

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

RESPONSE BY THE DELEGATION OF THE NETHERLANDS

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.

Response:

Under Article 813 of the Act implementing the 1980 Luxemburg Convention and the 1980 Hague Convention, if the court grants the application for the child's return, it shall order the child's surrender to the person who has custody rights over the child or, if its order cannot be implemented immediately, provisionally place the child in the care of the Child Protection Board.

The return order is immediately enforceable notwithstanding any appeal.

The former article 926 of the Code of Civil Procedure, now: article 813 of that Code, applies to the enforcement of a return order. See the response to question 2.

An appeal against a return order must be lodged within two weeks of the date of the order (the usual time limit for orders in family law matters is two months).

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.

Response:

Under article 813 of the Code of Civil Procedure, the Office of the Public Prosecutor lends assistance, where necessary, in effecting the surrender

of the child under article 812. Article 812 provides that any order relating to the exercise of custody rights over minor children entitles the person to whom these minors are provisionally or permanently entrusted to have them surrendered to him or her, if necessary with the assistance of the police.

Article 813 furthermore provides that the police officer designated to lend the assistance referred to shall have access to any premises, insofar as this is reasonably necessary for the performance of his duty.

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?

Response:

Cases where the surrender has to be effected with the assistance of the police may arouse interest of the media. Often such publicity does not help resolve the underlying dispute of the parents.

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.).

Response:

Yes. The time limit for an appeal against a return order by the Court of first instance is two weeks as of the date of the order. The time-limit for appeal against an order of the Appellate Court is four weeks as of the date of the order.

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

Response:

The appeal against the return order, which is granted by the Children's judge within the Court of first instance, is given by the Appellate Court. An order by the Appellate Court is subject to appeal to the Supreme 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).

Response:

No authorization or other decision is required for the actual enforcement.

- b) Which is the competent organ for these decisions?

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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?

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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.).

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- 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.

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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?

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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?

Response:
A and 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.

Response:
B and C.

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

Response:
It is the responsibility of the abductor. If the abductor is not willing to do so, the applicant is requested to collect the child.

B. Actors involved in enforcement

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

Response:
No. No authorization or other decision is required for the actual 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.

Response:

The Central Authority

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

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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
 - ii) in practice.

Response:

The Central Authority has an enforceable decision (by operation of the law) of a court. Usually the abductor is given the opportunity to return the child him-/herself. If the abductor is not willing to do so, the applicant is requested to collect the child. When the child is taken into hiding by the abductor, the Public Prosecutor can be requested to discover the whereabouts of the child. The Central authority then arranges for the child to be collected by the applicant.

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).

Response:

Under article 9 of the Act implementing the 1980 Luxemburg Convention and the 1980 Hague Convention, the Central Authority (in order to ascertain the whereabouts of a child in the Netherlands) applies to the Public Prosecutor in the District in which the child is believed to be, or to the Public Prosecutor in The Hague. The Public Prosecutor then requests the police to trace the child. When the whereabouts of the child have been established, the police will collect the child, if necessary in the company of the Child Care and Protection Board. Subsequently the applicant can come and collect the child.

- 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 the answer to question 3a. If necessary, the Child Protection Board will make appropriate arrangements in order to prepare the child and/or the defendant 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.

See the answer to question 3a.

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)?

Response:

Yes, there is supervision by the Central Authority itself.

- 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?

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C. The enforcement procedure proper

1. Is there a timeline for enforcement?

Response:

Yes, usually a timeline is determined in the decision of the court. If this is not the case, the Central Authority determines a reasonable period in accordance with the circumstances of the specific case.

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?

Response:

Yes, it is 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.

Response:

Yes. The Central Authority can request the court to order a temporary guardianship.

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?

Response:

The decision of the court ordering the return of the child is immediately enforceable. So if the child is taken into hiding after the order was made, the Central authority can apply immediately to the Public Prosecutor in order to ascertain the whereabouts of the child. See the answer to question 3, letter B.

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)?

Response:

See the answers under B.

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?

Response:

In theory coercive measures such as fines and imprisonment of the abductor can be taken, but those measures are usually not thought to be in the best interest of the child.

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

Response:

Yes, they have to be ordered by the court (on the request of the Central Authority if deemed necessary).

- 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.

Response:

Yes, at the enforcement stage the Public Prosecutor may request the court to upgrade the intensity of coercive measures ordered at an earlier stage on the request of the central authority.

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*?

Response:

If there is an immediate danger for the child, the court may, at the request of the Child Protection Board, order a provisional protective measure in ex parte proceedings. In most cases the abductor is heard within a few days by the judge so that the judge can decide whether or not the protective measure is to be continued. In such circumstances, usually the enforcement is suspended.

C. 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?

Response:

Usually not. If there are costs for enforcement, they are paid for by the Central Authority.

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?

Response:

The Central Authority bears the costs for enforcement. In return cases the Central Authority itself institutes the legal proceedings so there is no use for a legal aid system. The abductor might be entitled to legal aid, depending on his/her wages.

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?

Response:

No, the costs of the actual repatriation are not considered as part of the enforcement costs. These costs have to be paid by the parents of the child.

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

Response:

If they ask for information, the Central Authority will provide this information.

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

Response:

The duties in enforcement matters are not specified as compared to the normal duties of the Central Authority

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

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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.

Response:

In 2001 the Dutch Central authority received in total 1001 cases:

*Requests **to** the Netherlands (incoming):*

<i>child abduction</i>	<i>40</i>
<i>access</i>	<i>15</i>

*Requests **from** the Netherlands (outgoing):*

<i>child abduction</i>	<i>44</i>
<i>access</i>	<i>2</i>

In 2002 the Dutch Central authority received in total 101 cases:

*Requests **to** the Netherlands (incoming):*

<i>child abduction</i>	<i>33</i>
<i>access:</i>	<i>8</i>

*Requests **from** the Netherlands (outgoing):*

<i>child abduction</i>	<i>58</i>
<i>access</i>	<i>2</i>

In 2003 the Dutch Central authority received in total 113 cases:

*Requests **to** the Netherlands (incoming):*

<i>child abduction</i>	<i>26</i>
<i>access:</i>	<i>6</i>

*Request **from** the Netherlands (outgoing):*

<i>child abduction</i>	<i>70</i>
<i>access</i>	<i>11</i>

According to data provided by the Dutch central authority, cases where the return order is not complied with voluntarily are quite rare. They occur no more than once or twice a year.

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).

Response:

In 2002 the Dutch Central authority received 41 incoming cases: of these cases 5 applications were rejected by the court, 14 incoming cases were successful. The cases concerned a return order or an access arrangement.

In 2003 the Dutch Central authority received 32 incoming cases, of these cases 4 applications were rejected. 10 incoming cases were successful.

From published case law it is apparent that it occasionally happens that a return order is challenged on the merits in proceedings before the appellate court or even before the Supreme Court. One example: HR 18 October 2002 (RvdW 2002, 163, NIPR 2003,1) in a case involving a removal from Canada to the Netherlands. The challenge of the return order was unsuccessful. No examples were found of cases where particular enforcement measures were challenged.

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)?

Response:

In published case law over the 3-year period concerned, only one example was found of a case where a challenge was successful. The circumstances of that case were, however, very specific.

3. 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?

Response:

If a timeline is determined in the decision of the court, the length of enforcement depends on this timeline. If this is not the case, the average length of enforcement is 2-3 weeks depending on the circumstances of the specific case.

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?

Response:

There is an agreement between the Central Authority and the Child Care and Protection Board. This Board may accompany the police when they are searching for a child.

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.

Response:

Dutch Central authority

Address:

*Ministerie van Justitie
Directie Justitieel Jeugdbeleid
Centrale autoriteit
Schedeldoekshaven 100
Postbus 20301
2500 EH THE HAGUE
Netherlands*

Tel: +31 70 3704893

Fax: +31 70 3707507

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

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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.

Response:

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 persons who work at the Bureau of the Central Authority have studied all available information, such as the Hague Convention and the report on this Convention by Perez-Vera. Also, the Special Commissions for the review of the Convention are found very useful.

The national training programme for childrens' judges includes specialized course on the implementation of the 1980 Hague Convention. Dutch judges are also among the attendants of the judges' conferences organized by the Hague Conference on Private International Law.

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2. Who provides this training and education?

The Council for the Judiciary.

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?

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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.

Response:

A new brochure on child abduction is being prepared at the moment. This brochure will be translated into English as well.

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)?

Response:

The Central authority does. See also the answer to question 1.

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?

Response:

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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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.

Response:

In the Netherlands, the 1980 Hague Convention is applied to the maximum extent to requests to exercise contact rights (obviously, it is not the 1980 Convention itself, but the 1996 Child Protection Convention or the Brussels

IIbis Regulation which governs the enforcement of foreign contact orders). In principle, the provisions relating to the enforcement of return orders likewise apply in cases where the child is to be returned after completion of a period of contact. The situation is different in the case of an application by a parent residing abroad who seeks contact with a child in the Netherlands. Opinions differ as to whether "custody rights" in articles 812 and 813 of the Dutch Code of Civil Procedure include contact rights. In actual practice such orders are never enforced with the assistance of the police. Under civil law there are other coercive measures that can be taken by a court (e.g. in summary proceedings initiated by or on behalf of the parent seeking contact), e.g. a penalty in case of non-compliance, civil imprisonment, a suspension of the payment of child maintenance or a reduction or complete refusal of spousal maintenance.; an order placing the child under supervision; finally: a modification or withdrawal of custody rights. A Dutch court may resort to such coercive measures in both domestic and international cases. Coercive measures may also be taken by way of a sanction, where contact can no longer be implemented.