



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

At the Special Commission concerning the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* which was held at The Hague from 27 September to 1 October 2002 the following recommendations were made:

"The Permanent Bureau should continue to gather information on the practice of the enforcement of return orders in different Contracting States. The Permanent Bureau should prepare a report on this subject with a view to the development of a guide to Good Practice"

"Work should continue on a separate chapter of the Guide to Good Practice relating to transfrontier access/contact in the context of the 1980 Convention with the following objectives:

- a. to promote consistent and best practices in relation to those matters which it is agreed fall within the competence and obligations of States Parties under the Convention,
- b. to provide examples of practice even in relation to matters which fall within the disputed areas of interpretation.

Work should begin on the formulation of general principles and considerations. The idea is not to create a set of principles applying to access cases generally, but rather to draw attention to certain general considerations and special features, which need to be borne in mind by Contracting States and their authorities when formulating policies in respect of international access / contact cases. These general principles would not be binding; they would be advisory in nature. As well as offering general advice to States in formulating policy in this area, the general principles could be helpful to Central Authorities in informing their practice, they could possibly be helpful to the courts and other authorities, as well as to applicants as they present their cases."

Arising from these recommendations, the Permanent Bureau has entered into a joint initiative with Professor Nigel Lowe of Cardiff University, supported by the International Centre for Missing and Exploited Children in relation to the enforcement of return and access / contact orders. The role of Professor Lowe and the Cardiff Team (comprising of Samantha Patterson and Emily Atkinson) is to undertake extensive empirical research on the practice of enforcement of Hague Convention orders (including access orders) in a number of Contracting States. The research will also focus on identifying areas of good practice in the context of enforcement. Professor Lowe and the Cardiff team will then prepare a report on the empirical research.

At the same time, the Permanent Bureau will be undertaking comparative research on the internal law and practice with regard to enforcement in each Contracting State by way of the questionnaire which appears below. This will assist in identifying structural and practical problems with enforcement. The Permanent Bureau will then prepare a report on the enforcement of return orders which will also consider whether the development of a Good Practice Guide on enforcement would be useful. This report will be presented for the consideration of the next Special Commission meeting tentatively scheduled for autumn 2005. The Permanent Bureau is also preparing, for consideration at the same meeting, the general principles and separate chapter of the Guide to Good Practice relating to transfrontier access / contact.

The questionnaire which appears below is addressed to States Parties to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*. We would like to draw your attention to the fact that, while the questions in Chapters I–VII are specifically addressing the enforcement of return orders made under the 1980 Convention, Chapter VIII invites you to also indicate, for each reply, whether the same applies to the enforcement of contact orders. If this is not the case, please give details concerning the latter.

Respondents are also invited to identify and comment on matters concerning enforcement, which are not addressed specifically in the questionnaire. Where information is available on websites, please also provide the website address.

The Permanent Bureau requests responses to the questionnaire to be sent to secretariat@hcch.net with a copy to as@hcch.nl no later than **30 October 2004**, if possible in electronic form.

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.

Act relating to the recognition and enforcement of decision regarding parental custody and the return of children. 08.07.1988 nr 72. (the Child Abduction Act)

This law transforms the Convention on the Civil Aspects of International Child Abduction of 25 October 1980 and the European Convention on Recognition and enforcement of Decision concerning Custody of Children and on Restoration of Custody of Children

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.

The Enforcement Act of 26 June 1992 nr 86. It follows from the reference made in Section 18 first paragraph in the Child Abduction Act to Section 42 of the Children Act that the rules applicable to enforcement of decisions under the Children Act shall be applied. Section 42 of the Children Act refers to Chapter 13 of the Enforcement Act. This chapter regulates the enforcement of non-financial claims.

The Act of 8 April 1981 nr 7 relating to Children and Parents (the Children Act)

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).

Circular letter G-136/91 gives guidelines regarding the interpretation and practice of the Child Abduction Act, the Hague Convention and the European convention on Recognition and Enforcement of Decision concerning Custody of Children and on Restoration of Custody of Children,

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.).

The request for return of a child is decided by Court of Execution and Enforcement. The decision can be appealed to the Court of Appeal and also to the Supreme Court. An appeal must be lodged within 1 month. (the Enforcement Act Section 398) According to The Child Abduction Act Section 16 and Article 11 in the Hague Convention, the judicial or administrative authority must act expeditiously in proceedings for the return of the child. The Child Abduction Act Section 16 and The Hague Convention Article 11 also states that if the judicial or administrative authority concerned has not made a decision in the case within 6 weeks, a statement of the reasons for this delay must be given. The time limit also applies when the decision is appealed. However, in cases of appeal the intention of having an enforceable decision within 6 weeks will frequently be difficult to fulfil.

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

The decision can be appealed to the Court of Appeal and also 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).

The decision that states the return order is also the legal basis for the actual enforcement of the child. A specific authorisation or other decision is not required. When the court gives the return order, it also decides in the same decision in what way the child is to be returned. In the light of the fact that the child must be returned without delay, it is an advantage for the Court of Execution and Enforcement to provide a prioritised list of alternatives for return. This will prevent the waste of time involved in the Court having to decide on a coercive measure if it turns out that the first choice cannot be implemented.

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

The Court of Execution and Enforcement, which also orders the return of the child.

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?

According to the Norwegian Enforcement Act Section 4-1 the enforcement of a decision can be effectuated when the decision has been served on. The decision does not have to be final. However, when the return order is being appealed, the interlocutory appeal can have a suspensive effect if the court whose decision is being attacked by means of interlocutory appeal so decides. The

intention behind the Hague convention however, is that the child shall unconditionally be returned to the state in which he or she was habitually residing, The Court of Execution and Enforcement will therefore show restraint in giving the interlocutory appeal a suspensive effect. The Ministry of Justice assumes that the interlocutory appeal will only be given a suspensive effect when the best interest of the child so require.

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.).

Reference is made to the answer given to question II 2 a)

- 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.

Reference is made to answer given to question II 2 a)

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?

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?

In most cases the surrender of the child to the applicant is ordered. However, the court has discretionary power in this matter.

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.

The aim will normally be both to remove the child from the abductor and to hand the child over to the applicant and to ensure the child's return to his or her state of habitual residence.

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

Section 13-14 paragraph one of the Enforcement Act indicates three alternatives for the organisation of the repatriation of the child. The Court of Execution and Enforcement can decide that the most suitable measure is for the applicant to organise the return. If so, the applicant has to organise the practicalities of taking the child to his or her habitual residence. If the applicant is assisted by a lawyer in Norway the most natural course, will be for the lawyer to assist with the practicalities. The other alternative is that the repatriation of the child is organised by the Enforcement Officer, or as a third alternative the court can impose enforcement damages on the defendant/abductor for every day the return order is not complied with.

B. Actors involved in enforcement

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

Reference is made to the answer given under II 2 a). The return order and the way in which the return of the child can be enforced are established in the same decision

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.

Reference is made to the answer given to question III A 3. Section 13-14 of the Enforcement Act establishes three alternatives for the organisation of the return of the child. The enforcement can be organised either by the applicant or by the enforcement organ or by imposing enforcement damages on the defendant .The Act provides no guidelines as to which coercive means is to be chosen. However, according to the travaux préparatoires to the Children Act, the general rule is that the court chooses the most suitable measure.

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

Reference is made to the answer to question III B 2). According to the law the applicant or the Enforcement Officer are involved with the enforcement procedure.

- ii) in practice.

The applicant will frequently be involved in the enforcement of the return order, also the lawyer(s), the Enforcement Officer and the Police. The Child

Care authorities, psychologists, social workers and interpreters can also be involved in the repatriation.

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).

Their presence is not mandatory, and to what extent they do participate depends on the case and the way it develops. Under the Enforcement Act Section 13-14 the enforcement can be organised by the applicant/lawyer. If the defendant or someone else puts up resistance when the child is to be returned, the applicant may call upon the assistance of the Enforcement Officer. Furthermore, the Child Care authorities, psychologists and social workers can also be involved in the repatriation. If the return is to be organised by the Enforcement Officer, he/she should, in the best interest of the child, endeavour to achieve an amicable arrangement with the defendant. If the applicant is in the country he or she should normally be present when the child is being collected and is to be returned. If the applicant has not come to Norway to collect the child, the Enforcement Officer should ensure that an expert assistant is part of the collection operation, or another person whom the child trusts. If the child does not speak or understand Norwegian an interpreter shall normally be present.

- 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?

Reference is made to the answer given to question III B 3 a)

- 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.

No, the presence if the applicant is not required

- 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)?

- No-

- 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?

According to Article 11 of the Hague Convention and the Child abduction Act Section 16 the judicial or administrative authority must act expeditiously in proceedings for the return of the child.

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?

If the defendant agrees to comply voluntarily with the return order, he or she is according to The Norwegian Enforcement Act § 13-6,given a two weeks time limit. In the best interest of the child the repatriation should be arranged in an amicable way. This is also the case when the court decides that the Enforcement Officer shall organise the repatriation. If the Enforcement Officer has a reason to believe that the defendant will comply with the return order, the enforcement procedure can be deferred a few days.

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?

If such a situation occurs, the police will try to localise the child. The Child welfare Authorities may also be involved. The central authority will also be informed of the situation

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)?

Reference is made to the answers above. This will however to a large extent, depend on the case and how it develops.

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?

If necessary, the Enforcement Officer will have the authorisation to use physical force. Furthermore, enforcement damages can be imposed on the defendant according to the Norwegian enforcement Act § 13- 14 , § 13-8)

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

-Yes-

- 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.

Depending on how the case develops and what measures which turn out to be required, the Enforcement Officer can upgrade the intensity of the measures. The coercive measures however, must be set down in the courts decision. The

Court of Execution and Enforcement will normally provide a prioritised list of the alternatives for return. This will prevent the waste of time in the Court having to decide on another coercive measure if it turns out that the first choice cannot be implemented.

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*?

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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?

Yes. For determination of costs of the case before the Court of Execution and Enforcement, the provisions of chapter 3 of the Enforcement Act apply, and also chapter 13 of the Civil Procedure Act.

Under section 15 paragraph 3 sub-paragraph 2 of the Court Fees act, no court fees are payable for cases heard under the Child Abduction Act.

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?

As a general rule the applicant is to pay the costs of the case. The applicant can however, be granted free legal aid if the person in question meets the general criteria in order to be eligible for free legal assistance. This means that the applicant's gross income must not exceed the equivalent of 230 000 NOK pr year. Also, if the applicant so demands, the court can decide that the abductor has to pay the necessary costs incurred for the applicant.

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?

- No-

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

The applicant will be provided with such information either through his or her lawyer, the court or the Central Authority.

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

The enforcement can be organised either by the applicant or an Enforcement Officer. If it is up to the applicant to organise the return, the applicant or his/her lawyer has to organise the practicalities. If the enforcement is initiated by the Enforcement Officer, that officer must before the enforcement, ensure that the necessary airline tickets have been booked. If the applicant is not coming to Norway to collect the child, the Enforcement Officer must via the airlines, organise an escort for the child.

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.

Hague applications for repatriation 2001, children brought to Norway: 4, 1 of these cases had to be enforced

Hague applications for repatriation 2002, children brought to Norway: 4, none of these cases were enforced (3 applications were withdrawn , 1 refused)

Hague applications for repatriation 2003, children brought to Norway: 1 (voluntary return)

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).

Hague return proceedings pending, children brought to Norway, 2001: 2 Legal challenges, 2001:

Hague return proceedings pending, children brought to Norway, 2002:1 Legal challenges, 2002: none

Hague return proceedings pending, children brought to Norway, 2003:2 Legal challenges, 2003:0

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)?

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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?

2001: 15 weeks

2002: 25 weeks(2 cases carried over from 2001)

2003: -

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?

There are no formal co-operative agreements between agencies regarding the enforcement of Hague return orders. However, depending on the case and its development, the different agencies involved in the case, such as the Central authority, the Court of Execution and Enforcement, the child care authorities, embassies, the Enforcement Officer and the police will cooperate.

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?

The central authority concerned in each individual case will however cooperate.

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 Ministry of Justice and the Police, Postboks 8005 Dep, 0030 Oslo, Norway
(www.odin.dep.no/jd) KRIPOS, Postboks 8163, 0034 Oslo,
Norway (www.kripos.no) Furthermore, local courts of Execution and
Enforcement will be involved, and also local child care authorities***

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.

The central authority frequently provides training to student organisation at the faculty of law at the university of Oslo that are providing free legal aid. The central authority also provides training and lectures to other organisations when requested. Furthermore, the Central Authority also provides training to officers working at Norwegian embassies around the world.

2. Who provides this training and education?

The Central Authority

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?

Reference is made to the answers above

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.odin.dep.no/jd, The Ministry of Justice as the central authority also distribute a circular letter regarding international child abduction.

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 circular letter is in Norwegian and is provided by the central authority. It was compiled in 1991. A new circular letter is now being developed. www.odin.dep.no/jd is the Ministry of Justice's homepage, and contains information regarding international child abduction. It also has a link to the Haag application form for repatriation and the authorisation letter.

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.
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.

The Norwegian Ministry of Foreign Affairs, the Courts of Execution and Enforcement which gives the return orders in such cases and the Police may also provide information that may be relevant to this questionnaire.

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.

According to article 21 in the Hague Convention applications for access can be sent to the Central Authority. There is no provision regulating the right to access in the Norwegian Child Abduction Act. Article 21 in the Convention only applies to the Central authority, and imposes no obligations on any other authorities, as for instance the court. The Central Authority has the obligation to assist with practical questions, such as information regarding lawyers, free legal aid, The legal process in such cases etc. Under Norwegian law, Article 21 in the Convention does not impose an obligation to order the return of a child and is not a legal basis to enforce a right to access.

The Permanent Bureau would like to thank you for taking the time to consider this questionnaire. If you have any further questions or comments please do not hesitate to contact us at as@hcch.nl.