

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

## **I. Legal bases for the enforcement of Hague return orders**

1-2. General legislative provisions of the Civil Procedure law of the Republic of Latvia regulate the enforcement of return orders under the 1980 Hague Convention on the Civil Aspects of International Child Abduction (hereinafter - Hague Convention).

Civil Procedure law in English can be found at the web page of the Translation and Terminology Centre: <http://www.ttc.lv/New/lv/tulkojumi/E0044.doc>.

3. As there is no court practice in this field, there are also no specific judicial decisions, or any other guides that would govern the enforcement of return orders under the 1980 Hague Convention.

4. Taking into the account the above said, we do not have any additional comments.

## **II. Enforceability and legal remedies**

1. Following Article 637 of the Civil Procedure law Latvian courts can either recognize adjudications of foreign courts or not. Adjudication of a matter on the merits is not envisaged if a foreign court has made an adjudication on the matter.

2. Following Article 637 of the Civil Procedure law recognition of adjudications of foreign courts shall take place in accordance with Part F of the law, considering the general provisions of the law. Following Article 638 of the Civil Procedure law, an application for the recognition and execution of an adjudication of a foreign court shall be submitted for adjudication to a district (city) court on the basis of the place of execution of the adjudication or also on the basis of the place of residence of the defendant or location (legal address). In its turn, Article 644 establishes that an adjudication of a foreign court after its recognition shall be executed according to the procedures specified in this law and expenditures associated with the execution of an adjudication of the foreign court shall be covered according to general procedures.

Regulation (EC) No 2201/2003 concerning jurisdiction and the regulation and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing the procedure fixed in Chapter III „Recognition and

Enforcement” of the Regulation (EC) Nr.1347/2000 is applied to the EU member states.

3. If a foreign court or other institution adjudication has come into effect it shall be carried out. In its turn, following third part of Article 642 of the Civil Procedure law, a court on the basis of a petition from the defendant may suspend the court proceedings if the adjudication of the foreign court has been appealed according to general procedures or also the time period for such appeal has not ended. In the latter case, the court may specify a time period within which a complaint to appeal the adjudication of the foreign court shall be submitted in the relevant foreign state.

4. a) Yes, decisions specified under II.2 are subject to appeal independent of any appeal against the merits of the return order. Following the first part of Article 641, in respect of a decision by a first instance court in an adjudication of a foreign court recognition matter, an ancillary complaint to the regional court may be submitted, and a decision by the regional court in respect of an ancillary complaint may be appealed to the Senate by submitting an ancillary complaint. However, a court on the basis of a petition from the defendant may suspend the court proceedings if the adjudication of the foreign court has been appealed according to general procedures or also the time period for such appeal has not ended. In the latter case, the court may specify a time period within which a complaint to appeal the adjudication of the foreign court shall be submitted in the relevant foreign state (third part of Article 642 of the Civil Procedure law).

b) Following Article 641 of the Civil Procedure law, it is the competence of a regional court and the Senate of the Supreme Court.

5. Courts of the Republic of Latvia can either recognize adjudications of foreign courts or not. See answers to II 1, 2, 4.

6. We do not have any additional comments.

### **III. Enforcement procedure**

A.

1-2. Until now there were no any cases in courts regarding the return of children according to the Hague Convention. Therefore it is not possible to answer the questions.

3. In compliance with Article 7 of the Hague Convention, Central Authorities (in the case of the Republic of Latvia – Ministry for Children and Family Affairs) cooperate with each other to ensure the prompt return of the child. However court in its adjudication may indicate the responsible person.

B.

1-2. There are no any special regulations on the enforcement of a return order. Therefore it is applied in accordance with general procedures. Following Article 644 of the Civil Procedure law, an adjudication of a foreign court after its recognition shall be executed according to the procedures specified in the Law. This means that adjudications of court and other adjudications mentioned in Article 539 are executed by a bailiff (Article 548 of the Civil Procedure law) pursuant to an application in writing by a judgment creditor and in cases set out in law pursuant to the initiative of the Latvian Council of Sworn Bailiffs or a court on the basis of an execution document (Article 549 of the Civil Procedure law). Requirements and orders by a bailiff, when executing court judgments and other adjudications, are mandatory for all natural or legal persons throughout the territory of the State (Article 551 of the Civil Procedure law). Following Article 40 of the Law on Bailiffs, the requirements and orders of a sworn bailiff which are set forth and given by him or her in fulfilling official duties shall be binding on all persons in the State territory.

3. a. i) Adjudications of court are executed by a bailiff. In case of necessity representatives of other institutions, for example, representatives of orphan (parish) courts, social service workers, representatives of State Police etc. can be involved. Following Article 551 of the Civil Procedure law, if a bailiff's requirements or orders are not executed, the bailiff shall draw up a statement and submit it to a court to decide the issue regarding liability. The court may impose a fine on persons at fault — for a natural person up to two hundred and fifty lats, but for an official up to five hundred lats (1euro= 0.7Ls).

ii) Such information cannot be submitted since there were no a single case in court.

b. There are no any specialized social or psychological services in the Republic of Latvia available to prepare the child and/or the defendant for the return in order to de-escalate or avoid enforcement by coercive measures. In case of necessity Ministry for Children and Family Affairs as the Central Authority for the Hague Convention can provide consultations of a psychologist free of charge.

c. Presence of the applicant is not obligatory however in compliance with the sixth part of Article 549 of the Civil Procedure law, judgment creditors and debtors have the right to be present during execution activities, inviting not more than two witnesses, and to obtain information concerning the execution of the judgment.

4. Following Article 83 of the Law on Bailiffs, direct supervision of sworn bailiffs shall be in the jurisdiction of such regional court in the territory of

operation of which their office is located. Following Article 84 of the Law on Bailiffs, a judge assigned by the chief judge of the regional court shall examine the activities of sworn bailiffs, books and execution files at least once a year. District (city) court performs supervision of the activities of sworn bailiffs according to the civil proceedings. Article 632 of the Civil Procedure law determines that a judgment creditor or a debtor may appeal the actions of a bailiff in executing a judgment or the bailiff's refusal to perform such actions to the district (city) court according to the official appointment location of the bailiff within 10 days from the day when the actions appealed from are taken or the day when a complainant, who has not been notified of the time and place of actions to be taken, becomes informed of such actions. A complaint shall be adjudicated at a court sitting within 15 days. A debtor and a judgment creditor, as well as the bailiff, shall be notified of the court sitting. The failure of such persons to attend is not an impediment to the adjudicating of the issue. Because the place where claim is brought may differ from the place of execution of adjudication, it is not always that the court has made an adjudication shall have the supervision over the matter. The Council of Latvian Sworn Bailiffs may initiate a disciplinary matter against a sworn bailiff upon a proposal of a judge or a prosecutor, as well as pursuant to a complaint of a person or on its own initiative.

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

1. Following Article 538 of the Civil Procedure law, Court judgments and decisions shall be executed after they come into lawful effect, except in cases where pursuant to law or a court judgment they are to be executed without delay. The indication that the judgment and decision shall be executed without delay must be contained in the writ of execution itself.
2. Article 555 of the Civil Procedure law determines that a bailiff, when about to commence execution, shall notify the debtor by sending or issuing a proposal regarding a duty to execute the adjudication voluntarily within 10 days. If the adjudication is to be executed without delay, the time period for voluntary execution of not less than three days shall be set.
3. Article 139 of the Civil Procedure law envisages a possibility for a court to use the means by which claims may be secured, including enjoining the defendant from performing certain actions.
4. Following Article 44 of the Law on Bailiffs, in order to ensure the fulfillment of official duties, a sworn bailiff may request police assistance and the police have a duty to provide such assistance. Besides assistance of the State Border guards, Interpol and other law enforcement bodies in locating a child may be requested.

5. To carry out an adjudication of court, an applicant requests that a writ execution be issued and in her turn submits it to a bailiff. On the basis of the document the bailiff commences execution following the normative acts that are in lawful effect.

6-7. Article 551 of the Civil Procedure law determines that requirements and orders by a bailiff, when executing court judgments and other adjudications, are mandatory for all natural or legal persons throughout the territory of the State. If a bailiff's requirements or orders are not executed, the bailiff shall draw up a statement and submit it to a court to decide the issue regarding liability. The court may impose a fine on persons at fault — for a natural person up to two hundred and fifty lats, but for an official up to five hundred lats. If, in a judgment being executed, resistance is shown, a bailiff shall, in the presence of invited persons, but if it is not possible to invite persons – singly, draw up a statement in respect of this, and in order to eliminate impedance apply for assistance to the police. The statement shall be submitted to the court for it to decide the issue regarding the liability of those persons who have resisted the execution of the judgment. See also answer to III C 4.

8. The issue is regulated by the civil proceedings.

#### **D. Costs**

1-3. Following Article 568 of the Civil Procedure law, execution of a judgment shall be performed at the expense of the debtor. Voluntary execution of a judgment after the execution document has been submitted for execution shall not exempt the debtor from reimbursement of the execution of the judgment expenditures. A bailiff shall make a calculation regarding the execution of judgment expenditures and send it to the debtor and judgment creditor. The calculation may be appealed in accordance with the procedures specified in Article 632 of this Law.

4. Ministry for Children and Family Affairs as the Central Authority for the Hague Convention provides consultations on the enforcement of the Convention free of charge also to foreigners.

5. Please, see answers to III B 1-2 and III C 6-7.

6. We do not have any additional comments on this issue.

#### **IV. Statistical information**

1. No Hague return orders were made in Latvia in 2001, 2002, 2003.

2. There were no Hague return proceedings pending in Latvia for 2001, 2002, 2003.

3 – 4. Taking into consideration that there were no Hague return orders, it is not possible to provide answer to the questions.

#### **V. Co-operation**

1 - 2. Ministry for Children and Family Affairs as the Central Authority has not concluded any formal or informal cooperative agreements concerning the enforcement of Hague return orders.

3. Ministry for Children and Family Affairs as the Central authority (<http://www.bm.gov.lv>), courts and other law enforcement bodies.

4. We do not have any additional comments, please see answer to question V 1.

#### **VI. Training and education for professionals**

1. There are no any regular trainings in Latvia for judges, Central Authority personnel, lawyers, mediators, bailiffs, police workers and social workers to prepare them to enforce Hague return orders. In November 2004 Latvian Judicial Training Centre with the support provided by Deutsche Stiftung für Internationale rechtliche Zusammenarbeit e.v. has organized a seminar “Family rights. International aspects”, where the issues of child abduction have also been discussed.

2. Ministry of Justice and Latvian Judicial Training Centre are responsible for training and education.

3. Training is organized in form of seminars on the topical issues.

4. We do not have any additional comments.

#### **VII. Other information**

1-4. As there is no court practice in this field, the relevant materials on Hague return orders have not been prepared yet.

5. Regulation (EC) No 2201/2003 (27 November 2003) concerning jurisdiction and the regulation and enforcement of judgments in matrimonial matters and the matters of parental responsibility is applied to the EU member states. There are

two Central Authorities on enforcement of the regulation in the Republic of Latvia – Ministry for Children and Family Affairs and Ministry of Justice.

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6. We do not have any additional comments.

7. Work on the improvement of the norms regulating international civil proceedings is being conducted in Latvia, also concerning the Hague Convention.

### **VIII. Orders granting rights of contact/ access/ visitation**

All the information also applies to the enforcement of contact orders.