

QUESTIONNAIRE ON THE ENFORCEMENT OF RETURN ORDERS UNDER THE 1980 HAGUE CONVENTION

RESPONSE OF GEORGIA

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.

There are no specific legislative provisions concerning the enforcement of return orders under the 1980 Hague Convention.

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.

Law of Enforcement of Georgia 16.04.1999 (concerning issues about execution of court's orders)

Under Ordinance # 319, 22.06.1997 of the President of Georgia, the Ministry of Justice of Georgia is the body to maintain relations with the States Parties to the Hague Convention on the Civil Aspects of International Child Abduction and to exercise supervision on the fulfillment of the functions provided by Article 7 of the Convention. These issues fall within the competence of the Department of International Legal Relations of the Ministry of Justice of Georgia.

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).

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?

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.).

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

Pursuant to Article 48 Paragraph 3 of the Criminal Procedure Code of Georgia, the Judicial Boards for Criminal Cases of the Supreme Courts of the Autonomous Republics of Abkhazia and Ajaria and Tbilisi and

Kutaisi District Courts hear under the first instance procedure cases related to the crime (Illegal Deprivation of Liberty) provided by Article 143 of the Criminal Code of Georgia. If parents have disagreements on the rights of custody or the rights of access, they can submit their applications to the Supreme Court of Georgia.

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).

b) Which is the competent organ for these decisions?

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?

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

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?

The surrender of the child to the applicant

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.

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

It is not stated but in practice – The Ministry of Justice of Georgia and the Ministry of Internal Affairs of Georgia

B. Actors involved in enforcement

- Execution Department of the Ministry of Justice of Georgia
- The Ministry of Justice of Georgia – Department of International Legal Relations

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

According to the Law of Enforcement of Georgia a special order (issued by the competent court) is necessary for execution of the court order.

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.

the applicant (in person or through his or her lawyer) and/or the Central Authority

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

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

The Ministry of Justice of Georgia is involved in the enforcement of return orders

ii) in practice

Division of International Mutual Legal Assistance of the Ministry of Justice of Georgia, District Courts of Georgia, Ministry of Foreign Affairs

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).

There are no concrete cases. Division of International Mutual Legal Assistance of the Ministry of Justice of Georgia will provide legal consultations free of charge and realized other relevant measures for applicants. Applications will be sent by diplomatic channels with the aid of the Ministry of Foreign Affairs.

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?

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.

It is not necessary

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)?

There is no specific legislation. According to article 7 of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction the supervising body is Central Authority (Ministry of Justice of Georgia).

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?

According the Georgian legislation the appellate instance is Supreme Court of Georgia.

C. The enforcement procedure proper

1. Is there a timeline for enforcement?

According to the Law of Enforcement of Georgia 5 days are given for voluntarily execution of the court order

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?

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.

According to the law of Georgia of Guardianship after the return order is made and before it can be enforced and if necessary the child temporarily can be delivered to the tutorial council.

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 this case we have crime provided by Article 143 of the Criminal Code of Georgia (Illegal Deprivation of Liberty) and the Ministry of Internal Affairs would be involved to locate the child and provide other appropriate measures.

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)?

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?

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

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.

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?

D. Costs

According to the Law of Enforcement of Georgia costs incurred for the enforcement are calculated by the officer of the court and are paid out by the debtor

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?

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?

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?

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

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

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

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.

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).

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?

We have to cases under the 1980 Hague Convention:

1. *04.11.04 we had the application from Georgian citizens Giorgi Abaishvili and Medea Sharashenidze, asking for return of their child Jhoni Abaishvili from the Netherlands (where the child is currently adopted by a Dutch family) to Georgia.
27.12.04 we have submitted with the application to the Ministry of justice of the Netherlands
On present time we have asked to provide us with the decision of the relevant court of the Netherlands
About the deprivation of parenthood of Medea and Giorgi Sharashenidze.*
2. *21.12.04 we had the application from the Georgian citizen K. Parcvania, asking for return their child L. Kikalishvili from the Russia.
27.12.04 we have submitted with the application to the ministry of justice of Russian Federation*

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?

We have co-operation with Ministry of Foreign Affairs, Ministry of Internal Affairs, Execution Department, Courts.

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?

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.

*Ministry of Foreign Affairs
address: #4, Chitadze St. Tbilisi 0118, Georgia
Tel/ Fax: +99532284747
web: www.mfa.gov.ge
E-mail: inform@mfa.gov.ge*

*Ministry of Internal Affairs
address: G. Gulua Str. Tbilisi, Georgia
Tel: +99532991009
web: www.police.ge*

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

We have correspondence with Department of Private Law of Denmark and US Embassy in Georgia in field concerning the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

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.

In 3d of August 2004 there was a seminar concerning a programs in the field of protection and developing children. And in fields of 1980 Hague Convention the seminars is planing in a future.

2. Who provides this training and education?

The Educational Center of the Ministry of Justice of Georgia and the Judges Educational Center. The International Organizations takes part in organizing these measures (e.g. UNICEF, UNDP).

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 it was 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.