

FINLAND

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

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.

- The return orders made under the 1980 Hague Convention are enforced under the Finnish Child Custody and Right of Access Act (Law No 1983/361, Chapter 7). In addition, the provisions of the Act on the Enforcement of Decisions on the Child Custody and Right of Access (Law No 619/1996) are applied as stated below.

- An extract of the Child Custody and Right of Access Act:

“Section 46 — *Enforcement of a decision on the return of a child* (186/1994)

- (1) An order to return a child, issued under section 30, shall be enforced without hearing the opposing party, by ordering the child to be fetched. In other respects, the provisions of the Act on the Enforcement of Decisions on Child Custody and Right of Access apply to the enforcement of the order, in so far as not otherwise provided below in paragraph (2) or (3). (620/1996)
- (2) If the order to return a child is based on an application that had been filed before one year had passed from the abduction of the child or the failure to return the child, the enforcement of the order to return the child may be declined only if the child objects to being returned and has attained such an age and level of maturity that it is appropriate to take his or her opinion into account. (620/1996)
- (3) The order to return a child shall be enforced regardless of any decision on child custody or his being taken into the care of the social welfare board. However, no return shall be undertaken after the child has attained the age of sixteen years.”

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 provisions mentioned under question I.1 the provisions of the Enforcement Act (Law of 1895, reformed by the laws No 1996/197 and 2003/679) are applied as appropriate. For example provisions on the appeal against measures taken by the enforcement officer and measures to locate a child can be relevant in the enforcement of a return order.

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).

- The Ministry of Justice has given guidelines (Dno 3553/36/96) to the enforcement officers concerning enforcement of decisions on child custody and rights of access. They apply to the enforcement of the return orders mutatis mutandis.
- Cases on the enforcement of a return order:
 - Supreme Court of Finland (KKO 3492/1998) of 9 November 1998
 - Supreme Court of Finland (KKO 2004:129) of 21 December 2004

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.).

- Helsinki Court of Appeal has the exclusive jurisdiction to make decisions on international child abduction at first instance. An appeal to the Supreme Court may be lodged within fourteen days of the decision ordering the return. However, a return order is enforceable at once, even if not yet final.

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

- See II.1.a above. The Supreme Court is the final instance.

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).

- When Helsinki Appeal Court has ordered the return of a child it shall, on its own initiative, deliver the decision to the competent district court and request it to undertake urgent measures for the enforcement of the decision. The district court shall then order the child to be fetched.

b) Which is the competent organ for these decisions?

- See above.

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?

- No, a return order is enforceable at once.

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 time-limit to lodge them, possible time-limit for appellate court or court of appeals to decide etc.).

- An order of the district court to enforce the decision can be appealed to the competent appeal court. It does not, however, suspend the enforcement of the decision unless otherwise ordered by the appeal court.

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.

- See 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?

- They can be lodged simultaneously and they are always dealt with separately. An appeal against the order on the merits is lodged with the Supreme Court. An appeal against a district court order for enforcement is lodged with the competent appeal court. A further appeal to the Supreme Court is subject to a leave of appeal.

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?

- b)

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) and c)

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

- Normally it is the applicant but the parents may agree on other arrangements. Sometimes the abducting parent returns with the child to the State of habitual residence.

B. Actors involved in enforcement

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

- When Helsinki Appeal Court, which is the first instance in these matters, orders the return of a child it shall on its own initiative deliver the decision to the competent district court and request it to undertake urgent measures for the enforcement of the decision. Normally, the district court gives the enforcement order on the same day. After that the applicant (in person or through his or her lawyer) shall make an application to the bailiff to fetch the child.

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.

- See above.

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 enforcement of a return order is the responsibility of the local enforcement officer (bailiff). As a mandatory rule, the enforcement officer invites a social worker to be present. The social worker's main role is to prepare the child for the return.

- The social worker has to call a child's relative or another person close to the child to be present, if available. Where necessary, the social worker invites also a doctor or another specialist. The applicant shall be present if required by the enforcement officer. If needed, the enforcement officer may ask a witness and a police to be present as well.

ii) in practice.

- If a return order is not complied with voluntarily, the enforcement normally involves at least the enforcement officer, a social worker, the applicant and his/her lawyer.

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?

- See above.

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.

- Normally the enforcement officer requires the applicant or a person close to the child to be present when the child is fetched. The enforcement officer will ensure the hand over of the child to that person.

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 officer acts independently. His/Her decisions may be appealed to the local district court but an appeal does not interrupt the procedure unless otherwise ordered by a court. It is also possible to make a complaint to the Ministry of Justice or to the Chancellor of Justice or the Parliamentary Ombudsman who are the supreme guardians of the law.

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 Finland it is Helsinki Court of Appeal who decides on the Hague cases at the first instance. Even if the Appeal Court refuses the return and the Supreme Court orders the return the control of the enforcement procedure goes as described under question 4. a above.

C. The enforcement procedure proper

1. Is there a timeline for enforcement?

- According to the Child Custody and Right of Access Act the enforcement measures shall be taken urgently.

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?

- Yes.

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.

- The local district court may order appropriate precautionary measures (e.g. order the respondent to bring the child to a certain place under penalty of a fine). It is also possible to order that a child has to be placed under the care of the social welfare authorities.

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?

- A request for executive assistance in locating the child can be made by the central authority or the enforcement officer to the police. If needed, intensified searches are conducted in cooperation between the enforcement officer and the police. They can also use appropriate coercive measures in order to find a child to the extent that the measures are grounded taking into account the conditions as a whole.

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)?

- Once an enforcement order is made it is urgently transmitted to the enforcement officer. He/She will contact the parties, the social worker and possibly other actors mentioned above (under question B3.a) in order to prepare and organise the fetching of the child. In difficult cases the district court may order precautionary measures on the request of the applicant.

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?

- Conditional imposition of a fine against the defendant is available. It is used in difficult cases. All measures relating to a child have to be carried out with

discretion. Appropriate coercive measures can be used against persons who try to prevent the enforcement or to hinder it but not against a child.

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

- Conditional fines and placement of a child can be ordered by the court only. Decisions on the appropriate physical force are made by the enforcement officer independently.

b) If problems occur during enforcement, may the enforcement organs unilaterally "up-grade" 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.

- See above.

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?

- In urgent cases a district court may, for instance, order that the social welfare authorities temporarily place the child in appropriate care. It can be obtained ex parte and can not be appealed.

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?

- In Finland the applicant is granted free legal aid automatically in proceedings concerning return of a child under the Hague Convention. The legal aid covers the enforcement procedure. The legal costs, which in difficult cases may rise to a considerable amount, are met by the Finnish government.

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?

- See answer above under C.1.

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?

- In practice, the applicant has to bear the repatriation costs. In the proceedings concerning the return of a child the applicant may demand that the defendant pay the travel and other expenses for the return of the child.

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

- They are informed by the central authority or by their attorney.

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

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

No.

V. 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: one (1) return order
2002: two (2) return orders
2003: one (1) return order

- In each case the return order was complied with voluntarily.

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: one case
2002: two cases
2003: two cases (one return order, one refused)

- There were no challenges regarding the enforcement.

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)?

- There were no challenges at the enforcement level.
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?
- Normally a return order is enforced voluntarily and in a few days or weeks after a return order was made.

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?
 - If the enforcement appears to be difficult in an individual case all the competent authorities for that case (the local enforcement officer, the social workers, a doctor etc.) work as a team. The central authority is informed of the situation and keeps in close contact with the requesting authority.
 - At a general level, a multiprofessional group for child abduction cases was created in 1998. It consists of nominated contact persons from different agencies (e.g. from the Ministry for Foreign Affairs, the Ministry of Justice, the Social Welfare Authority, the Police, the Border Guard, the mental health care, enforcement officers etc.). It is convoked approximately twice a year to discuss these matters. Since child abduction cases are relatively rare at the local level it has proved to be very useful to have a list of contact persons from different bodies that may be contacted where necessary.

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?

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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 enforcement of the return orders is the responsibility of the local agencies.
 - A list of main actors in child abduction cases in general is found in the brochure "International Child Abduction" which can be found at www.om.fi/esitteet/9604.htm.
 - A list of local enforcement officers can be found at <http://www.oikeus.fi/9363.htm>.

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.

- Training in these issues can be organised by various actors: the Ministry of Justice, the Ministry for Foreign Affairs, the Police, social welfare authorities, NGOs, private training companies etc. There is no regular training but persons of the multiprofessional group mentioned under question V.1. have an important role in securing the professional skills in these issues in their respective sectors.

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?

- Training is quite often conducted in the form of a seminar including lectures from different perspectives. In many cases different professional groups attend the training.

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.

- A brochure on International Child Abduction mentioned under question V.3 is available through the Internet. It is available in Finnish, Swedish, English, Russian and French. It contains, however, more information on international child abduction in general and is not focused on enforcement issues.

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)?

- The brochure was prepared in co-operation between the Ministry for Foreign Affairs, the Ministry of Justice, the Ministry of Social Affairs and Health and the Association for Abducted Children in December 2000. It was last updated in February 2005. Otherwise see above.

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?

- No.

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?

- No.

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.

- No.

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.

- The Acts mentioned under part I. apply also to the enforcement of the visitation orders except that a mediation phase is normally included in the enforcement of a custody or a visitation order but not in the enforcement of a return order. Foreign contact orders are enforced like domestic orders once the exequatur is obtained. It is to be noted that the special provisions of the Brussels II bis regulation apply to European contact orders.