

STANDARD QUESTIONNAIRE FOR NEWLY-ACCEDING STATES

I Implementing legislation

1. Is implementing legislation necessary to bring the Convention into force in domestic law? If so, has the necessary legislation been enacted and is it in force? (Please provide a copy or indicate where copies of the legislation maybe obtained.)

Under Art. 5, paragraph 4 of the Constitution of the Republic of Bulgaria, international treaties that are ratified by the country, published and have entered into force, are considered as incorporated into the country's internal law. Such treaties take precedence over the internal law that collides with them.

In compliance with the Constitution and the Law on the International Treaties of the Republic of Bulgaria, the Convention was ratified with the Law on the Ratification of the Hague Convention on the Civil Aspect of International Child Abduction, passed by the 39th Parliament on February 21, 2003, and published in State Gazette (SG), issue 20 of March 3, 2003. The Convention gains the force of an internal law with its publication in the State Gazette. It was published in SG, issue 82 of September 16, 2003, and entered into force for the Republic of Bulgaria on August 1, 2003. The enforcement of the Convention between Bulgaria and other countries that are parties to it is implemented as provided by Art. 38 of the Convention.

Besides the abovementioned law on the ratification of the Convention, the following legislative changes were carried out for the implementation of the provisions of the Convention:

Law on the Amendment and Supplement of the Code of Civil Procedure (published in SG, issue 84 of 2003); the closing provisions of this law amend the Law on the Supreme Administrative Court. These changes entered into force on the day of the Convention's publication in SG – September 16, 2003. The Code of Civil Procedure (CCP) is the law that regulates the court proceedings in civil cases and is a codification of the Bulgarian civil procedural law. The abovementioned amendments regulate a special adversary proceeding with the Sofia City Court, namely, a proceeding for the return of or access to a child – Section VII, Art. 502 and subsequent of the CCP.

This special proceeding guarantees the direct application of the Convention as a material law.

Under Art. 4, Paragraph 1 of the Constitution, the Republic of Bulgaria is a country governed by law. The main legal source in the Republic of Bulgaria is the law. When carrying out their functions, the judges must obey only to the law, as Art. 117, Paragraph 2 of the Constitution mandates. The procedurals are imperative.

The procedure for reviewing and decision making on Hague Convention cases is a court one and is regulated with the CCP of Bulgaria. For cases within the Convention's field of application the Convention itself is the applicable law. The court may not refuse to order a child's return on grounds other than the ones listed in the Convention.

The child's rights and interests are guaranteed with a series of provisions in Bulgaria's internal law: 1. In the Family Code, Art. 3 of which lays as a basic principle the thorough protection of the children. 2. In the Child Protection Law, Art. 15 of which states that in the course of any administrative or judicial proceeding concerning a child's rights and interests, it is mandatory that the child be heard if it is ten or more years old, unless this would be to the child's interests' detriment. The child might be heard even if it has not turned the age of ten, depending on its level of maturity. The procedure for reviewing and making decisions on applications for a child's return under the Convention introduced in the CCP of Bulgaria also provides for the child to be heard by the court, in accordance with Art. 15 of the Law on the Child.

II Locating children

2. Please indicate the agencies involved and the processes available for the location of missing children in your country.

Ministry of Interior.

III Central Authority

3. The designation and contact details of the Central Authority. Contact persons within the Central Authority, languages spoken, contact details for each. Please indicate measures taken to ensure that the Central Authority is in a position to carry out the functions set out in Article 7 of the Convention?

As already mentioned in the beginning of the questionnaire, with the Law on the Ratification of the Hague Convention, Art. 1 (1), the Republic of Bulgaria has made the following declaration under Art. 6 of the Convention, “In compliance with Art. 6 of the Convention the Republic of Bulgaria determines the Ministry of Justice located at 1 Slavyanska St., Republic of Bulgaria, Sofia 1040, to be the central authority under the Convention”.

The structure of the Ministry of Justice as a central authority under the Convention is defined by the Constitution, the Regulation on the Structure and Functioning of the Council of Ministers and the Regulation on the Organization of the Ministry of Justice. The activity under the Convention is concentrated in the International Legal Cooperation and International Legal Assistance Directorate, respectively – in the International Legal Assistance Section within it, and in the Legal Directorate. The International Legal Assistance Section and Legal Directorate staff works directly on the processing of the applications and their supporting documentation submitted under the Convention. Pending is the approval and publication of an ordinance on the central authority’s activity under the Hague and Luxemburg Conventions which will regulate the central authorities’ responsibilities.

The contact persons within the Central Authority are : Ms. Veselina Maleva, Chief, International Legal Assistance Section, languages spoken English and French, e-mail address v_maleva@mjeli.government.bg; Ms. Biliana Beliakova, Expert, International Legal Assistance Section, languages spoken English and French, e-mail address b_beliakova@mjeli.government.bg. Telephone numbers: 00359 2 980 6462, 00359 2 9237 514; fax number : 00359 2 980 9222.

Bearing in mind that Bulgaria became only recently a party to the Convention, currently underway are organizational changes so that its central authority would be able to take over all functions as listed in Art. 7 of the Convention. The Section and the Directorate are equipped with computers, fax, telephone receivers; also, identified are the employees who will work on the Convention. A software program for the purposes of the Convention is being developed. The Ministry would gladly take advice or help in this area. In performing its functions the Ministry, as a central authority, works closely with the State Agency for Child Protection, the State Agency for Social Support, prosecutors’ offices, the court and the police. It is understandable that the Ministry would need additional staff,

equipment and financial resources but all this is planned within the frames of the Ministry's fiscal year budget.

IV Judicial procedures

4. Which courts/administrative bodies within your system have been given jurisdiction to consider applications for return orders (and questions of access) under the Convention?
5. What measures exist to ensure that return applications will be dealt with expeditiously at first instance and on appeal?
6. What facilities are available to foreign applicants to assist them in bringing their applications before the courts, and in particular is legal aid available and, if so, on what conditions?

The Law on the Amendment and Supplement of the Code of Civil Procedure, published in SG, issue 84 of 2003, introduces after Art. 501 a new, seventh section, entitled Proceedings on a Child's Return or on the Exercising of the Right of Access. Art. 502 of it determines the Sofia City Court to be the competent court to review and make decisions on cases on applications for children's return and for exercising of the right of access.

Under Art. 504 of the CCP, in cases under the Convention the Sofia City Court must come with a decision within 30 days from the application's submission; under Art. 505 the appeal of the Sofia City Court's decision is filed with the Sofia Court of Appeals within 14 days from the date of the decision, in compliance with the provisions of Art. 197 of the CCP. The Sofia Court of Appeals must come with a decision within 30 days from the date of the submission of the appeal and this decision is final.

In carrying out its powers as a central authority under the Convention, the Ministry of Justice (MOJ) assists the parties for a voluntary resolution of the dispute in child abduction and right to access cases. The application filed with the ministry and the accompanying documents are filed through the official channels with the Sofia City Court for its review and decision. The ministry takes part in the court procedure through its representative. It assists the party who filed the application in empowering a lawyer and serves as a liaison between the central authority and the applicant ensuring the best course of the proceedings and a timely decision on the case from both court instances.

V Enforcement procedures

7. What procedures and measures exist for the enforcement of:

- a) Return order?
- b) a contact/access order?

Under the CCP, court decisions regarding a child's return or right of access that have come into force are enforced by a receiver of the court from the respective regional court where an executory order was issued. For the decision enforcement the receiver of the court opens an executory case. The mechanisms in disposition to the receiver of the court for ensuring an efficient enforcement are imposing of fines or actual surrender of the child. In principle, the executory bodies do not have the right to exercise discretion whether and to what degree a court decision should be enforced; they must enforce it such as decreed. In exceptional cases, when significant time period has elapsed from the moment of the decision's announcement until its enforcement and, because of that, the circumstances on the case have changed essentially, in the meaning of Art. 106, Paragraph 5 of the Family Code, the executory body may postpone the enforcement and advise the respective court about an eventual amendment to the initial decision.

As mentioned, a receiver of the court with the respective regional court enforces a court decision. The enforcement is regulated with the CCP as an "Enforcement of a specific action" (Art. 419 through Art. 423a) and with Decree No. 4 of December 6, 1962 of the Plenary Session of the Supreme Court of the Republic of Bulgaria. The receiver of the court is obliged to request from the obligator to perform the actions ordered with the court decision – to return the child or to provide the claimant with access to the child. If the obligator fails to do so, the receiver of the court enforces compulsory measures as envisaged by law and imposes fines on the obligator from 200 to 400 BGN. Besides the court the decision, the court issues also an executory order which is a court act that certifies the right to a compulsory enforcement and authorizes its implementation, obligating and empowering the executory body to proceed with compulsory enforcement after claimant's request. In both cases under the Convention, no order or other document proving the validity of the court decision or that it is in the child's best interest is required.

VI Substantive law

8. What are the legal criteria by which custody and contact determinations are made?

9. Is there a difference in the legal status of mothers and fathers in custody or contact cases?

The fundamental criterion of the Bulgarian legislation concerning the resolution of issues regarding child custody and right to access is the child's best interests. Here Art. 3 of the Family Code applies which proclaims the overall protection of the child.

There is no difference in the treatment afforded women and men in custody or contact cases. Art. 3 of the Family Code specifically sets the equal treatment of men and women as a basic principle in settling marriage, relationship, adoption and guardianship-based relations.

VII Social services and child protection services

10. Please describe the services which exist for the assessment, care and protection of children in the context of international child abduction.

11. Please indicate the services available for the protection (if necessary) of returning children, as well as the services available (including legal advice and representation) to a parent accompanying the child on return.

At present, there are 272 Offices for Child Protection (OCP) within the municipal Social Support Directorates (SSDs). The SSDs are local divisions of the State Agency for Social Support. The OCPs carry out the actual practical child protection activity on the territory of the respective municipality. This includes defining and implementing specific child protection measures, preparing an individual plan for working with a child, verification of information about a child's rights violations, preparation of written opinions for the goals of administrative or court proceedings that concern a child's interests, etc. The State Agency for Child Protection (SACP) is a specialized body within the Council of Ministers for administration, coordination and control in the child protection area. SACP participates in the development of the state child protection policy, observes and analyzes its implementation, and gives methodological directions to OCPs. SACP organizes verification of children's rights observation by all state, municipal and private schools, kindergartens, daycare centers, specialized institutions, servicing entities, health institutions, SSDs and NGOs working in the child protection area; in cases of children's rights violation the agency

issues instructions for their elimination.

The OCPs within the SSDs are tasked with the provision of pedagogical, psychological and legal assistance to parents and persons to whom parental responsibilities were conferred, in the area of children's upbringing and educating issues; with providing consultation and information to the child that correspond to its development level; with performing social work in order to enable the child-parent relationship and to resolve relationship conflicts and crisis.

VIII Information and training

12. What measures are being taken to ensure that persons responsible for implementing the Convention (e.g. judges and Central Authority personnel) have received appropriate information and training? (Note: the Permanent Bureau may be contacted for information in relation to forms of assistance which may be available for this purpose.)

1. Within the frames of a joint project for training for employees and magistrates implemented by the Ministry of Justice and a German foundation for international legal cooperation located in Bonn, an international seminar was organized in June 2003 with topic International Dimensions of the Private Legal Aspects of Children's Rights. This seminar provided a two-stage training:

I stage – June 2 and 3, 2003, in Bulgaria, training on two Conventions – the Hague and the Luxemburg. The participants were experts from the Ministry of Justice, judges from the Sofia City Court, the Sofia Court of Appeals, the Sofia County Court and the Sofia Regional Court, prosecutors from the Sofia City Prosecutor's Office, representatives of the National Service Police Directorate within the Ministry of Interior, experts from the State Agency for Child Protection, from the State Agency for Social Support and from the Consular Relation Directorate within the Ministry of Foreign Affairs, altogether 50 participants. The lecturers were managers and councilors from the Hague Conference on International Private Law – Mr. Phillip Lorti, Dr. Andrea Schultz and Mrs. Sarah Armstrong.

II stage – June 24-29, 2003, in Germany, in the cities of Bonn, Frankfurt and Cologne. This was practical training on the Hague Convention for experts from the Ministry of Justice, judges from the Sofia City Court and the Sofia Court of Appeals, the Sofia City Prosecutor, an expert from the police and a

representative of the State Agency for Child Protection. There were working visits to the Office of Children, Youth and Family Issues in Bonn, to the Office of the Chief Federal Prosecutor at the Supreme Federal Court in Bonn which is the central authority for the Convention, to the International Social Service of the German Alliance for Public and Private Support at Frankfurt, and to the Supreme County Court in Cologne.

2. On March 17-19, 2004, an international seminar was held, organized by TAIEX with topic The European Legislation and the International Conventions in the Area of Parental Rights Exercising and Related Issues. The seminar provided training for experts from the State Agency for Social Support, the Ministry of Justice, the State Agency for Child Protection, for judges from the Sofia City Court and the Sofia Court of Appeals, and for prosecutors from the Sofia City Prosecutor's Office and the Sofia Appeal Prosecutor's Office, altogether 34 participants. The presentations included training on the Hague Convention. The lecturers were managers and experts from the Hague Conference on International Private Law, from the Federal Ministry of Justice of Germany, from the Tempelhof-Kreuzberg District Court, Germany, and from the Ministry of Justice of Bulgaria.