

**QUESTIONNAIRE ON THE ENFORCEMENT OF RETURN ORDERS
UNDER THE 1980 HAGUE CONVENTION AND OF ACCESS/ CONTACT
ORDERS
RESPONSE BY THE CENTRAL AUTHORITY OF TURKEY**

I. LEGAL BASES FOR THE ENFORCEMENT OF HAGUE RETURN ORDERS

1. There are no specific legislative provisions which exist in Turkey concerning the enforcement of return orders under the 1980 Hague Convention. However a draft law on the implementation of the 1980 Hague Convention has been submitted to the Parliament for approving.
2. The general legislative provisions which exist in Turkish legal system concerning the enforcement of court orders in the area of family law and govern the enforcement of return orders under the 1980 Hague Convention, are as follows:

The Enforcement and Bankruptcy Law, Number No: 2004, Article 25 of the Enforcement and Bankruptcy Law provides the compulsory enforcement mechanisms that would be applied to ensure the return of the child to its place of habitual residence. Under this article an order required the defendant to return a child to the plaintiff and he/she fails to do so, the bailiff would take direct forcible steps to accomplish the command of the judgment, if necessary with the assistance of the police. According to article 25/a, if a right of access is impeded by abduction of the child, the same enforcement mechanisms will be applied.

Article 341 furthermore provides that, where a child has been wrongfully removed or retained by any of whom parents who has not given parental authorities, upon the application of the other party having the right of custody shall be punished by imprisonment for one to three months.

3. There are no judicial decisions, practice directions nor guides available that govern the enforcement of return orders under the 1980 Hague Convention. As a general rule all the return orders are enforced on the basis on the actual case.
4. No, we do not have.

II. ENFORCEABILITY AND LEGAL REMEDIES

1. a) Yes, a Hague return order subject to appeal. A Hague return case has been brought before the competent family court where the child is located. Once the court makes its decision, the public prosecutor who acting for the Central Authority of Turkey and either party can appeal to the Supreme Court within 15 days from the decision is served. If not appeal is lodge within this time, the court decision becomes final and the enforcement proceedings can be initiated.

b) When the final decision of the Supreme Court is to affirm the judgement of the local court no further review is possible. Only exceptionally a revision may be requested. It means that the parties can appeal the Supreme Court for a review the decision within 15 days from it has been duly notified.

An appeal and exceptionally a revision may only made once.

2. a) The Hague return order can be enforced under the Civil Procedure Law only when it has been finalized.

b) A return order granted by Turkish courts will be enforceable throughout the country. The enforcement of the decision is exercised by an officer (bailiff) of the Execution office.
3. Yes, the Hague return order has to be final and no longer subject to ordinary appeal before any authorization for enforcement or other measure specified under 11.2 may be ordered. As mentioned in question 1.a the enforcement proceedings can be commenced only when the decision becomes final.
4. a) No, they are not subject to appeal independent of any appeal against the merits of the return order.

b) Not applicable.
5. Not applicable.
6. No, we do not have.

III. ENFORCEMENT PROCEDURE

A. The order to be enforced and the aims of enforcement

1. Response: b)
2. Response: b) and c)
3. The public prosecutor acting for the Central Authority of Turkey where the child is located, organizes the repatriation of the child in cooperation with the applicant. In practice generally the applicant is requested to pick up the child.

B. Actors involved in enforcement

1. 1. Yes a specific request for enforcement is necessary. If the abducting parent does not comply with the return order, depending upon the request of the public prosecutor or applicant, the order is enforced by the execution officer.
2. Response: a) and b)
3. a(i) Execution officer, parties, social workers and public prosecutor acting for the Central Authority are involved in the enforcement of return orders under the 1980 Hague Convention.

a(ii) the same.

- b) No. However depending on the nature of the actual case the Institution of the Protection of children and Social Services may be asked in order to prepare the child for the return.
 - c) No. However depending upon the wishes of the applicant, he/she may take place at any stage of the enforcement proceedings.
4. a) Yes there is supervision of the enforcement procedure by an enforcement court.
- b) The enforcement court would be the court, controlling enforcement in such a case.

C. The enforcement procedure proper

1. No, there is not a timeline for enforcement. The enforcement of the return orders take place immediately.
2. Yes, it is normal to allow a period of time for voluntary compliance with a return or to allow appropriate practical arrangements for the return of the child to be made.
3. Depending on the nature of the actual case, the public prosecutor acting for the Central Authority can request the court to order a prohibition preventing the child from leaving Turkey or the surrender of passports.
4. If the child is taken into hiding after the order was made and before it can be enforced, the public prosecutor enquires the whereabouts of the child with the assistance of the police. In addition the Central Authority can apply directly to the Ministry of Interior to establish the whereabouts of the child throughout the country. Furthermore the abducting parent can be prosecuted under article 341 of the Enforcement and Bankruptcy Law.
5. Not available
6. During the enforcement, if the abducting parent or any person refuses the return of the child, the execution officer can use physical force against them under the provision of article 80 of the Enforcement and Bankruptcy Law. Provided that, all conditions regulated by the law should be met.
7. a) No, they do not.
- b) Yes, the intensity of the measures can be upgraded where the physical or intellectual development of the child is endangered.
8. The court can by oneself or upon the application of the public prosecutor or the other party, order a provisional protective measure in ex-parte proceedings. As a rule, the temporary protective measures shall be dealt with expeditiously at first instance.

D. Costs

1. There are not costs regarding the enforcement of Hague return orders
2. The Ministry of Justice bears the costs for enforcement.
3. No, it has reservation to third Paragraph of Article 26 of the on Convention the Civil Aspects of International Child Abduction, Turkey does not accept any responsibility pertaining to the costs resulting from the enforcement of the return orders. In this respect, these costs have to be paid by the parents of the child. In practice, generally the costs of the actual repatriation of the child (such as the airfare for child) would be paid by the left-behind parent.
4. The Central Authority provides this information.
5. No, they have not.
6. No, we do not.

IV. STATISTICAL INFORMATION

1. In 2001, Turkish Central Authority received in total 35 return cases. In 10 cases the return of the child was ordered. 4 the applications of the return were refused by the court. The other applications were rejected by the Central Authority due to unsatisfactory the Convention requirements pursuant to Article 27, or settled voluntarily or withdrawn. All of the return orders were enforced.

In 2002, Turkish Central Authority received in total 31 cases. In 10 cases the return was ordered. 2 applications for return were refused by the court. 2 return cases are still pending. (The others were settled amicable or withdrawn or not accepted by the Central Authority). We are aware of the 2 return orders could not be enforced.

In 2003 36 applications for the return are made. In 6 cases, the return was ordered. (one of them has not become final yet) 4 return cases were not accepted by the court. (the others are still pending or have withdrawn or settled). 5 return orders have been enforced.

2. 2001 - No
2002 - 2
2003 - 12
3. None.
4. Information is not available.

V. CO-OPERATION

1. There is not available.
2. There is not available.
3. Information is not available.
4. No, we do not have.

VI. TRAINING AND EDUCATION FOR PROFESSIONALS

1. The Ministry of Justice has organized a judicial training for professionals including judges, public prosecutors and Central Authority personnel on the implementation of the Convention in co-operation with the European Commission TAIEX office in 2004. At present there is not available any training or education specifically concerning the enforcement of the Hague return orders.
2. Not available.
3. Not available.
4. No, we do not have.

VII- OTHER INFORMATION

1. There is not available.
2. Not available.
3. No we do not have.
4. Not available.
5. Not available.
6. No we have not.
7. No, there are not any changes envisaged in practice.

VIII- ORDERS GRANTING RIGHTS OF CONTACT/ACCESS/VISITATION

The same rules apply to the enforcement of domestic and foreign contact orders.