directive issued by the Ministry of Justice Nr. 56/2004-MO-J on the practice of the Czech Authorities of justice in relations to abroad in the civil and commercial matters (Art. 45 – 46).*

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).

*See 1 and 2.*

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?

*Some cases especially with abductors Czech mothers and little children become subject to the interest of media and the authorities involved in the abduction cases are reported in a very negative way.*

### 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.).

*The return order is subject to appeal which time limit is 15 days. There is no specific time limit for the court of appeal to decide.*

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 may be made only once. The jurisdiction has the court of appeal (regional court).*

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).

*There is no need for it as the return order is a judgement made by the Czech court and is immediately enforceable.*

b) Which is the competent organ for these decisions?

*See 2a).*

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 court may decide that the return order shall be enforceable irrespective whether or not it is final. Otherwise it must first become final.*

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.).

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.

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?

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

### **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?

a)

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.

b)

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

*Of the court, Central Authority and applicant.*

#### **B. Actors involved in enforcement**

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

*Yes it is necessary.*

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.

*Either the applicant or the Central Authority (if the applicant gave his power of attorney to the Central Authority).*

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

See 2. Both ways are common.

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

*Courts.*

ii) in practice.

*All as mentioned above in the brackets.*

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).

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?

*There are no specific services designated for these purposes. It could be managed for it if necessary.*

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.

*The presence of the applicant is required on the day when the child is to be taken from the abductor.*

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 enforcement can be ordered and made only by the court (judge or bailiff) which ordered return in the first instance.*

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?

*Also in such circumstances the enforcement can be made only by the court that made the decision in the first instance.*

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

1. Is there a timeline for enforcement?

*Yes, usually a timeline is determined in the decision of the court.*

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?

*No, because of bad experiences with abductors who declare to be ready to return the child within a concrete time-limit and then they refuse to do so.*

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.*

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?

*The court, police and local authorities.*

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)?

*The enforcement runs in accordance with the provisions of the Code on Civil procedure.*

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?

*Pecuniary fines and physical force against the defendant. Both are normally used.*

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

*Normally the judge should first invite the defendant to secure voluntarily the return of the child. If this fails the second step(not obligatory) is pecuniary fine ordered by the court and the third (or second) step is a forced taking the child.*

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

*Alone the court through its bailiffs or/and judges is the enforcement organ.*

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*?

*Pure teoretically. There is no experience with such orders.*

#### **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?

*Normally parties cannot be charged for any service. Only in exceptional cases when a party causes unnecessary expenses for the court or for other party it may be charged.*

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 procedure for enforcement is ex lege free of costs in respect to all the parties. Of course if the applicant wishes to be represented by a lawyer outside of the Central Agency and is not able to pay for him, he can ask the court for legal aid.*

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?

*Normally the applicants pay for it (for instance air tickets, new passports and so on) and do not ask for any reimbursement.*

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

*There are no enforcement costs.*

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

*No specific duties.*

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.

*In 2001 the Czech Central authority received in total 25 cases:*

*Requests to the Czech Republic (incoming): child abduction 11*  
*access 5*

*Requests from the Czech Republic (outgoing): child abduction 7*  
*access 2*

*In 2002 the Czech Central authority received in total 9 cases:*

*Requests to the Czech Republic (incoming): child abduction 7*  
*access: 2*

*Requests from the Czech Republic (outgoing): child abduction 0*  
*access 0*

*In 2003 the Czech Central authority received in total 23 cases:*

*Requests to the Czech Republic (incoming): child abduction 10*  
*access: 5*

*Request from the Czech Republic (outgoing): child abduction 4*  
*access 4*

*Cases where the return order is not complied with voluntarily are quite often.*

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            9/4 - *challenging the return order*  
 2002            11/4 -            *dtto*  
 2003            13/5 -            *dtto*

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)?

2001            - 2  
 2002            - 3  
 2003            - 1

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?  
*7 months.*

#### **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?

*Co-operation between the different state agencies is based on informal understandings. No formal co-operative agreements exist. To our mind the provisions of the 1980 Convention are clear enough.*

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?  
*See 1.*

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.

4. Do you have any other comments relating to co-operation, including any comments on the effectiveness of co-operative agreements?  
*No.*

#### **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.

*It is considered that there is no need for special training for the enforcement of return orders. The efforts of all persons which might be involved, fall within the normal exercise of their functions. The lawyers working at the Central Authority have studied all available information, such as the Hague Convention and the report on this Convention by Perez-Vera. They also attend the Special Commissions for the review of the Convention.*

*The training programmes for childrens' judges organized by the Regional courts and the Judicial Academy include also information on the implementation of the 1980 Hague Convention.*

2. Who provides this training and education?

*See above.*

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?

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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?

*No.*

## **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.

*www.umpod.cz*

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)?

*Czech Central Authority. It was compiled in 2003 and is updated if there are any news. It is available in Czech and (partially) in English.*

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?

*The Central Authority itself represents the applicant in court. Within this relation the applicant is also given information by the Central Authority about the enforcement of return orders.*

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

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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.

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

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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.

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